

ASSEMBLY, No. 4454

STATE OF NEW JERSEY 221st LEGISLATURE

INTRODUCED JUNE 3, 2024

Sponsored by:

Assemblyman ROY FREIMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex and Hudson)

Assemblyman JOHN DIMAIO

District 23 (Hunterdon, Somerset and Warren)

Co-Sponsored by:

Assemblywomen Flynn and Reynolds-Jackson

SYNOPSIS

“Real Estate Consumer Protection Enhancement Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/13/2024)

1 AN ACT concerning consumer rights in certain real estate
2 transactions and amending P.L.2009, c.238 and supplementing
3 chapter 8 of Title 56 of the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) As used in P.L. , c. (C.) (pending
9 before the Legislature as this bill):

10 “Agency relationship” means the agency relationship created
11 under P.L. , c. (C.) (pending before the Legislature as this
12 bill) between a real estate brokerage firm and a principal relating to
13 the performance of real estate brokerage services.

14 “Agent” means a real estate brokerage firm, including affiliated
15 brokers, broker-salespersons and salespersons who are duly licensed
16 under P.L. , c. (C.) (pending before the Legislature as this
17 bill), that has an agency relationship with a principal.

18 “Brokerage firm” means a real estate brokerage firm, including real
19 estate brokers, real estate broker-salespersons and real estate
20 salespersons licensed or otherwise authorized to provide brokerage
21 services in this State pursuant to chapter 15 of Title 45 of the Revised
22 Statutes who are affiliated with the brokerage firm, unless the context
23 requires the terms to be considered separately. In accordance with
24 section 2 of P.L.1989, c.239 (C.45:15-16.28), “broker” also includes
25 any broker, broker-salesperson or salesperson who performs within
26 this State as an agent or employee of a subdivider any one or more of
27 the services or acts as set forth in chapter 15 of Title 45 of the Revised
28 Statutes.

29 “Brokerage services” means the rendering of services for which a
30 real estate license is required under chapter 15 of Title 45 of the
31 Revised Statutes.

32 “Brokerage services agreement” means a written agreement
33 between a brokerage firm and principal that appoints a brokerage firm
34 to represent the principal as an agent or work with a buyer or seller as
35 a transaction broker. Broker services agreements include, but are not
36 limited to, sale and rental listing agreements; buyer-lessee agency
37 agreements; and transaction broker, dual agency and designated
38 agency agreements.

39 “Buyer” means an actual or prospective purchaser in a real estate
40 transaction, or an actual or prospective tenant in a real estate rental or
41 lease transaction, as applicable.

42 “Buyer’s agent” means a brokerage firm, including brokers,
43 broker-salespersons and salespersons affiliated with the brokerage
44 firm, that has an agency relationship and works only with the buyer

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 in a real estate transaction, and to whom the brokerage firm and its
2 brokers, broker-salespersons and salespersons owe fiduciary duties.

3 “Commercial real estate” means a fee title interest, possessory
4 estate, or lease in real property located in the State of New Jersey,
5 other than an interest in real property that is:

6 (1) improved with one single-family residential unit or one
7 multifamily structure with four or fewer residential units;

8 (2) unimproved and the maximum permitted development is one
9 to four residential units or structures under applicable zoning
10 regulations;

11 (3) classified as farmland, timberland or other agricultural land for
12 real estate tax assessment purposes;

13 (4) improved with single-family residential units, such as
14 condominiums, townhouses, timeshares, or stand-alone houses in a
15 subdivision that may be legally sold, leased or otherwise disposed of
16 on a unit-by-unit basis;

17 (5) subject to an agreement that provides that the real estate should
18 be considered residential; or

19 (6) within the definition in this section as of the date of its
20 disposition.

21 “Confidential information” means information from or concerning
22 a principal that, unless required to be disclosed by the brokerage firm
23 pursuant to applicable law:

24 (1) is acquired by the brokerage firm during the course of an
25 agency relationship with the principal;

26 (2) is information that, as advised by the principal to the brokerage
27 firm, the principal reasonably expects to be kept confidential or that
28 the brokerage firm otherwise knows is confidential;

29 (3) would, if disclosed, operate to the detriment of the principal,
30 except that the information may be disclosed if authorized by the
31 principal; and

32 (4) the principal personally would not be obligated to disclose to
33 the other party.

34 “Designated agent” means, in any transaction where the buyer’s
35 agent and the seller’s agent are affiliated with the same brokerage firm
36 or are the same broker, broker-salesperson or salesperson, the broker,
37 broker-salesperson or salesperson who has been designated by the
38 brokerage firm, including but not limited to by a broker or managing
39 broker of the brokerage firm, to solely represent the buyer as the
40 buyer’s agent and another broker, broker-salesperson or salesperson
41 who has been designated by the brokerage firm, including but not
42 limited to a broker or managing broker of the brokerage firm, to solely
43 represent the seller as the seller’s agent in a particular real estate
44 transaction.

