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**Date:** October 1, 2008  
**To:** All Clients and Friends  
**From:** Cliff Bernstein  
**Re:** Real Estate Broker's Affidavit of Entitlement

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**TITLE INSURANCE BULLETIN – NEW YORK  
AFFIDAVIT OF ENTITLEMENT**

Governor Patterson recently signed into law Chapter 436/2008. This new law amends Real Property Law 294-b and is effective January 1, 2009.

Real Estate Brokers were given the right to file an affidavit of entitlement to a commission on 1-4 family dwellings by RPL 294-b, signed into law in 1982. The law specifically states this affidavit is not a lien.

Chapter 436 adds an interest in a cooperative apartment as an interest covered under the law.

A new section has been added requiring the broker to serve a copy of the affidavit upon the seller by registered or certified mail, return receipt requested, or by personal delivery. If the closing is to be within 5 days of signing the affidavit, the affidavit must be personally served. If the broker fails to serve the affidavit, it will forfeit its right to have the commission deposited with the county clerk.

If the seller has an attorney, the broker must send a copy to the seller's attorney by mail, fax or e mail. Failure to do so will NOT cause a forfeiture of the above right.

The right referred to is contained in section 5. The lesser of the net proceeds or the unpaid commission shall be deposited by the seller with the recording officer in whose office the affidavit has been recorded.

The monies deposited are deemed to be paid into court under 2600 (b) of the CPLR. The broker or seller may commence an action to determine the entitlement of the monies. If no action is commenced within 60 days of deposit, the seller is entitled to a court order directing payment of the monies to the seller.

Failure to deposit the monies does not create a lien or encumbrance on the property. Further, the failure to deposit the monies will not invalidate any transfer of the property.

In order to receive the "benefit" of this section, the broker's commission must contain a statement recited in the law.

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