

SENATE, No. 3192

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED MAY 9, 2024

Sponsored by:

Senator PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

Senator PAUL D. MORIARTY

District 4 (Atlantic, Camden and Gloucester)

Co-Sponsored by:

Senator Turner

SYNOPSIS

“Real Estate Consumer Protection Enhancement Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/20/2024)

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
19 real 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
22 Revised Statutes who are affiliated with the brokerage firm, unless
23 the context requires the terms to be considered separately. In
24 accordance with section 2 of P.L.1989, c.239 (C.45:15-16.28),
25 “broker” also includes any broker, broker-salesperson or salesperson
26 who performs within this State as an agent or employee of a
27 subdivider any one or more of the services or acts as set forth in
28 chapter 15 of Title 45 of the Revised 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
34 firm to represent the principal as an agent or work with a buyer or
35 seller as a transaction broker. Broker services agreements include,
36 but are not limited to, sale and rental listing agreements; buyer-
37 lessee agency agreements; and transaction broker, dual agency and
38 designated 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
41 or 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
12 for 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
18 should 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
22 concerning a principal that, unless required to be disclosed by the
23 brokerage firm 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
27 brokerage firm, the principal reasonably expects to be kept
28 confidential or that the brokerage firm otherwise knows is
29 confidential;

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

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

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

46 “Disclosed dual agent” means a brokerage firm, including
47 brokers, broker-salespersons and salespersons affiliated with the

1 brokerage firm, that has an agency relationship and is working for
2 both the buyer and seller in the same transaction.

3 “Material information” means the existence or non-existence of
4 information:

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

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

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

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

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

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

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

33

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

39 a. to exercise reasonable skill and care;

40 b. to deal honestly and in good faith;

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

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

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

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

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

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

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

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

40 (2) the terms of compensation, if any, offered by a party or the
41 brokerage firm to another brokerage firm representing a different
42 party; and

43 h. to undertake a reasonable effort to obtain material
44 information concerning the condition of every property for which
45 the brokerage firm accepts an agency relationship or is retained to
46 market as a transaction broker, and concerning the financial
47 qualifications of every person for whom the brokerage firm submits

1 an offer to the brokerage firm's principal, provided that the broker,
2 broker-salesperson or salesperson at the brokerage firm who
3 undertakes the reasonable efforts shall not be held to a standard of a
4 licensed property inspector unless that broker, broker-salesperson or
5 salesperson is separately licensed as a property inspector.

6

7 3. (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 buyer is a
10 buyer's agent unless:

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

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

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

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

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

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

46 (a) the term of the brokerage services agreement, including, if
47 applicable, the period after the termination of the agreement that the
48 brokerage firm will be protected as provided in the agreement with

1 regard to any properties that a broker, broker-salesperson or
2 salesperson from the brokerage firm introduced to the buyer during
3 the term of the agreement;

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

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

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

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

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

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

32

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

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

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

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

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

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

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

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

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

14

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

19 (1) a brokerage firm, including brokers, broker-salespersons and
20 salespersons affiliated with the brokerage firm, represents the buyer
21 pursuant to a brokerage services agreement between the brokerage
22 firm and the buyer in a residential real estate transaction or
23 otherwise represents the buyer in a commercial real estate
24 transaction, in which case the brokerage firm, including the brokers,
25 broker-salespersons and salespersons, is a buyer's agent;

26 (2) a brokerage firm, including brokers, broker-salespersons and
27 salespersons affiliated with the brokerage firm, represents the buyer
28 pursuant to a brokerage services agreement between the brokerage
29 firm and the buyer in a residential real estate transaction or
30 otherwise represents the buyer in a commercial real estate
31 transaction, and the brokerage firm, including the same broker,
32 broker-salesperson or salesperson or a different broker, broker-
33 salesperson or salesperson represents the seller pursuant to a
34 brokerage services agreement between the brokerage firm and the
35 seller, in which case the brokerage firm, including the broker,
36 broker-salesperson or salesperson or brokers, broker-salespersons or
37 salespersons, as applicable, is a disclosed dual agent;

38 (3) the brokerage firm, including a broker, broker-salesperson or
39 salesperson affiliated with the brokerage firm, has agreed to work
40 with the seller pursuant to brokerage services agreement between the
41 brokerage firm and the seller as a transaction broker; or

