

[First Reprint]

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)

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)

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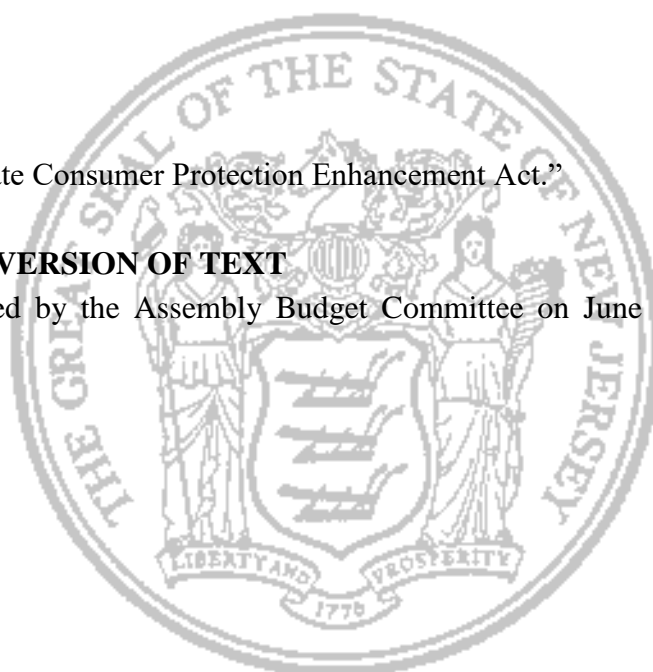
Senator Turner, Assemblywomen Flynn, Reynolds-Jackson, Assemblyman Sampson, Assemblywomen Speight, Swain, Assemblymen Hutchison and Tully

SYNOPSIS

“Real Estate Consumer Protection Enhancement Act.”

CURRENT VERSION OF TEXT

As reported by the Assembly Budget Committee on June 26, 2024, with amendments.



(Sponsorship Updated As Of: 6/28/2024)

1 AN ACT concerning consumer rights in certain real estate
2 transactions and amending P.L.2009, c.238 and supplementing
3 ¹Title 45 of the Revised Statutes and¹ chapter 8 of Title 56 of the
4 Revised Statutes.

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

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

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

15 “Agent” means a real estate brokerage firm, including affiliated
16 brokers, broker-salespersons and salespersons who are duly licensed
17 under ¹[P.L. , c. (C.) (pending before the Legislature as this
18 bill)] R.S.45:15-1 et seq.¹, that has an agency relationship with a
19 principal.

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

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

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

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

44 “Buyer’s agent” means a brokerage firm, including brokers,
45 broker-salespersons and salespersons affiliated with the brokerage

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ABU committee amendments adopted June 26, 2024.

1 firm, that has an agency relationship and works only with the buyer
2 in a real estate transaction, and to whom the brokerage firm and its
3 brokers, broker-salespersons and salespersons owe fiduciary duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

47 “Disclosed dual agent” means a brokerage firm, including
48 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) ¹**[A]** In addition to the duties provided for
35 under current law, a¹ brokerage firm, including its brokers, broker-
36 salespersons and salespersons, when acting as a buyer’s agent,
37 seller’s agent, disclosed dual agent or designated agent, owes the
38 following duties to the brokerage firm’s principal and to all parties
39 in a transaction, which may not be waived:

40 a. ¹to strictly comply with the laws of agency and the principles
41 governing fiduciary relationships;

42 b.¹ to exercise reasonable skill and care;

43 ¹**[b.] c.**¹ to deal honestly and in good faith;

44 ¹**[c.] d.**¹ unless otherwise directed in writing by the principal,
45 to present all written offers and counteroffers in a timely manner in
46 accordance with applicable law, and to provide written confirmation
47 of receipt to the other party or its agent or transaction broker of each
48 and every written offer or counteroffer as soon as reasonably

1 practicable, regardless of whether the property is subject to an
2 existing contract for sale or the buyer is already a party to an
3 existing contract to purchase another property;

4 ¹**[d.] e.**¹ where the principal is the seller in a residential real
5 estate transaction, to obtain a signed property condition disclosure
6 statement that is provided for in section 1 of P.L.1999, c.76 (C.56:8-
7 19.1), with it being required that the seller provide to the brokerage
8 firm the statement with the information filled in and signed by the
9 seller and, if the seller is not represented by a brokerage firm or
10 working with a brokerage firm that is a transaction broker, then the
11 seller shall be required to provide the statement to the buyer ¹**[prior**
12 **to there being a binding sales contract, and]** before the buyer
13 becomes obligated under any contract for the purchase of the property;