45 “Disclosed dual agent” means a brokerage firm, including brokers,
46 broker-salespersons and salespersons affiliated with the brokerage
47 firm, that has an agency relationship and is working for both the buyer
48 and seller in the same transaction.

1 “Material information” means the existence or non-existence of
2 information:

3 (1) to which a reasonable person would attach importance in
4 deciding whether or how to proceed with a transaction; or

5 (2) that the agent knows or has reason to know that the recipient
6 of the information regards or is likely to regard as important in
7 deciding whether or how to proceed, although a reasonable person
8 would not so regard it.

9 “Principal” means a buyer or a seller who has an agency
10 relationship with a brokerage firm.

11 “Real estate transaction” or “transaction” means an actual or
12 prospective transaction involving a purchase, sale, option, or
13 exchange of any interest in real property, or a lease or rental of real
14 property. For purposes of P.L. , c. (C.) (pending before the
15 Legislature as this bill), a prospective transaction does not exist until
16 a written offer has been signed by at least one party.

17 “Seller” means an actual or prospective seller in a real estate
18 transaction, or an actual or prospective landlord in a real estate rental
19 or lease transaction, as applicable.

20 “Seller’s agent” means a brokerage firm, including brokers,
21 broker-salespersons and salespersons affiliated with the brokerage
22 firm, that has an agency relationship and works only with the seller in
23 a real estate transaction, and to whom the brokerage firm and its
24 brokers, broker-salespersons and salespersons owe fiduciary duties.

25 “Transaction broker” means a brokerage firm, including brokers,
26 broker-salespersons or salespersons affiliated with the brokerage
27 firm, that works with a buyer or a seller, or both, in a real estate
28 transaction without representing either party and has no agency
29 relationship and owes no fiduciary duties to either party to the
30 transaction.

31

32 2. (New section) A brokerage firm, including its brokers, broker-
33 salespersons and salespersons, when acting as a buyer’s agent, seller’s
34 agent, disclosed dual agent or designated agent, owes the following
35 duties to the brokerage firm’s principal and to all parties in a
36 transaction, which may not be waived:

37 a. to exercise reasonable skill and care;

38 b. to deal honestly and in good faith;

39 c. unless otherwise directed in writing by the principal, to present
40 all written offers and counteroffers in a timely manner in accordance
41 with applicable law, and to provide written confirmation of receipt to
42 the other party or its agent or transaction broker of each and every
43 written offer or counteroffer as soon as reasonably practicable,
44 regardless of whether the property is subject to an existing contract
45 for sale or the buyer is already a party to an existing contract to
46 purchase another property;

47 d. where the principal is the seller in a residential real estate
48 transaction, to obtain a signed property condition disclosure statement

1 that is provided for in section 1 of P.L.1999, c.76 (C.56:8-19.1), with
2 it being required that the seller provide to the brokerage firm the
3 statement with the information filled in and signed by the seller and,
4 if the seller is not represented by a brokerage firm or working with a
5 brokerage firm that is a transaction broker, then the seller shall be
6 required to provide the statement to the buyer prior to there being a
7 binding sales contract, and to disclose all existing material
8 information known by the seller's agent and not apparent or readily
9 ascertainable to a buyer concerning the physical condition of the
10 property that is for sale. This subsection shall not be construed to
11 imply any duty to investigate matters that the brokerage firm has not
12 agreed to investigate, except as otherwise required by law;

13 e. to provide an accounting to the principal as necessary in a
14 timely manner for all money and property received from or on behalf
15 of any party to the transaction;

16 f. in a residential real estate transaction, to provide the consumer
17 information statement in the form required by the New Jersey Real
18 Estate Commission and obtain a signed acknowledgment of receipt of
19 same by the party. The statement shall be included as part of the
20 brokerage services agreement. The statement shall be provided to:

21 (1) any party to whom the broker renders real estate brokerage
22 services as soon as reasonably practical but no later than at the time
23 the party signs a brokerage services agreement; and

24 (2) any party not represented by a brokerage firm in a transaction
25 before the party signs an offer or as soon as reasonably practical
26 thereafter;

27 g. to disclose in writing as soon as reasonably practical but no
28 later than at the time the brokerage firm's principal signs a brokerage
29 service agreement:

30 (1) whether the brokerage firm is acting as the buyer's agent, the
31 seller's agent, a disclosed dual agent, a designated agent, or a
32 transaction broker. The disclosure shall be set forth in a separate
33 paragraph titled "Agency Disclosure" in a brokerage services
34 agreement prepared by the brokerage firm between the principal and
35 the brokerage firm or in a separate writing titled "Agency Disclosure"
36 signed by the principal; and

37 (2) the terms of compensation, if any, offered by a party or the
38 brokerage firm to another brokerage firm representing a different
39 party; and

40 h. to undertake a reasonable effort to obtain material information
41 concerning the condition of every property for which the brokerage
42 firm accepts an agency relationship or is retained to market as a
43 transaction broker, and concerning the financial qualifications of
44 every person for whom the brokerage firm submits an offer to the
45 brokerage firm's principal, provided that the broker, broker-
46 salesperson or salesperson at the brokerage firm who undertakes the
47 reasonable efforts shall not be held to a standard of a licensed property

1 inspector unless that broker, broker-salesperson or salesperson is
2 separately licensed as a property inspector.