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

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

- 1 (2) The brokerage services agreement shall include the
2 following:
- 3 (a) the term of the brokerage services agreement, including, if
4 applicable, the period after the termination of the agreement that the
5 brokerage firm will be protected as provided in the agreement with
6 regard to any properties that a broker, broker-salesperson or
7 salesperson from the brokerage firm introduced to the seller during
8 the term of the agreement;
- 9 (b) the brokerage firm is appointed as an agent for the seller;
- 10 (c) if the agency relationship is exclusive or nonexclusive, and
11 shall include an option for the seller to select if the relationship is
12 exclusive or nonexclusive;
- 13 (d) if the seller consents to the brokerage firm acting as a
14 disclosed dual agent or designated agent, which, if consent is
15 granted, shall be in the brokerage services agreement or in another
16 document requiring separate initialization or signature by the seller
17 and include an acknowledgment from the seller that a disclosed dual
18 agent shall not advocate terms favorable to one principal to the
19 detriment of the other principal;
- 20 (e) if the seller consents, as demonstrated by initialization or
21 signature, to the broker or a managing broker for the brokerage firm,
22 or a broker, broker-salesperson or salesperson appointed by the
23 broker or managing broker, being an agent for the seller to act as a
24 disclosed dual agent in a transaction in which the same broker,
25 broker-salesperson or salesperson or different brokers, broker-
26 salespersons or salespersons, as applicable, affiliated with the
27 brokerage firm represent different parties;
- 28 (f) the brokerage firm's compensation and if the compensation
29 will be shared with another brokerage firm that may have a
30 brokerage relationship with another party to the transaction; and
- 31 (g) whether a notice on the property to be sold will be circulated
32 in a Multiple Listing Service of which the brokerage firm is a
33 member, except that the seller's agent shall not submit any notice to
34 the service stating whether the seller authorized the sharing of the
35 compensation of the seller's agent with cooperating sub-agents,
36 transaction brokers, or the buyer's agents, or the amount of the
37 shared compensation to any service that prohibits an offer from
38 being displayed.
- 39 c. A brokerage firm may work with a party in separate
40 transactions pursuant to different or same agency relationships,
41 including, but not limited to, representing a party in one transaction
42 and at the same time representing that party in a different
43 transaction, if the broker complies with P.L. , c. (C.)
44 (pending before the Legislature as this bill) in establishing the
45 relationships for each transaction, even if the other transaction is a
46 related transaction.

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

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

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

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

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

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

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

25 (2) The representation of or acting as a transaction broker with
26 more than one seller by a brokerage firm, including different
27 brokers, broker-salespersons or salespersons affiliated with the
28 brokerage firm, in competing transactions involving the same buyer
29 does not breach the duty of loyalty to the seller or create a conflict
30 of interest.

31

32 7. (New section) a. A brokerage firm, including its brokers,
33 broker-salespersons and salespersons, may act as a disclosed dual
34 agent only with the informed consent of both parties to the
35 transaction as set forth in brokerage services agreements signed by
36 the buyer and the seller, respectively, in a residential real estate
37 transaction or otherwise in writing in a commercial real estate
38 transaction.

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

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

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

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

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

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

14 (6) unless otherwise agreed to in writing with the buyer, to make
15 a good faith and continuous effort to find a property for the buyer,
16 except that a disclosed dual agent is not obligated to seek additional
17 properties to purchase while the buyer is a party to an existing
18 contract to purchase that is no longer subject to the attorney-review
19 period, if applicable.

20 c. Notwithstanding any provision of chapter 15 of Title 45 of
21 the Revised Statutes or any other law, rule, or regulation to the
22 contrary, including but not limited to, subsection i. of R.S.45:15-17,
23 a broker, broker-salesperson or salesperson acting as a disclosed
24 dual agent in a real estate transaction shall be deemed to be acting in
25 the same capacity with the buyer and the seller as a dual agent and
26 may receive compensation through its brokerage firm from either or
27 both the buyer and seller provided that the sources and amounts of
28 compensation are disclosed in writing to the buyer and the seller.

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

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

38 e. (1) The showing of property in which a buyer is
39 interested to other prospective buyers or the presentation of
40 additional offers to purchase property while the property is subject
41 to a transaction in which a disclosed dual agent is involved does not
42 constitute action that is adverse or detrimental to the buyer or create
43 a conflict of interest.

44 (2) The representation of or acting as a transaction broker with
45 more than one buyer by the brokerage firm, including different
46 brokers, broker-salespersons or salespersons affiliated with the
47 brokerage firm, in competing transactions involving the same

1 property does not constitute action that is adverse or detrimental to
2 the buyer or create a conflict of interest.

3

4 8. (New section) a. In a transaction in which a different
5 broker, broker-salesperson or salesperson is designated as a
6 designated agent by a brokerage firm, including but not limited to by
7 the broker or a managing broker affiliated with the brokerage firm,
8 the broker, broker-salespersons or salespersons, as applicable, shall
9 be designated agents. Each designated agent shall solely represent
10 the party with whom the designated agent has an agency
11 relationship.

