



Legal Line

New document retention regulation goes into effect on October 13, 2014

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As part of NYSAR's effort to amend outdated New York State Department of State (DOS) regulations, a proposed amendment was made to 19 NYCRR §175.23 addressing the broker requirement to retain certain transaction-related documents for a period of three years. This amendment was voted on by the New York State Board of Real Estate and appeared in the New York Register on July 15, 2014 as being approved and effective in 90 days. It is NYSAR's hope that the amended regulation will make the requirements of document retention clearer and easier for brokerages.

There has always been some confusion among licensees as to what documents need to be retained. Many brokers believed that they were required to keep a copy of the HUD-1 from every closing they were involved in. There was never any DOS rule requiring the HUD-1 to be kept, rather the previous regulation required a copy of a settlement statement in lieu of other documents. Furthermore, real estate brokers are not entitled to a copy of the HUD-1 unless their client or customer agrees to supply a copy. If the client or customer refuses to supply a copy, the broker is not entitled to receive one. In order to alleviate the confusion, the language of the amended regulation simplifies the document retention requirement.

It should be noted that only the broker is required to retain those documents set forth in 19 NYCRR §175.23. NYSAR has communicated with DOS on this matter, and DOS has

stated that there is no provision requiring associate brokers and/or salespersons to retain any paperwork pursuant to DOS regulations.

Another amendment expressly permits documents to be retained electronically. Although DOS had permitted this in the past, including it in the regulation preserves this practice going forward. Brokers who choose to retain documents electronically should set forth a policy as to how the documents are stored. The procedure for retaining documents electronically should be the same throughout a brokerage. The brokerage should also make sure that industry accepted security and backup are in place for the electronically retained documents.

Below, please find the text of the amended regulation. As always, questions about the amended document retention regulation should be directed to the NYSAR Legal Hotline. The Legal Hotline is available Monday-Friday from 9 a.m. to 3 p.m. by calling 518-436-9727 or 518-43-NYSAR.

§175.23 RECORDS OF TRANSACTIONS TO BE MAINTAINED (EFFECTIVE 10/13/2014)

(a) Each licensed broker shall keep and maintain for a period of three years, paper and/or electronic records of each transaction effected through his or her office concerning the sale of real property used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons improved by a one- to four-family dwelling or a condominium or cooperative apartments but shall not refer to unimproved real property upon

which such dwellings are to be constructed. Records to be kept and maintained shall contain: (1) the names and addresses of the seller and the buyer, (2) the broker prepared purchase contract/binder. If the purchase contract is not prepared by the broker, then the purchase price and the amount of deposit (if collected by broker), (3) the amount of commission paid to broker, (4) gross profit realized by the broker if purchased by him or her for resale, (5) any document required under Article 12-A of the Real Property Law and (6) the listing agreement or commission agreement or buyer-broker agreement.

(b) In some transactions, the broker may not be provided a copy of the documents required to be maintained by subdivision (a) of this section. In such instances, the broker will not be found to have violated the requirements of this section. ●

NYSAR's Legal Hotline is a question-and-answer service for REALTOR® members only. Call 518-43-NYSAR or 518-436-9727 from 9 a.m. to 3 p.m. Monday through Friday with your questions. You will need to provide your member number, which can be found on the mailing label of this magazine. The hotline does not provide a client-lawyer relationship. For confidential legal advice, consult a competent attorney.