3

4 3. (New section) a. A brokerage firm, including brokers, broker-
5 salespersons and salespersons affiliated with the brokerage firm, that
6 performs real estate brokerage services for a buyer is a buyer's agent
7 unless:

8 (1) a brokerage firm, including brokers, broker-salespersons and
9 salespersons affiliated with the brokerage firm, represents the seller
10 pursuant to a brokerage services agreement between the brokerage
11 firm and the seller, in which case the brokerage firm, including the
12 brokers, broker-salespersons and salespersons, is a seller's agent;

13 (2) a brokerage firm, including brokers, broker-salespersons and
14 salespersons affiliated with the brokerage firm, represents the seller
15 pursuant to a brokerage services agreement between the brokerage
16 firm and the seller, and the brokerage firm, including the same broker,
17 broker-salesperson or salesperson or a different broker, broker-
18 salesperson or salesperson affiliated with the same brokerage firm in
19 a residential real estate transaction or otherwise represents the buyer
20 in a commercial real estate transaction, represents the buyer pursuant
21 to a brokerage services agreement between the brokerage firm and the
22 buyer, in which case the brokerage firm, including the broker, broker-
23 salesperson, salesperson or brokers, broker-salespersons or
24 salespersons, as applicable, is a disclosed dual agent;

25 (3) the brokerage firm, including a broker, broker-salesperson or
26 salesperson affiliated with the brokerage firm, has agreed to work
27 with the buyer pursuant to a brokerage services agreement between
28 the brokerage firm and the buyer in a residential real estate transaction
29 or otherwise represents the buyer in a commercial real estate
30 transaction as a transaction broker; or

31 (4) the broker, broker-salesperson or salesperson affiliated with the
32 brokerage firm is the seller or one of the sellers.

33 b. (1) In a residential real estate transaction, a brokerage firm
34 shall enter into a brokerage services agreement with the buyer before,
35 or as soon as reasonably practical after, the firm commences rendering
36 real estate brokerage services to, or on behalf of, the buyer. A
37 brokerage services agreement shall not be required between a
38 brokerage firm and a buyer in a commercial real estate transaction.

39 (2) The brokerage services agreement shall include the following:

40 (a) the term of the brokerage services agreement, including, if
41 applicable, the period after the termination of the agreement that the
42 brokerage firm will be protected as provided in the agreement with
43 regard to any properties that a broker, broker-salesperson or
44 salesperson from the brokerage firm introduced to the buyer during
45 the term of the agreement;

46 (b) that the brokerage firm is appointed as an agent for the buyer;

47 (c) if the agency relationship is exclusive or nonexclusive;

1 (d) if the buyer consents to the brokerage firm acting as a disclosed
2 dual agent or designated agent, which, if consent is granted, shall be
3 in the brokerage services agreement or another document requiring
4 separate initialization or signature by the buyer and include an
5 acknowledgment from the buyer that a disclosed dual agent shall not
6 advocate terms favorable to one principal to the detriment of the other
7 principal;

8 (e) if the buyer consents, as demonstrated by initialization or
9 signature, to the broker or a managing broker for the brokerage firm,
10 or a broker, broker-salesperson or salesperson appointed by the broker
11 or managing broker, being an agent for the buyer to act as a disclosed
12 dual agent in a transaction in which the same broker, broker-
13 salesperson or salesperson or different brokers, broker-salespersons
14 or salespersons, as applicable, affiliated with the brokerage firm
15 represent different parties; and

16 (f) the brokerage firm's compensation and if the compensation is
17 to be shared with another brokerage firm that may have a brokerage
18 relationship with another party to the transaction.

19 c. A brokerage firm may work with a party in separate
20 transactions pursuant to different or the same agency relationships,
21 including, but not limited to, representing a party in one transaction
22 and at the same time representing that party in a different transaction,
23 if the broker complies with P.L. , c. (C.) (pending before the
24 Legislature as this bill) in establishing the relationships for each
25 transaction, even if the other transaction is a related transaction.

26

27 4. (New section) a. Unless additional duties are agreed to in
28 writing signed by a buyer's agent or other authorized representative
29 of the brokerage firm, the duties of a buyer's agent are limited to the
30 following, which may not be waived, except as expressly set forth in
31 paragraphs (4) and (5) of this subsection:

32 (1) to be loyal to the buyer by taking no action that is adverse or
33 detrimental to the buyer's interest in a transaction;

34 (2) to timely disclose to the buyer any conflicts of interest;

35 (3) to advise the buyer to seek expert advice on matters relating to
36 the transaction that are beyond the agent's expertise;

37 (4) to not disclose confidential information from or about the
38 buyer, except under subpoena, court order or otherwise as provided
39 by law, or as expressly authorized by the buyer, even after termination
40 of the agency relationship; and

41 (5) unless otherwise agreed to in writing, to make a good faith and
42 continuous effort to find a property for the buyer, except that a buyer's
43 agent is not obligated to seek additional properties to purchase while
44 the buyer is a party to an existing contract to purchase that is no longer
45 subject to the attorney-review period, if applicable.