14 f.¹ to disclose all existing material information known by ¹**[the**
15 **seller's agent and not apparent or readily ascertainable to a buyer]** a
16 real estate broker, real estate broker-salesperson, or real estate
17 salesperson acting on behalf of the brokerage firm or which a
18 reasonable effort to ascertain the information would have revealed to
19 their principal and when appropriate to any other party to the
20 transaction¹ concerning the physical condition of the property that is
21 for sale¹**].** This subsection shall not be construed to imply any duty
22 to investigate matters that the brokerage firm has not agreed to
23 investigate, except as otherwise required by law¹;

24 ¹**[e.] g.**¹ to provide an accounting to the principal as necessary
25 in a timely manner for all money and property received from or on
26 behalf of any party to the transaction;

27 ¹**[f.] h.**¹ in a residential real estate transaction, to provide the
28 consumer information statement in the form required by the New
29 Jersey Real Estate Commission and obtain a signed acknowledgment
30 of receipt of same by the party. The statement shall be included as
31 part of the brokerage services agreement. The statement shall be
32 provided to:

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

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

39 ¹**[g.] i.**¹ to disclose in writing as soon as reasonably practical
40 but no later than at the time the brokerage firm's principal signs a
41 brokerage service agreement:

42 (1) whether the brokerage firm is acting as the buyer's agent, the
43 seller's agent, a disclosed dual agent, a designated agent, or a
44 transaction broker. The disclosure shall be set forth in a separate
45 paragraph titled "Agency Disclosure" in a brokerage services
46 agreement prepared by the brokerage firm between the principal and

1 the brokerage firm or in a separate writing titled “Agency
2 Disclosure” signed by the principal; and

3 (2) the terms of compensation, if any, offered by a party or the
4 brokerage firm to another brokerage firm representing a different
5 party; and

6 ¹[h.] j. to undertake a reasonable effort to obtain material
7 information concerning the condition of every property for which
8 the brokerage firm accepts an agency relationship or is retained to
9 market as a transaction broker, and concerning the financial
10 qualifications of every person for whom the brokerage firm submits
11 an offer to the brokerage firm’s principal, provided that the broker,
12 broker-salesperson or salesperson at the brokerage firm who
13 undertakes the reasonable efforts shall not be held to a standard of a
14 licensed property inspector unless that broker, broker-salesperson or
15 salesperson is separately licensed as a property inspector.

16

17 3. (New section) a. A brokerage firm, including brokers,
18 broker-salespersons and salespersons affiliated with the brokerage
19 firm, that performs real estate brokerage services for a buyer is a
20 buyer’s agent unless:

21 (1) a brokerage firm, including brokers, broker-salespersons and
22 salespersons affiliated with the brokerage firm, represents the seller
23 pursuant to a brokerage services agreement between the brokerage
24 firm and the seller, in which case the brokerage firm, including the
25 brokers, broker-salespersons and salespersons, is a seller’s agent;

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

39 (3) the brokerage firm, including a broker, broker-salesperson or
40 salesperson affiliated with the brokerage firm, has agreed to work
41 with the buyer pursuant to a brokerage services agreement between
42 the brokerage firm and the buyer in a residential real estate
43 transaction or otherwise represents the buyer in a commercial real
44 estate transaction as a transaction broker; or

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

47 b. (1) In a residential real estate transaction, a brokerage firm
48 shall enter into a brokerage services agreement with the buyer

1 before, or as soon as reasonably practical after, the firm commences
2 rendering real estate brokerage services to, or on behalf of, the
3 buyer. A brokerage services agreement shall not be required
4 between a brokerage firm and a buyer in a commercial real estate
5 transaction.