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

15 (2) In order for a designated agency relationship to take effect,
16 the brokerage firm shall enter into a written designated agency
17 agreement that may be incorporated into the brokerage services
18 agreement with each of the parties in a residential real estate
19 transaction or otherwise in a written agreement with each of the
20 parties in a commercial transaction that includes the informed,
21 written consent of each of parties to the transaction.

22 b. Notwithstanding any provision of chapter 15 of Title 45 of
23 the Revised Statutes or any other law, rule, or regulation to the
24 contrary, including but not limited to subsection i. of R.S.45:15-17,
25 a broker-salesperson or salesperson acting as a designated agent in a
26 real estate transaction shall be deemed to be acting in the same
27 capacity with the buyer and the seller as a designated agent and may
28 receive compensation through its brokerage firm from either or both
29 the buyer and the seller provided that the sources and amounts of
30 compensation are disclosed in writing to the buyer and the seller.

31

32 9. (New section) a. A brokerage firm, including brokers,
33 broker-salespersons and salespersons affiliated with the brokerage
34 firm, that has been engaged as a transaction broker by a buyer, a
35 seller, or both, shall not act as an agent for and shall not represent
36 any party in the transaction; shall not promote the interest of one
37 party over the interest of the other party; and shall not be required to
38 keep any information confidential.

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

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

45 (2) to ensure, when working with a seller, that the brokerage
46 service agreement states whether a notice on the property to be sold
47 will be circulated in a Multiple Listing Service of which the
48 brokerage firm is a member, except that the seller's agent shall not

1 submit any notice to the service stating whether the seller authorized
2 the sharing of the compensation of the seller's agent with
3 cooperating sub-agents, transaction brokers, or the buyer's agents, or
4 the amount of the shared compensation to any service that prohibits
5 an offer from being displayed;

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

7 (4) to locate qualified buyers for a seller or suitable properties
8 for a buyer;

9 (5) unless otherwise directed in writing by the principal, to
10 present all written offers and counteroffers in a timely manner in
11 accordance with applicable law, and to provide written confirmation
12 of receipt to the other party or its agent or transaction broker of each
13 and every written offer or counteroffer as soon as reasonably
14 practicable, regardless of whether the property is subject to an
15 existing contract of sale or the buyer is already a party to an existing
16 contract to purchase another property;

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

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

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

23 (9) to manage the transaction and perform tasks to facilitate the
24 closing of the transaction.

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

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

30

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

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

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

36 (3) termination of the relationship by mutual agreement of the
37 parties; or

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

42 b. If the agency or transaction broker relationship is being
43 terminated pursuant to paragraphs (3) or (4) of subsection a. of this
44 section, written confirmation of termination shall be required for the
45 termination to take effect. Written confirmation of termination shall
46 not be required for the termination to take effect pursuant to
47 paragraphs (1) or (2) of subsection a. of this section.

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

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

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

11 d. With respect to the termination of disclosed dual agent
12 relationships, absent a termination by expiration or fulfillment by a
13 completed closing, brokerage services agreements between a
14 disclosed dual agent and a buyer and a seller shall otherwise only be
15 terminated in writing signed by the buyer or seller, as applicable,
16 with confirmed delivery to the disclosed dual agent.

17

18 11. (New section) a. In any real estate transaction, a brokerage
19 firm's compensation may be paid by one or more of the following:
20 the seller; the buyer; a third party; or by sharing the compensation
21 between brokerage firms. Agreements on compensation shall be in
22 writing signed by the seller or buyer, as applicable.

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

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

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

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

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

46 g. To receive compensation for rendering real estate brokerage
47 services from any party, firm or third party, a brokerage firm shall
48 have a written brokerage services agreement with the buyer or the

1 seller, as applicable, in a residential real estate transaction and a
2 written brokerage services agreement with the seller but not with the
3 buyer in a commercial real estate transaction containing the
4 following:

- 5 (1) the terms of compensation, including:
6 (a) the amount the principal agrees to compensate the brokerage
7 firm;
8 (b) the principal's consent, if any, and any terms of the consent,
9 to compensation sharing between brokerage firms and parties
10 sharing the payment of the compensation; and
11 (c) the principal's consent, if any, and any terms of consent, to
12 compensation of the brokerage firm by more than one party; and

13 (2) in a brokerage services agreement with a buyer, if there is no
14 agreement or offer or a limited offer by any other party or brokerage
15 firm to pay compensation to the brokerage firm, if the buyer will pay
16 the difference between the offer and the compensation the buyer has
17 agreed is due to the buyer's agent and, if not, the buyer's agreement
18 as to how to proceed in this situation, including, but not limited to,
19 directing the buyer's agent not to introduce the buyer to properties
20 where the seller is not offering compensation or is offering less
21 compensation to the buyer's agent than the buyer agreed is due to
22 the buyer's agent.