46 b. (1) The showing of a property in which a buyer is interested
47 to other prospective buyers by a buyer's agent shall not breach the
48 duty of loyalty to the buyer or create a conflict of interest.

1 (2) The representation of or acting as a transaction broker with
2 more than one buyer by a brokerage firm, including different brokers,
3 broker-salespersons or salespersons affiliated with the brokerage
4 firm, in competing transactions involving the same property does not
5 breach the duty of loyalty to the buyer or create a conflict of interest.
6

7 5. (New section) a. A brokerage firm, including brokers,
8 broker-salespersons and salespersons affiliated with the brokerage
9 firm, that performs real estate brokerage services for a seller is a
10 seller's agent unless:

11 (1) a brokerage firm, including brokers, broker-salespersons and
12 salespersons affiliated with the brokerage firm, represents the buyer
13 pursuant to a brokerage services agreement between the brokerage
14 firm and the buyer in a residential real estate transaction or otherwise
15 represents the buyer in a commercial real estate transaction, in which
16 case the brokerage firm, including the brokers, broker-salespersons
17 and salespersons, is a buyer's agent;

18 (2) a brokerage firm, including brokers, broker-salespersons and
19 salespersons affiliated with the brokerage firm, represents the buyer
20 pursuant to a brokerage services agreement between the brokerage
21 firm and the buyer in a residential real estate transaction or otherwise
22 represents the buyer in a commercial real estate transaction, and the
23 brokerage firm, including the same broker, broker-salesperson or
24 salesperson or a different broker, broker-salesperson or salesperson
25 represents the seller pursuant to a brokerage services agreement
26 between the brokerage firm and the seller, in which case the brokerage
27 firm, including the broker, broker-salesperson or salesperson or
28 brokers, broker-salespersons or salespersons, as applicable, is a
29 disclosed dual agent;

30 (3) the brokerage firm, including a broker, broker-salesperson or
31 salesperson affiliated with the brokerage firm, has agreed to work
32 with the seller pursuant to brokerage services agreement between the
33 brokerage firm and the seller as a transaction broker; or

34 (4) the broker, broker-salesperson or salesperson affiliated with
35 the brokerage firm is the buyer or one of the buyers.

36 b. (1) A brokerage firm shall enter into a brokerage services
37 agreement with the seller before, or as soon as reasonably practical
38 after, it commences rendering real estate brokerage services to, or on
39 behalf of, the seller.

40 (2) The brokerage services agreement shall include the following:

41 (a) the term of the brokerage services agreement, including, if
42 applicable, the period after the termination of the agreement that the
43 brokerage firm will be protected as provided in the agreement with
44 regard to any properties that a broker, broker-salesperson or
45 salesperson from the brokerage firm introduced to the seller during
46 the term of the agreement;

47 (b) the brokerage firm is appointed as an agent for the seller;

1 (c) if the agency relationship is exclusive or nonexclusive, and
2 shall include an option for the seller to select if the relationship is
3 exclusive or nonexclusive;

4 (d) if the seller consents to the brokerage firm acting as a disclosed
5 dual agent or designated agent, which, if consent is granted, shall be
6 in the brokerage services agreement or in another document requiring
7 separate initialization or signature by the seller and include an
8 acknowledgment from the seller that a disclosed dual agent shall not
9 advocate terms favorable to one principal to the detriment of the other
10 principal;

11 (e) if the seller consents, as demonstrated by initialization or
12 signature, to the broker or a managing broker for the brokerage firm,
13 or a broker, broker-salesperson or salesperson appointed by the broker
14 or managing broker, being an agent for the seller to act as a disclosed
15 dual agent in a transaction in which the same broker, broker-
16 salesperson or salesperson or different brokers, broker-salespersons
17 or salespersons, as applicable, affiliated with the brokerage firm
18 represent different parties;

19 (f) the brokerage firm's compensation and if the compensation
20 will be shared with another brokerage firm that may have a brokerage
21 relationship with another party to the transaction; and

22 (g) whether a notice on the property to be sold will be circulated
23 in a Multiple Listing Service of which the brokerage firm is a
24 member, except that the seller's agent shall not submit any notice to
25 the service stating whether the seller authorized the sharing of the
26 compensation of the seller's agent with cooperating sub-agents,
27 transaction brokers, or the buyer's agents, or the amount of the shared
28 compensation to any service that prohibits an offer from being
29 displayed.