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

8 (a) the term of the brokerage services agreement, including, if
9 applicable, the period after the termination of the agreement that the
10 brokerage firm will be protected as provided in the agreement with
11 regard to any properties that a broker, broker-salesperson or
12 salesperson from the brokerage firm introduced to the buyer during
13 the term of the agreement;

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

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

16 (d) if the buyer consents to the brokerage firm acting as a
17 disclosed dual agent or designated agent, which, if consent is
18 granted, shall be in the brokerage services agreement or another
19 document requiring separate initialization or signature by the buyer
20 and include an acknowledgment from the buyer that a disclosed dual
21 agent shall not advocate terms favorable to one principal to the
22 detriment of the other principal;

23 (e) if the buyer consents, as demonstrated by initialization or
24 signature, to the broker or a managing broker for the brokerage firm,
25 or a broker, broker-salesperson or salesperson appointed by the
26 broker or managing broker, being an agent for the buyer to act as a
27 disclosed dual agent in a transaction in which the same broker,
28 broker-salesperson or salesperson or different brokers, broker-
29 salespersons or salespersons, as applicable, affiliated with the
30 brokerage firm represent different parties; ¹~~[and]~~¹

31 (f) the brokerage firm's compensation ¹, how the compensation
32 will be calculated,¹ and if the compensation is to be shared with
33 another brokerage firm that may have a brokerage relationship with
34 another party to the transaction¹; and

35 (g) a disclosure expressly stating that broker compensation is
36 fully negotiable and not set by law¹.

37 c. A brokerage firm may work with a party in separate
38 transactions pursuant to different or the same agency relationships,
39 including, but not limited to, representing a party in one transaction
40 and at the same time representing that party in a different
41 transaction, if the broker complies with P.L. , c. (C.)
42 (pending before the Legislature as this bill) in establishing the
43 relationships for each transaction, even if the other transaction is a
44 related transaction.

1 4. (New section) a. ¹~~【Unless additional duties are agreed to in~~
2 writing signed by a buyer's agent or other authorized representative
3 of the brokerage firm】 In addition to the duties provided for under
4 current law¹, the duties of a buyer's agent ¹~~【are limited to】~~ shall
5 include¹ the following, which may not be waived, except as
6 expressly set forth in paragraphs (4) and (5) of this subsection:

7 (1) to be loyal to the buyer by taking no action that is adverse or
8 detrimental to the buyer's interest in a transaction ¹and to exercise
9 primary devotion to the buyer's interests¹;

10 (2) to timely disclose to the buyer any ¹actual or potential¹
11 conflicts of interest ¹which the buyer's agent may reasonably
12 anticipate¹;

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

15 (4) to not disclose confidential information from or about the
16 buyer, except under subpoena, court order or otherwise as provided
17 by law, or as expressly authorized by the buyer, even after
18 termination of the agency relationship; ¹~~【and】~~¹

19 (5) unless otherwise agreed to in writing, to make a good faith
20 and continuous effort to find a property for the buyer, except that a
21 buyer's agent is not obligated to seek additional properties to
22 purchase while the buyer is a party to an existing contract to
23 purchase that is no longer subject to the attorney-review period, if
24 applicable¹; and

25 (6) any additional duties that are agreed to in writing signed by a
26 buyer's agent or other authorized representative of the brokerage
27 firm¹.

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

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

37

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

42 (1) a brokerage firm, including brokers, broker-salespersons and
43 salespersons affiliated with the brokerage firm, represents the buyer
44 pursuant to a brokerage services agreement between the brokerage
45 firm and the buyer in a residential real estate transaction or
46 otherwise represents the buyer in a commercial real estate

1 transaction, in which case the brokerage firm, including the brokers,
2 broker-salespersons and salespersons, is a buyer's agent;

3 (2) a brokerage firm, including brokers, broker-salespersons and
4 salespersons affiliated with the brokerage firm, represents the buyer
5 pursuant to a brokerage services agreement between the brokerage
6 firm and the buyer in a residential real estate transaction or
7 otherwise represents the buyer in a commercial real estate
8 transaction, and the brokerage firm, including the same broker,
9 broker-salesperson or salesperson or a different broker, broker-
10 salesperson or salesperson represents the seller pursuant to a
11 brokerage services agreement between the brokerage firm and the
12 seller, in which case the brokerage firm, including the broker,
13 broker-salesperson or salesperson or brokers, broker-salespersons or
14 salespersons, as applicable, is a disclosed dual agent;

15 (3) the brokerage firm, including a broker, broker-salesperson or
16 salesperson affiliated with the brokerage firm, has agreed to work
17 with the seller pursuant to brokerage services agreement between the
18 brokerage firm and the seller as a transaction broker; or

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

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

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

27 (a) the term of the brokerage services agreement, including, if
28 applicable, the period after the termination of the agreement that the
29 brokerage firm will be protected as provided in the agreement with
30 regard to any properties that a broker, broker-salesperson or
31 salesperson from the brokerage firm introduced to the seller during
32 the term of the agreement;

