

REAL ESTATE BROKER COOPERATION AGREEMENTS

This article explores what are referred to as “Broker Cooperation Agreements” under A.R.S. § 32-2163. In most cases it is necessary for a person to be actively licensed as a real estate broker or salesperson in the State of Arizona in order to receive a commission or co-broke arising out of an Arizona real estate transaction. An exception applies where an Arizona broker pays a cooperating commission or “co-broke” to a broker licensed in a neighboring state, California being a noteworthy example.

This exception is provided under A.R.S. § 32-2163, which states that notwithstanding the normal prohibition against paying or sharing compensation with unlicensed individuals, a “licensed broker in this state may pay compensation to and receive compensation from a broker lawfully operating in another state.” A.R.S. § 32-2163(A). The reference to “lawfully operating” in another state is construed to mean that so long as the person receiving the compensation is acting within the scope of the applicable licensing laws in the state where that person operates, the person may lawfully receive the compensation even though the person is not licensed within the State of Arizona.

This exception, however, has its limits. The statute clarifies that an out of state broker is not permitted to “conduct activity in this state [Arizona]” that would require a license. A.R.S. § 32-2163(B). A notable example of activity that would require an Arizona license would include website advertising of Arizona real property: “the offering of real estate brokerage services . . . for compensation or any other thing of value pertaining to real property located in this state through an internet web site constitutes activity that requires a broker's license issued by the department.” A.R.S. § 32-2163(C)(2).

Where an out of state broker seeks to conduct broker activities that would (otherwise) require an Arizona license, and receive commissions or “co-brokers” from Arizona brokers, a “broker cooperation agreement” should be utilized. The provisions of A.R.S. § 32-2163 were amended a few years ago to provide for such “broker cooperation agreements,” which may be entered subject to certain requirements. Among those requirements, such a “broker cooperation agreement” must provide the following terms:

- A list of the real estate activities to be conducted by the out of state broker;
- An agreement by the out of state broker to fully comply with the laws of the State of Arizona and to submit to the regulatory jurisdiction of the Arizona Department of Real Estate; and

- An agreement by the Arizona broker to accept responsibility for the acts of the out of state broker.

Further, the out of state broker's activities must be limited in many respects. For example, the out of state broker should not conduct negotiations in Arizona or with owners of Arizona property; the statute requires that "all negotiations in this state or with people who own property in this state are conducted with the licensed broker in this state." A.R.S. § 32-2163(C)(2). The out of state broker also should not place any signs on Arizona property. Such acts should be done only by the Arizona broker.

Obviously, in the event an out of state broker seeks to conduct limited activities in the State of Arizona pursuant to a broker cooperation agreement, that broker should familiarize himself with all the statutory and regulatory requirements that apply to Arizona real estate agents under the provisions of Title 32 of the Arizona Revised Statutes, and Chapter 28 of the Arizona Administrative Code (aka the Commissioner's Rules). Likewise, before an Arizona broker commits to entering into a broker cooperation agreement, that Arizona broker should recognize that he will be called to task for any transgressions of the out of state broker in violation of Arizona laws; with the recognition that the Arizona broker will probably be held to carry the same liability for that out of state broker's acts as if the out of state broker were employed and licensed under the Arizona broker. Considering this last point, the Arizona broker should confirm whether the broker's errors and omissions insurance will cover the Arizona broker for any liability arising out of the out of state broker's actions or omissions.

Assuming the Arizona broker and out of state broker are able to deal with and address these issues, there remains the question as to the form of the agreement. While the statutory provisions do not specify a particular format of such an agreement, the agreement must comply with the requirements for specifying the out of state broker's obligation to comply with Arizona statutes, the Arizona broker's obligation to be responsible for the out of state broker's activities, and a specific description of the activities to be conducted by the out of state broker within the State of Arizona. For illustrative purposes, following is a "form" Broker Cooperation Agreement which provides a format that addresses those matters required to be addressed by the statute, and further includes optional terms, such as indemnification provisions, that may be important and should be considered.

BROKER COOPERATION AGREEMENT

This Broker Cooperation Agreement ("Agreement") is entered into effective _____, 20__ (the "Effective Date") by and between _____ ("California Broker") and _____ ("Arizona Broker") pursuant to the provisions of A.R.S. § 32-2163(C), and the terms and conditions set forth below.

RECITALS

- A. Arizona Broker is an Arizona [limited liability company / corporation] doing business and licensed as a real estate entity broker pursuant to A.R.S. § 32-2125.
- B. California Broker is a California [corporation / limited liability company] licensed in the state of California as a real estate broker.
- C. This Agreement is entered pursuant and subject to the provisions of A.R.S. § 32-2163(C).
- D. This Agreement is entered prior to the conduct of any activity by California Broker otherwise requiring an Arizona real estate broker's license.

NOW, THEREFORE, in consideration of the above recitals and covenants hereinafter set forth, Arizona Broker and California Broker agree as follows:

AGREEMENT

- 1. The real estate activities to be conducted by California Broker [may / shall] include the following:

[Description of activities, e.g. communicating and negotiating on behalf of specified client(s) and the property(ies) involved . . .

(any of such properties to be referred to as "Properties" or a "Property").

All such activities of California Broker, however, shall at all times be subject to and conditioned upon the provisions following below.

- 2. California Broker agrees to fully comply with the laws of Arizona and submit to the regulatory jurisdiction of the Arizona Department of Real Estate for activities subject to the Arizona real estate licensing statutes.
- 3. Arizona Broker understands and accepts responsibility for the acts of California Broker.
- 4. All negotiations in this state or with people who own property in the state of Arizona shall be conducted through Arizona Broker.
- 5. All principal funds handled by either Arizona Broker in this state or California Broker shall be subject to the deposit and handling requirements of A.R.S. §

32-2151.

6. Any signs placed on property in Arizona in which California Broker may become involved shall be placed and be the responsibility of Arizona Broker.

7. This Agreement shall not be construed to allow California Broker to list, market or advertise in Arizona, real property located in Arizona for sale, lease or exchange. This Agreement shall further not be deemed to give any authority to California Broker to sell, lease, rent, exchange or attempt to sell, lease, rent or exchange real property to a resident of Arizona.

8. Arizona Broker shall pay to California Broker a co-brokerage fee or commission (a "Co-Broke") in the amount of ____ Percent (____%) of any and all fees and commissions or substitute consideration (whether monetary or otherwise) received by Arizona Broker up until ninety (90) days following the Termination Date, arising out of the sale or transfer of any Property or Properties or portions or interests therein. Arizona Broker shall utilize reasonable efforts to collect any commissions payable to Arizona Broker out of which a Co-Broke is in turn payable to California Broker.

9. California Broker agrees to indemnify, defend and hold Arizona Broker entirely free and harmless for, from, and against any loss, damage, liability, or expense (including, without limitation, attorney fees) arising from any claim, demand or action (including any administrative actions or investigations by the Arizona Department of Real Estate) arising out of any act or omission of California Broker, and further agrees to defend Arizona Broker at California Broker's sole cost and expense from any such claims.

10. The individuals executing this Agreement on behalf of the respective parties hereunder each represent and warrant that they have full authority to execute this Agreement and bind the respective parties to this Agreement.

11. This Agreement shall automatically terminate and be of no further force and effect on _____, 20__ (hereinafter the "Termination Date"), unless terminated earlier by either party upon thirty (30) days advance written notice.

EXECUTED as of the Effective Date:

ARIZONA BROKER:

_____, LLC, an Arizona limited liability company

By: _____

Its: _____

CALIFORNIA BROKER:

_____, _____, a California _____

By: _____

Its: _____