30 c. A brokerage firm may work with a party in separate
31 transactions pursuant to different or same agency relationships,
32 including, but not limited to, representing a party in one transaction
33 and at the same time representing that party in a different transaction,
34 if the broker complies with P.L. , c. (C.) (pending before the
35 Legislature as this bill) in establishing the relationships for each
36 transaction, even if the other transaction is a related transaction.

37

38 6. (New section) a. Unless additional duties are agreed to in
39 writing signed by a seller's agent or other authorized representative
40 of the brokerage firm, the duties of a seller's agent are limited to the
41 following, which may not be waived, except as expressly set forth in
42 paragraphs (4) and (5) of this subsection:

43 (1) to be loyal to the seller by taking no action that is adverse or
44 detrimental to the seller's interest in a transaction;

45 (2) to timely disclose to the seller any conflicts of interest;

46 (3) to advise the seller to seek expert advice on matters relating to
47 the transaction that are beyond the agent's expertise;

1 (4) not to disclose any confidential information from or about the
2 seller, except under subpoena, court order or otherwise as provided
3 by law, or as expressly authorized by the seller, even after termination
4 of the agency relationship; and

5 (5) unless otherwise agreed to in writing, to make a good faith and
6 continuous effort to find a buyer for the property, except that a seller's
7 agent is not obligated to seek additional offers to purchase the
8 property while the property is subject to an existing contract for sale
9 that is no longer subject to the attorney-review period, if applicable.

10 b. (1) The showing of properties not owned by the seller to
11 prospective buyers or the listing of competing properties for sale by a
12 seller's agent does not breach the duty of loyalty to the seller or create
13 a conflict of interest.

14 (2) The representation of or acting as a transaction broker with
15 more than one seller by a brokerage firm, including different brokers,
16 broker-salespersons or salespersons affiliated with the brokerage
17 firm, in competing transactions involving the same buyer does not
18 breach the duty of loyalty to the seller or create a conflict of interest.
19

20 7. (New section) a. A brokerage firm, including its brokers,
21 broker-salespersons and salespersons, may act as a disclosed dual
22 agent only with the informed consent of both parties to the
23 transaction as set forth in brokerage services agreements signed by
24 the buyer and the seller, respectively, in a residential real estate
25 transaction or otherwise in writing in a commercial real estate
26 transaction.

27 b. Unless additional duties are agreed to in writings signed by a
28 disclosed dual agent or an authorized representative of the brokerage
29 firm and each of the parties, the duties of a disclosed dual agent are
30 limited to the following, which may not be waived, except as
31 expressly set forth in paragraphs (4), (5) and (6) of this subsection:

32 (1) to take no action that is adverse or detrimental to either party's
33 interest in a transaction;

34 (2) to timely disclose to both parties any conflicts of interest;

35 (3) to advise both parties to seek expert advice on matters relating
36 to the transaction that are beyond the disclosed dual agent's expertise;

37 (4) not to disclose any confidential information from or about
38 either party, except under subpoena, court order or otherwise as
39 provided by law, or as expressly authorized by the party, even after
40 termination of the agency relationship;

41 (5) unless otherwise agreed to in writing with the seller, to make
42 a good faith and continuous effort to find a buyer for the property,
43 except that a disclosed dual agent is not obligated to seek additional
44 offers to purchase the property while the property is subject to an
45 existing contract for sale that is no longer subject to the attorney-
46 review period, if applicable; and

47 (6) unless otherwise agreed to in writing with the buyer, to make
48 a good faith and continuous effort to find a property for the buyer,

1 except that a disclosed dual agent is not obligated to seek additional
2 properties to purchase while the buyer is a party to an existing contract
3 to purchase that is no longer subject to the attorney-review period, if
4 applicable.

5 c. Notwithstanding any provision of chapter 15 of Title 45 of the
6 Revised Statutes or any other law, rule, or regulation to the contrary,
7 including but not limited to, subsection i. of R.S.45:15-17, a broker,
8 broker-salesperson or salesperson acting as a disclosed dual agent in
9 a real estate transaction shall be deemed to be acting in the same
10 capacity with the buyer and the seller as a dual agent and may receive
11 compensation through its brokerage firm from either or both the buyer
12 and seller provided that the sources and amounts of compensation are
13 disclosed in writing to the buyer and the seller.

14 d. (1) The showing of properties not owned by the seller to
15 prospective buyers or the listing of competing properties for sale by a
16 disclosed dual agent does not constitute action that is adverse or
17 detrimental to the seller or create a conflict of interest.

18 (2) The representation of or acting as a transaction broker with
19 more than one seller by different brokers, broker-salespersons or
20 salespersons licensed with the same brokerage firm in competing
21 transactions involving the same buyer does not constitute action that
22 is adverse or detrimental to the seller or create a conflict of interest.

23 e. (1) The showing of property in which a buyer is interested
24 to other prospective buyers or the presentation of additional offers to
25 purchase property while the property is subject to a transaction in
26 which a disclosed dual agent is involved does not constitute action
27 that is adverse or detrimental to the buyer or create a conflict of
28 interest.