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

34 (c) if the agency relationship is exclusive or nonexclusive, and
35 shall include an option for the seller to select if the relationship is
36 exclusive or nonexclusive;

37 (d) if the seller consents to the brokerage firm acting as a
38 disclosed dual agent or designated agent, which, if consent is
39 granted, shall be in the brokerage services agreement or in another
40 document requiring separate initialization or signature by the seller
41 and include an acknowledgment from the seller that a disclosed dual
42 agent shall not advocate terms favorable to one principal to the
43 detriment of the other principal;

44 (e) if the seller consents, as demonstrated by initialization or
45 signature, to the broker or a managing broker for the brokerage firm,
46 or a broker, broker-salesperson or salesperson appointed by the
47 broker or managing broker, being an agent for the seller to act as a
48 disclosed dual agent in a transaction in which the same broker,

1 broker-salesperson or salesperson or different brokers, broker-
2 salespersons or salespersons, as applicable, affiliated with the
3 brokerage firm represent different parties;

4 (f) the brokerage firm's compensation¹, how the compensation
5 will be calculated,¹ and if the compensation will be shared with
6 another brokerage firm that may have a brokerage relationship with
7 another party to the transaction; and

8 (g) whether a notice on the property to be sold will be circulated in
9 a ¹**Multiple Listing Service** database established to provide data
10 about properties for sale, such as a multiple listing service,¹ of which
11 the brokerage firm is a member, except that the seller's agent shall not
12 submit any notice to the service stating whether the seller authorized
13 the sharing of the compensation of the seller's agent with cooperating
14 sub-agents, transaction brokers, or the buyer's agents, or the amount of
15 the shared compensation to any service that prohibits an offer from
16 being displayed.

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

25

26 6. (New section) a. ¹**Unless additional duties are agreed to in**
27 **writing signed by a seller's agent or other authorized representative**
28 **of the brokerage firm** In addition to the duties provided for under
29 current law¹, the duties of a seller's agent ¹**are limited to** shall
30 include¹ the following, which may not be waived, except as
31 expressly set forth in paragraphs (4) and (5) of this subsection:

32 (1) to be loyal to the seller by taking no action that is adverse or
33 detrimental to the seller's interest in a transaction ¹and to exercise
34 primary devotion to the seller's interests¹;

35 (2) to timely disclose to the seller any ¹actual or potential
36 conflicts of interest ¹which the seller's agent may reasonably
37 anticipate¹;

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

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

44 (5) unless otherwise agreed to in writing, to make a good faith
45 and continuous effort to find a buyer for the property, except that a
46 seller's agent is not obligated to seek additional offers to purchase
47 the property while the property is subject to an existing contract for

1 sale that is no longer subject to the attorney-review period, if
2 applicable¹; and

3 (6) any additional duties that are agreed to in writing signed by a
4 seller's agent or other authorized representative of the brokerage
5 firm¹.

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

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

16
17 7. (New section) a. A brokerage firm, including its brokers,
18 broker-salespersons and salespersons, may act as a disclosed dual
19 agent only with the informed consent of both parties to the transaction
20 as set forth in brokerage services agreements signed by the buyer and
21 the seller, respectively, in a residential real estate transaction or
22 otherwise in writing in a commercial real estate transaction.

23 b. ¹【Unless additional duties are agreed to in writings signed by a
24 disclosed dual agent or an authorized representative of the brokerage
25 firm and each of the parties】 In addition to the duties provided for
26 under current law¹, the duties of a disclosed dual agent ¹【are limited
27 to】 shall include¹ the following, which may not be waived, except as
28 expressly set forth in paragraphs (4), (5) and (6) of this subsection:

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

31 (2) to timely disclose to both parties any ¹actual or potential¹
32 conflicts of interest ¹which the disclosed dual agent may reasonably
33 anticipate¹;

34 (3) to advise both parties to seek expert advice on matters
35 relating to the transaction that are beyond the disclosed dual agent's
36 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; ¹【and】¹

1 (6) unless otherwise agreed to in writing with the buyer, to make
2 a good faith and continuous effort to find a property for the buyer,
3 except that a disclosed dual agent is not obligated to seek additional
4 properties to purchase while the buyer is a party to an existing
5 contract to purchase that is no longer subject to the attorney-review
6 period, if applicable¹; and

7 (7) any additional duties that are agreed to in writings signed by
8 a disclosed dual agent or an authorized representative of the
9 brokerage firm and each of the parties¹.

