

Real Property Law § 294-b allows a licensed real estate broker to file an "Affidavit of Entitlement" with the County Clerk's Office.

The "Affidavit of Entitlement" must contain the following:

1. Name and license number of the real estate broker.
2. Name of the seller of the real property or the person responsible for paying the broker commission.
3. Name of person authorizing the sale on behalf of the seller, if any, and the date of authorization.
4. A copy of the written agreement for the broker's commission must be attached to the Affidavit of Entitlement, which agreement MUST contain the following language in **BOLD**: "At the time of closing, you may be required to deposit the broker's commission with the county clerk in the event that you do not pay the broker his or her commission as set forth herein. Your obligation to deposit the broker's commission with the county clerk may be waived by the broker."
5. Description of the real property.
6. Amount of the commission claimed.
7. Description of the brokerage services performed.
 - a. DATES OF THE BROKERAGE SERVICES PERFORMED.

The statute states that the filing of the "Affidavit of Entitlement" does NOT create a lien against the real property and it is discharged after one year. However, the County Clerk should enter the "Affidavit of Entitlement" on the lien docket with the following note: **This document does not constitute a lien and does not invalidate any transfer or lease of the real property described therein.**

The fee for filing the "Affidavit of Entitlement" is the same as filing a deed.

45 # 5/PAGE

If the seller does not pay the real estate commission as stated in the commission agreement, then at the time of the transfer of the deed, then the seller must deposit with the recording officer (the County Clerk's Office) the lesser of the following: (a) the net proceeds of the sale; or (b) the amount of the unpaid portion of the commission due pursuant to the agreement.

The Clerk's Office is entitled to a fee of \$25.00 to be paid by the broker if monies are deposited with the Clerk.

The Clerk shall hold the monies deposited in accordance with CPLR § 2601 until Court Order.

Final note; the statute only applies to one-to-four family dwellings and to individual condominiums and individual cooperative apartments where such premises is occupied as a residence. Therefore, do not accept at "Affidavit of Entitlement" for commercial or other non-residential real property transfers.

Thank you for the opportunity to research this issue. Do not hesitate to contact me if you have further questions.

[Individual Broker]

**AFFIDAVIT OF ENTITLEMENT TO COMMISSION
FOR COMPLETED BROKERAGE SERVICES**

STATE OF NEW YORK)
) ss:
COUNTY OF _____)

_____ being duly sworn, deposes and says:

1. I am a duly licensed real estate broker in the State of New York. I have produced a person ready, willing and able to purchase all or part of a piece of real property or an interest in a cooperative apartment pursuant to a written contract of brokerage employment with the owner thereof. This person or another acting on his or her behalf has subsequently contracted to purchase such real property or an interest in a cooperative apartment pursuant to such contract of brokerage employment.

2. I make this affidavit in accordance with Section 294-b(2) of the Real Property Law.

(i) My name is _____
and my license number is _____

(ii) The name of the seller or person responsible for the commission is _____.

(iii) The name of the person authorizing the sale on behalf of the seller (if other than the seller) is _____
_____ and the date of such authorization is _____
_____.

(iv) The brokerage employment agreement was written and a copy thereof is attached hereto, which pursuant to Section 294-b(5)(j) of the Real Property Law contains the following statement to the seller in clear and conspicuous boldface type: **“AT THE TIME OF CLOSING, YOU MAY BE REQUIRED TO DEPOSIT THE BROKER’S COMMISSION WITH THE COUNTY CLERK IN THE EVENT THAT YOU DO NOT PAY THE BROKER HIS OR HER COMMISSION AS SET FORTH HEREIN. YOUR OBLIGATION TO DEPOSIT THE BROKER’S COMMISSION WITH THE COUNTY CLERK MAY BE WAIVED BY THE BROKER.”**

(v) The real property or interest in a cooperative apartment involved is situated in the County of _____
_____ and State of New York and is described as follows:

_____.

(vi) The commission is due and unpaid is _____ (\$ _____).

(vii) The brokerage services performed and applicable dates are as follows:

Date	Service Provided
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

3. The Broker has not waived the seller's obligation to deposit the broker's commission with the county clerk in the event the seller does not pay the Broker's commission as set forth herein. By the filing of this affidavit and its service upon the seller, the Broker is putting the seller on notice that if the Broker does not receive the compensation called for under the terms of the attached written contract at or prior to the delivery of the deed or delivery of the stock certificate and/or proprietary lease, the lesser of the net proceeds of the sale or the amount of the unpaid portion of the compensation agreed to in such written contract of brokerage employment shall be deposited by the seller at the time of the delivery of the deed or the delivery of the stock certificate and/or proprietary lease, with the county clerk of the county set forth in paragraph 2(v), pursuant to Section 294-b(5)(a) of the Real Property Law. Furthermore, if the seller fails to make such deposit with said county clerk, the seller may be responsible for paying the broker's costs and reasonable attorney fees pursuant to Section 294-b(5)(h) of the Real Property Law.

[BROKERS SIGNATURE AND PRINTED NAME]

Sworn to before me this _____ day of _____, 20__.

Under Real Property Law ("RPL") Section 294-b ("Recording brokers affidavit of entitlement to commission for completed brokerage services"), a duly licensed real estate broker asserting entitlement to a commission for producing a person or entity who purchases or leases real property may file an affidavit of entitlement to a commission with the recording officer of the county in which any of the real property in question is located. The filing of the affidavit does not invalidate the transfer or lease of real property, does not create a lien, and shall be discharged after one year. Section 294-b has been amended by Chapter 436 of the Laws of 2008, effective January 1, 2009. First, the scope of a notice of entitlement has been expanded to include a claim for a commission in connection with the conveyance of an interest in a cooperative unit. Second, the affidavit of entitlement, while still not a lien, will be recorded in the "lien docket". Third, when the subject property is a one-to-four family dwelling, an individual condominium unit or an individual cooperative apartment, used or intended to be used, wholly or partially, as a residence, and the broker's commission is not paid at closing, "the lesser of the net proceeds of the sale or the amount of the unpaid portion of the compensation agreed to in such written contract [the brokerage agreement] shall be deposited by the seller... with the recording officer in whose office the affidavit was recorded...until the rights of the seller and broker to such monies has been determined by order of a court of competent jurisdiction...", provided that (i) the brokerage contract includes a notice, as required by Chapter 436, (ii) the affidavit has been recorded, and (iii) the broker serves a copy of the affidavit on the seller prior to closing, as required by the statute. The failure to deposit monies with the recording officer does not "create a lien or encumbrance against any real property" and does not invalidate "any transfer of real property".