29 (2) The representation of or acting as a transaction broker with
30 more than one buyer by the brokerage firm, including different
31 brokers, broker-salespersons or salespersons affiliated with the
32 brokerage firm, in competing transactions involving the same
33 property does not constitute action that is adverse or detrimental to
34 the buyer or create a conflict of interest.

35
36 8. (New section) a. In a transaction in which a different
37 broker, broker-salesperson or salesperson is designated as a
38 designated agent by a brokerage firm, including but not limited to by
39 the broker or a managing broker affiliated with the brokerage firm,
40 the broker, broker-salespersons or salespersons, as applicable, shall
41 be designated agents. Each designated agent shall solely represent the
42 party with whom the designated agent has an agency relationship.

43 (1) For the purposes of designated agency, the seller's designated
44 agent and the buyer's designated agent are not dual agents and owe
45 fiduciary duties solely to their respective principals.

46 (2) In order for a designated agency relationship to take effect, the
47 brokerage firm shall enter into a written designated agency agreement
48 that may be incorporated into the brokerage services agreement with

1 each of the parties in a residential real estate transaction or otherwise
2 in a written agreement with each of the parties in a commercial
3 transaction that includes the informed, written consent of each of
4 parties to the transaction.

5 b. Notwithstanding any provision of chapter 15 of Title 45 of the
6 Revised Statutes or any other law, rule, or regulation to the contrary,
7 including but not limited to subsection i. of R.S.45:15-17, a broker-
8 salesperson or salesperson acting as a designated agent in a real estate
9 transaction shall be deemed to be acting in the same capacity with the
10 buyer and the seller as a designated agent and may receive
11 compensation through its brokerage firm from either or both the buyer
12 and the seller provided that the sources and amounts of compensation
13 are disclosed in writing to the buyer and the seller.
14

15 9. (New section) a. A brokerage firm, including brokers,
16 broker-salespersons and salespersons affiliated with the brokerage
17 firm, that has been engaged as a transaction broker by a buyer, a seller,
18 or both, shall not act as an agent for and shall not represent any party
19 in the transaction; shall not promote the interest of one party over the
20 interest of the other party; and shall not be required to keep any
21 information confidential.

22 b. Unless additional duties are agreed to in writings signed by the
23 transaction broker or other authorized representative of the brokerage
24 firm, a transaction broker's duties are limited to the following:

25 (1) to perform the terms of any brokerage service agreement made
26 with any party to the transaction;

27 (2) to ensure, when working with a seller, that the brokerage
28 service agreement states whether a notice on the property to be sold
29 will be circulated in a Multiple Listing Service of which the brokerage
30 firm is a member, except that the seller's agent shall not submit any
31 notice to the service stating whether the seller authorized the sharing
32 of the compensation of the seller's agent with cooperating sub-agents,
33 transaction brokers, or the buyer's agents, or the amount of the shared
34 compensation to any service that prohibits an offer from being
35 displayed;

36 (3) to treat all parties honestly and act in a competent manner;

37 (4) to locate qualified buyers for a seller or suitable properties for
38 a buyer;

39 (5) unless otherwise directed in writing by the principal, to present
40 all written offers and counteroffers in a timely manner in accordance
41 with applicable law, and to provide written confirmation of receipt to
42 the other party or its agent or transaction broker of each and every
43 written offer or counteroffer as soon as reasonably practicable,
44 regardless of whether the property is subject to an existing contract of
45 sale or the buyer is already a party to an existing contract to purchase
46 another property;

47 (6) to keep the parties fully informed regarding the transaction;

1 (7) to communicate and work with all parties in an effort to arrive
2 at an acceptable agreement without providing advice to any party on
3 how to gain an advantage at the expense of the other party;

4 (8) to advise the parties to seek expert advice on matters relating
5 to the transaction; and

6 (9) to manage the transaction and perform tasks to facilitate the
7 closing of the transaction.

8 c. The showing of alternate properties not owned by the seller to
9 a buyer shall not breach any duties or create a conflict of interest.

10 d. The showing of a property in which a buyer is interested to
11 other prospective buyers shall not breach any duties or create a
12 conflict of interest.

13

14 10. (New section) a. The agency or transaction broker
15 relationships established pursuant to this chapter shall continue until
16 the earliest of the following:

17 (1) completion of performance by the brokerage firm;

18 (2) expiration of the term agreed upon by the parties;

19 (3) termination of the relationship by mutual agreement of the
20 parties; or

21 (4) termination of the relationship by written notice from either
22 party to the other as provided in the brokerage services agreement, if
23 applicable, except that a termination does not otherwise affect the
24 contractual rights of either party.

25 b. If the agency or transaction broker relationship is being
26 terminated pursuant to paragraphs (3) or (4) of subsection a. of this
27 section, written confirmation of termination shall be required for the
28 termination to take effect. Written confirmation of termination shall
29 not be required for the termination to take effect pursuant to
30 paragraphs (1) or (2) of subsection a. of this section.