23 h. A brokerage firm may receive compensation, which shall be
24 deemed to be the payment of a commission, without a brokerage
25 services agreement for the provision of a broker's price opinion;
26 comparative market analysis; or a referral by one firm to another
27 firm if the referring firm provided no real estate brokerage services
28 in the transaction.

29
30 12. (New section) a. A principal shall not be liable for an act,
31 error or omission by an agent or transaction broker of the principal
32 arising out of their relationship:

33 (1) unless the principal participated in or authorized the act, error
34 or omission.

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

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

44
45 13. (New section) Unless otherwise agreed to in writing, a
46 principal may not be charged with knowledge or notice of any facts
47 known by a brokerage firm representing or working with the
48 principal that are not actually known by the principal and a

1 brokerage firm representing or working with the principal may not
2 be charged with knowledge or notice of any facts known by the
3 principal that are not actually known by the brokerage firm.

4
5 14. (New section) a. At any residential property showing that is
6 generally open to the public, a sign shall be posted at the entrance or
7 at a sign-in sheet clearly advising prospective buyers that the
8 brokerage firm hosting the real estate open house represents the
9 seller only and has no relationship with the prospective buyer,
10 except if the buyer does not have an exclusive buyer agency
11 agreement with another brokerage firm and agrees to the seller's
12 agent becoming a disclosed dual agent or designated agent.

13 b. For the avoidance of doubt and to ensure uniformity at public
14 real estate open houses across the State, the sign shall clearly read:
15 "ATTENTION PROSPECTIVE PURCHASERS - PLEASE READ
16 THIS SIGN CAREFULLY. This is to advise you that the agent who
17 is conducting this Open House REPRESENTS THE SELLER AND
18 IS REQUIRED BY LAW TO PROMOTE THE INTERESTS OF
19 THE SELLER. ANY INFORMATION YOU GIVE THIS AGENT
20 IS NOT CONSIDERED CONFIDENTIAL under New Jersey law
21 and could be disclosed to the Seller of this property. You, as the
22 Buyer, are entitled to have someone represent you as a Buyer's
23 Agent if you are interested in this property. The duties of a Buyer's
24 Agent include helping you evaluate the property, prepare an offer on
25 the property and negotiate in your best interests. If you, as the
26 Buyer, are already exclusively represented by a Buyer's Agent, you
27 are required to disclose this representation on the sign-in sheet. If
28 you, as the Buyer, are not already exclusively represented by a
29 Buyer's Agent, please be advised that the Open House agent is not
30 precluded from being a disclosed dual agent or designated agent and
31 can enter into any relationship with you as explained in the
32 Consumer Information Statement."

33
34 15. (New section) Notwithstanding the provisions of P.L. , c.
35 (C.) (pending before the Legislature as this bill), the New
36 Jersey Real Estate Commission may promulgate regulations to
37 address other types of agency or business relationships for real estate
38 brokerage firms.

39
40 16. Section 27 of P.L.2009, c.238 (C.45:15-16.2e) is amended to
41 read as follows:

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

- 46 (1) Agency;
47 (2) Disclosure;
48 (3) Legal issues;

- 1 (4) Ethics, which shall not be less than two hours;
- 2 (5) Fair housing;
- 3 (6) Rules and regulations;
- 4 (7) Real estate licensee safety;
- 5 (8) Financial literacy and planning; and
- 6 (9) Any other core topics that the New Jersey Real Estate
- 7 Commission may prescribe by rule.

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

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

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

19 d. Notwithstanding the provisions of subsection a. of this
20 section, the commission shall require that a continuing education
21 course on agency be completed by a broker, broker-salesperson and
22 salesperson as a condition for license renewal during each biennial
23 license term.

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

25

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

27

28

29

STATEMENT

30

31 This bill incorporates certain protections for consumers
32 regarding residential real estate transactions and certain aspects of
33 commercial real estate transactions. Specifically, the bill
34 incorporates into current law the responsibilities to a consumer of a
35 brokerage firm; a buyer's agent; a seller's agent; a dual agent; a
36 designated agent; and a transaction broker. Additionally, the bill
37 establishes the circumstances under which an individual is a buyer's
38 agent and under which an individual is a seller's agent and
39 delineates the terms of the broker agreement between the agent and
40 a consumer.

41 The bill also stipulates that a seller's agent is not required to
42 submit any notice to a Multiple Listing Service stating that a seller
43 has authorized the sharing of the compensation for the seller's agent
44 with cooperating subagents, transaction brokers or a buyer's agent,
45 or the amount of compensation to any Multiple Listing Service.
46 Under the bill, a statement regarding a property is required for

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1 prospective buyers to see and is to be posted at open houses for the
2 property. Lastly, the continuing education requirements of
3 licensees to the Real Estate Commission are to include at least one
4 hour on agency per biennial renewal period.