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Senate Engrossed House Bill

FILED

Jane Dee Hull
Secretary of State

State of Arizona
House of Representatives
Forty-second Legislature
Second Regular Session
1996

CHAPTER 299

# HOUSE BILL 2147

AN ACT

AMENDING SECTIONS 32-2151 AND 32-2156, ARIZONA REVISED STATUTES; RELATING TO REAL ESTATE REGULATION.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 32-2151, Arizona Revised Statutes, is amended to read:

32-2151. Disposition of funds; trust money deposit requirements

A. Unless otherwise provided in writing by all parties to a transaction, any licensed real estate broker who does not immediately place all funds entrusted to him, in his capacity as a real estate broker, in a neutral escrow depository in this state shall upon receipt place all such funds in a trust fund account in a federally insured or guaranteed account in a depository located in this state. The commissioner may adopt such rules as are necessary to provide for records to be maintained and the manner in which such trust fund account deposits may be made.

B. The following minimum requirements apply to each broker's trust fund account:

1. The broker shall make deposits to trust fund accounts by deposit slips. Receipts or other documentation shall identify each transaction, the date and the amount of each deposit and the names of parties involved in the transaction represented by the deposit and monies shall be used only for the purpose for which the monies were deposited.

2. The broker shall retain a complete record of all monies received in connection with a real estate transaction in the main or branch office of the designated broker. A broker's records shall be kept according to generally accepted accounting principles and shall include a properly descriptive receipts and disbursement journal and client ledger. The broker shall keep any computerized records in a manner allowing reconstruction in the event of destruction of electronic data. The broker shall maintain a trust fund account bank reconciliation and client ledger balance on a monthly basis and shall remove any interest earned on a trust fund account at least once every twelve months. A broker shall not permit advance payment of monies belonging to others to be deposited in the broker's personal account or to be commingled with personal monies. It is not considered commingling if, when establishing a trust fund account, a broker deposits monies not exceeding five hundred dollars to keep the account open or to avoid charges for an insufficient minimum balance.

C. An agreement to place monies entrusted to the broker in a depository that is located outside of this state is valid if all parties to the transaction agree in writing and either:

1. The monies are placed in a property management trust account established pursuant to section 32-2174 and:

(a) The account is federally insured or guaranteed.

(b) The property management agreement contains:

(i) Disclosure that the department's regulatory protections of the owner's monies may be significantly hampered.

(ii) Disclosure that the owner may not have access to or any control over the trust account, except to audit and review the status of the account.

(iii) An addendum that has the signed authorization by an appropriately empowered official of the depository in which the trust account is placed that the trust account and all related documentation will be open to examination by the department and the owner.

2. If the monies are not deposited in a property management trust account, the broker discloses to the parties to the transaction that potential risks may accrue as the result of depositing the monies in a depository outside this state.

D. This section shall not be construed to allow a broker to commingle monies entrusted to the broker with the broker's own monies, UNLESS THE COMMISSIONER ADOPTS RULES THAT ALLOW COMMINGLING.

Sec. 2. Section 32-2156, Arizona Revised Statutes, is amended to read:

32-2156. Real estate sales persons; disclosure

A. No criminal, civil or administrative action may be brought against a transferor of real property or a licensee ~~acting on behalf of a transferor~~ for failing to disclose that the property being transferred is or has been:

1. The site of a natural death, suicide or homicide or any other crime classified as a felony.

2. Owned or occupied by a person exposed to the human immunodeficiency virus or diagnosed as having the acquired immune deficiency syndrome or any other disease that is not known to be transmitted through common occupancy of real estate.

B. Failing to disclose any fact or suspicion as set forth in subsection A shall not be grounds for termination or rescission of any transaction in which real property has been or will be transferred.

APPROVED BY THE GOVERNOR APRIL 29, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 30, 1996