31 c. Except as otherwise agreed to in writing, a brokerage firm
32 shall owe no further duty or other responsibility after termination of
33 the agency or transaction broker relationship, other than the duty:

34 (1) to provide an accounting to its principal as necessary in a
35 timely manner for all moneys and property received from or on behalf
36 of any party to the transaction; and

37 (2) to not disclose confidential information if there was an agency
38 relationship, except under subpoena, court order or otherwise as
39 provided by law, or as expressly authorized by the applicable party.

40 d. With respect to the termination of disclosed dual agent
41 relationships, absent a termination by expiration or fulfillment by a
42 completed closing, brokerage services agreements between a
43 disclosed dual agent and a buyer and a seller shall otherwise only be
44 terminated in writing signed by the buyer or seller, as applicable, with
45 confirmed delivery to the disclosed dual agent.

46

47 11. (New section) a. In any real estate transaction, a brokerage
48 firm's compensation may be paid by one or more of the following: the

1 seller; the buyer; a third party; or by sharing the compensation
2 between brokerage firms. Agreements on compensation shall be in
3 writing signed by the seller or buyer, as applicable.

4 b. An agreement to pay or payment of compensation shall not
5 establish an agency relationship between the party who paid the
6 compensation and the brokerage firm.

7 c. A seller may agree that a seller's agent's or transaction
8 broker's brokerage firm may share with another brokerage firm the
9 compensation paid by the seller, provided that this type of agreement
10 is in writing and signed by the seller.

11 d. A buyer may agree that a buyer's agent's or transaction
12 broker's brokerage firm may share with another brokerage firm the
13 compensation paid by the buyer, provided that this type of agreement
14 is in writing and signed by the buyer.

15 e. Notwithstanding any provision of chapter 15 of Title 45 of the
16 Revised Statutes or any other law, rule, or regulation to the contrary,
17 including but not limited to subsection i. of R.S.45:15-17, a brokerage
18 firm may be compensated by more than one party for real estate
19 brokerage services in a real estate transaction regardless of the agency
20 or transaction broker relationship the brokerage firm has with the
21 parties.

22 f. A brokerage firm may receive compensation based upon a flat
23 fee arrangement, a percentage of the purchase price or some other
24 method, all of which shall be a commission payment for any real
25 estate brokerage services rendered, without breaching any duty to the
26 buyer or seller.

27 g. To receive compensation for rendering real estate brokerage
28 services from any party, firm or third party, a brokerage firm shall
29 have a written brokerage services agreement with the buyer or the
30 seller, as applicable, in a residential real estate transaction and a
31 written brokerage services agreement with the seller but not with the
32 buyer in a commercial real estate transaction containing the
33 following:

34 (1) the terms of compensation, including:

35 (a) the amount the principal agrees to compensate the brokerage
36 firm;

37 (b) the principal's consent, if any, and any terms of the consent,
38 to compensation sharing between brokerage firms and parties sharing
39 the payment of the compensation; and

40 (c) the principal's consent, if any, and any terms of consent, to
41 compensation of the brokerage firm by more than one party; and

42 (2) in a brokerage services agreement with a buyer, if there is no
43 agreement or offer or a limited offer by any other party or brokerage
44 firm to pay compensation to the brokerage firm, if the buyer will pay
45 the difference between the offer and the compensation the buyer has
46 agreed is due to the buyer's agent and, if not, the buyer's agreement
47 as to how to proceed in this situation, including, but not limited to,
48 directing the buyer's agent not to introduce the buyer to properties

1 where the seller is not offering compensation or is offering less
2 compensation to the buyer's agent than the buyer agreed is due to the
3 buyer's agent.

4 h. A brokerage firm may receive compensation, which shall be
5 deemed to be the payment of a commission, without a brokerage
6 services agreement for the provision of a broker's price opinion;
7 comparative market analysis; or a referral by one firm to another firm
8 if the referring firm provided no real estate brokerage services in the
9 transaction.

10

11 12. (New section) a. A principal shall not be liable for an act, error
12 or omission by an agent or transaction broker of the principal arising
13 out of their relationship:

14 (1) unless the principal participated in or authorized the act, error
15 or omission.

16 (2) except to the extent that the principal benefited from the act,
17 error or omission, in which case the principal's liability shall be
18 limited to the monetary amount of the benefit unless some form of
19 punitive damages are awarded.

20 b. A brokerage firm shall not be liable for information that is to be
21 disclosed by a seller in a property condition disclosure statement that
22 is provided for in section 1 of P.L.1999, c.76 (C.56:8-19.1) or
23 otherwise by law or that the brokerage firm requested the seller to
24 provide and was not provided to the brokerage firm.

