

Commissioner's Advisory No. 5

November 6, 2015

The Department of Real Estate is a resource for consumers and industry practitioners.

This Advisory is offered as guideline for the Designated Broker to determine the Closing Document that will be required in the Designated Broker's Closed Transaction file for at least five years from the date of the Closing of the transaction. This Advisory is informational only and is not intended as legal advice.

Q. What is the Closing Document that will be required in the Designated Broker's Transaction file for at least five years from the date of the closing of a transaction?

A. A Closing Statement that conforms to statutory/rule requirements of the Arizona Revised Statutes, Title 32 and the Arizona Administrative Code, Title 4.

With the implementation of the Federal Government's Consumer Financial Protection Bureau TRID (CFPB-TRID) rule and its guidelines, the Arizona Department of Real Estate (ADRE) has received many questions from the real estate industry regarding the ADRE statutory and rule requirements for the Closing Statement.

Let's review what the Statutes and Rule indicate.

Definition of "Closing": "Closing" means the final step of a real estate transaction, such as when the consideration is paid, all documents relating to the transaction are executed and recorded, or the deed is delivered or placed in escrow. AAC R4-28-101

Records to be retained by the Designated Broker: The records required by this section shall include copies of earnest money receipts, confirming that the earnest money has been handled in accordance with the transaction, closing statements showing all receipts, disbursements and adjustments, sales contracts and, if applicable, copies of employment agreements. A.R.S § 32-2151.01 (A); and

Sales transaction folders shall include: A complete copy of the sales contract, any escrow account receipt, any closing or settlement statement, and, if applicable, a copy of the escrow instructions, listing agreement, employment agreement and release of escrow monies, A.R.S 32-2151.01(F) (2). Also, R4-28-802 (C) states, Transaction Statements. In addition to the requirements of A.R.S §§ 32-2151.01 and 32-2174, the broker shall retain true copies of all receipts and disbursements, or copies of the executed and delivered escrow closing statements that evidence all receipts and disbursements in the transaction. The CFPB-TRID Closing Disclosure (CD) form will not comply with the above, since it is only delivered to the Buyer/Borrower, and not the Seller. Therefore, the CFPB-TRID Closing Disclosure (CD) form should not be held in the Designated Broker's sales transaction folder as the Closing Statement. A final Closing Statement per the Arizona Statutes and Rule must be included in the Designated Brokers closed transaction file. Commission Disbursements must be authorized by the Designated Broker, and a licensee cannot accept compensation as a licensee for the performance of real estate activity from any person other than the licensed broker; A.R.S § 32-2153 (A) (7).

Definition of "Compensation" means any fee, commission, salary, money or other valuable consideration for services rendered or to be rendered, as well as the promise of consideration whether contingent or not; A.R.S § 32-2101(16).