

# TAKE JUDICIAL NOTICE

## New Broker Law

October 9, 2008

Effective January 1, 2009 The Commission Escrow Act expands the Affidavit of Entitlement to Commission For Completed Brokerage Services. The entitlement affidavit has long been on the books, and can be found in Real Property Law Section 294-b.

The new portion of the law (which affects one-to-four family dwellings, an individual condominium unit, or an individual cooperative unit used for residential purposes) allows a duly licensed real estate broker, when the commission is not paid at closing, to force the seller to deposit the money with the recording officer in whose office the affidavit of entitlement was recorded.

The broker who wishes to avail himself of the remedy must fulfill all of the following requirements:

1. A written brokerage agreement must be executed by the parties, and contain the following statement in clear and conspicuous type face **“at the time of closing, you may be required to deposit the broker’s commission with the county clerk in the event you do not pay the broker his or her commission as set forth herein. Your obligation to deposit the broker’s commission may be waived by the broker.”**
2. File the affidavit of entitlement with the county clerk.

The affidavit must include:

- a) name and license number of the broker
- b) name of seller or other party responsible for paying commission
- c) name of person authorizing sale, if other than the seller
- d) a copy of the brokerage agreement
- e) description of the real property
- f) amount of commission
- g) description of brokerage services, and the dates.

If the seller does not deposit the commission he will be responsible for paying the broker’s legal costs. It would be wise to include this information in the brokerage agreement.

The deposit is held by the clerk until the rights of the seller and broker have been determined by a court of competent jurisdiction.

The failure to make such a deposit does “not create a lien or encumbrance against any real property” and does not invalidate “any transfer of real property”. It certainly does not supply a broker a basis for filing a Notice of Pendency.