25

26 13. (New section) Unless otherwise agreed to in writing, a
27 principal may not be charged with knowledge or notice of any facts
28 known by a brokerage firm representing or working with the principal
29 that are not actually known by the principal and a brokerage firm
30 representing or working with the principal may not be charged with
31 knowledge or notice of any facts known by the principal that are not
32 actually known by the brokerage firm.

33

34 14. (New section) a. At any residential property showing that is
35 generally open to the public, a sign shall be posted at the entrance or
36 at a sign-in sheet clearly advising prospective buyers that the
37 brokerage firm hosting the real estate open house represents the seller
38 only and has no relationship with the prospective buyer, except if the
39 buyer does not have an exclusive buyer agency agreement with
40 another brokerage firm and agrees to the seller's agent becoming a
41 disclosed dual agent or designated agent.

42 b. For the avoidance of doubt and to ensure uniformity at public
43 real estate open houses across the State, the sign shall clearly read:
44 "ATTENTION PROSPECTIVE PURCHASERS - PLEASE READ
45 THIS SIGN CAREFULLY. This is to advise you that the agent who
46 is conducting this Open House REPRESENTS THE SELLER AND
47 IS REQUIRED BY LAW TO PROMOTE THE INTERESTS OF THE
48 SELLER. ANY INFORMATION YOU GIVE THIS AGENT IS NOT

1 CONSIDERED CONFIDENTIAL under New Jersey law and could
2 be disclosed to the Seller of this property. You, as the Buyer, are
3 entitled to have someone represent you as a Buyer's Agent if you are
4 interested in this property. The duties of a Buyer's Agent include
5 helping you evaluate the property, prepare an offer on the property
6 and negotiate in your best interests. If you, as the Buyer, are already
7 exclusively represented by a Buyer's Agent, you are required to
8 disclose this representation on the sign-in sheet. If you, as the Buyer,
9 are not already exclusively represented by a Buyer's Agent, please be
10 advised that the Open House agent is not precluded from being a
11 disclosed dual agent or designated agent and can enter into any
12 relationship with you as explained in the Consumer Information
13 Statement."

14

15 15. (New section) Notwithstanding the provisions of
16 P.L. , c. (C.) (pending before the Legislature as this bill), the
17 New Jersey Real Estate Commission may promulgate regulations to
18 address other types of agency or business relationships for real estate
19 brokerage firms.

20

21 16. Section 27 of P.L.2009, c.238 (C.45:15-16.2e) is amended to
22 read as follows:

23 27. a. Not less than 50 percent of the continuing education courses
24 of study that a broker, broker-salesperson or salesperson are required
25 to complete as a condition for license renewal shall be comprised of
26 one or more of the following core topics:

- 27 (1) Agency;
28 (2) Disclosure;
29 (3) Legal issues;
30 (4) Ethics, which shall not be less than two hours;
31 (5) Fair housing;
32 (6) Rules and regulations;
33 (7) Real estate licensee safety;
34 (8) Financial literacy and planning; and
35 (9) Any other core topics that the New Jersey Real Estate
36 Commission may prescribe by rule.

37 In no event shall the commission require that courses in these core
38 topics comprise more than 60 percent of the total continuing
39 education hours required for the renewal of any license.

40 b. In the case of continuing education courses and programs,
41 each hour of instruction shall be equivalent to one credit.

42 c. Notwithstanding the provisions of subsection a. of this
43 section, the commission shall require that the continuing education
44 courses of study that a broker, broker-salesperson or salesperson are
45 required to complete as a condition for license renewal shall be
46 comprised of at least one hour on the core topic of fair housing and
47 housing discrimination during each biennial license term.

1 d. Notwithstanding the provisions of subsection a. of this
2 section, the commission shall require that a continuing education
3 course on agency be completed by a broker, broker-salesperson and
4 salesperson as a condition for license renewal during each biennial
5 license term.

6 (cf: P.L.2019, c.177, s.2)

7

8 17. This act shall take effect on August 1, 2024.

9

10

11

STATEMENT

12

13 This bill incorporates certain protections for consumers regarding
14 residential real estate transactions and certain aspects of commercial
15 real estate transactions. Specifically, the bill incorporates into
16 current law the responsibilities to a consumer of a brokerage firm; a
17 buyer's agent; a seller's agent; a dual agent; a designated agent; and
18 a transaction broker. Additionally, the bill establishes the
19 circumstances under which an individual is a buyer's agent and under
20 which an individual is a seller's agent and delineates the terms of the
21 broker agreement between the agent and a consumer.

22 The bill also stipulates that a seller's agent is not required to
23 submit any notice to a Multiple Listing Service stating that a seller
24 has authorized the sharing of the compensation for the seller's agent
25 with cooperating subagents, transaction brokers or a buyer's agent,
26 or the amount of compensation to any Multiple Listing Service.
27 Under the bill, a statement regarding a property is required for
28 prospective buyers to see and is to be posted at open houses for the
29 property. Lastly, the continuing education requirements of licensees
30 to the Real Estate Commission are to include at least one hour on
31 agency per biennial renewal period.