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October 18, 2011

S. Anthony Gatto, Esq.
Director of Legal Services
New York State Association of Realtors, Inc.
130 Washington Avenue
Albany, NY 12210

Dear Mr. Gatto:

Your request for a legal opinion has been referred to me for reply. You have indicated that a Declaratory Ruling issued by the Department of State on August 27, 1991 (In re Janet S. Kaplan, #91-34) is being misinterpreted by some as creating an absolute right for a real estate salesperson or associate broker to take listings with them upon leaving the broker for whom the listing was obtained.

Licensed associate brokers and salespeople obtain all clients and conduct all real estate business on behalf of and subject to the control and supervision of the sponsoring real estate broker with whom they are associated. (See, DLS v. Schmidt, 72 DOS 97, DOS v. Strout Realty Inc, 20 DOS 88, DOS v. Eksteen, 49 DOS 88.) The provisions of 19 NYCRR 175.14 mandate that on termination of an association with a sponsoring broker, an associate broker or salesperson must "...forthwith turn over to the (sponsoring)...broker any and all listing information obtained during (the associate broker/salesperson's) association..." with the sponsoring broker. If an associate broker or salesperson were to enter into a new listing agreement with a seller knowing that said seller was already bound by an agency agreement with the associate broker/salesperson's former brokerage, the Department of State could institute disciplinary proceedings against said licensee pursuant to Real Property Law section 441-c. The associate broker/salesperson's new broker could also face disciplinary action. A real estate broker may not "...negotiate the sale, exchange or lease of any property directly with an owner or lessor if he knows that such owner, or lessor, has an existing written contract granting exclusive authority in connection with such property with another broker." (19 NYCRR 175.8)

A seller or buyer has the authority to cancel an agency contract because "... contracts ... of ...agency...have been analogized to employment contracts..." and can be revoked at anytime. (Haines v. City of New York, 41 NY2d 820(Ct. App, 1977); DOS v. Gagliano, 25 DOS 88). The seller or buyer's right to cancel an agency contract, however, depends upon the terms of the agreement. If a seller or buyer terminates the agency in breach of his or her ~~contract with the broker, the broker has the legal right to maintain suit under the terms of the~~

contract. (Restatement (Second) of Agency, section 455, comment c).

Thank you for your inquiry.

Very truly yours,

Whitney A. Clark
Associate Attorney