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

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

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

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

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

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

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

4 (2) In order for a designated agency relationship to take effect,
5 the brokerage firm shall enter into a written designated agency
6 agreement that may be incorporated into the brokerage services
7 agreement with each of the parties in a residential real estate
8 transaction or otherwise in a written agreement with each of the
9 parties in a commercial transaction that includes the informed,
10 written consent of each of parties to the transaction.

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

20

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

28 b. ¹Unless additional duties are agreed to in writings signed by
29 the transaction broker or other authorized representative of the
30 brokerage firm In addition to the duties provided for under current
31 law¹, a transaction broker's duties ¹are limited to shall include¹ the
32 following:

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

35 (2) to ensure, when working with a seller, that the brokerage
36 service agreement states whether a notice on the property to be sold
37 will be circulated in a ¹Multiple Listing Service database
38 established to provide data about properties for sale, such as a multiple
39 listing service,¹ of which the brokerage firm is a member, except that
40 the seller's agent shall not submit any notice to the service stating
41 whether the seller authorized the sharing of the compensation of the
42 seller's agent with cooperating sub-agents, transaction brokers, or
43 the buyer's agents, or the amount of the shared compensation to any
44 service that prohibits an offer from being displayed;

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

46 (4) to locate qualified buyers for a seller or suitable properties
47 for a buyer;

1 (5) unless otherwise directed in writing by the principal, to
2 present all written offers and counteroffers in a timely manner in
3 accordance with applicable law, and to provide written confirmation
4 of receipt to the other party or its agent or transaction broker of each
5 and every written offer or counteroffer as soon as reasonably
6 practicable, regardless of whether the property is subject to an
7 existing contract of sale or the buyer is already a party to an existing
8 contract to purchase another property;

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

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

13 (8) to advise the parties to seek expert advice on matters relating
14 to the transaction; ¹**[and]**¹

15 (9) to manage the transaction and perform tasks to facilitate the
16 closing of the transaction¹; and

17 (10) any additional duties that are agreed to in writings signed by
18 the transaction broker or other authorized representative of the
19 brokerage firm¹.

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

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

25
26 10. (New section) a. The agency or transaction broker
27 relationships established pursuant to this chapter shall continue until
28 the earliest of the following:

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

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

31 (3) termination of the relationship by mutual agreement of the
32 parties; or

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

37 b. If the agency or transaction broker relationship is being
38 terminated pursuant to paragraphs (3) or (4) of subsection a. of this
39 section, written confirmation of termination shall be required for the
40 termination to take effect. Written confirmation of termination shall
41 not be required for the termination to take effect pursuant to
42 paragraphs (1) or (2) of subsection a. of this section.

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

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

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

5 d. With respect to the termination of disclosed dual agent
6 relationships, absent a termination by expiration or fulfillment by a
7 completed closing, brokerage services agreements between a
8 disclosed dual agent and a buyer and a seller shall otherwise only be
9 terminated in writing signed by the buyer or seller, as applicable,
10 with confirmed delivery to the disclosed dual agent.

11

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

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

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

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

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

35 f. A brokerage firm may receive compensation based upon a
36 flat fee arrangement, a percentage of the purchase price or ¹[some]¹
37 other method ¹permitted by law¹, all of which shall be a commission
38 payment for any real estate brokerage services rendered, without
39 breaching any duty to the buyer or seller.

40 g. To receive compensation for rendering real estate brokerage
41 services from any party, firm or third party, a brokerage firm shall
42 have a written brokerage services agreement with the buyer or the
43 seller, as applicable, in a residential real estate transaction and a
44 written brokerage services agreement with the seller but not with the
45 buyer in a commercial real estate transaction containing the
46 following:

47 (1) the terms of compensation, including:

1 (a) the amount the principal agrees to compensate the brokerage
2 firm;

3 (b) the principal's consent, if any, and any terms of the consent,
4 to compensation sharing between brokerage firms and parties
5 sharing the payment of the compensation; and

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

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

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

24
25 12. (New section) a. A principal shall not be liable for an act,
26 error or omission by an agent or transaction broker of the principal
27 arising out of their relationship:

28 (1) unless the principal participated in or authorized the act, error
29 or omission.

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

34 b. A brokerage firm shall not be liable for information that is to
35 be disclosed by a seller in a property condition disclosure statement
36 that is provided for in section 1 of P.L.1999, c.76 (C.56:8-19.1) or
37 otherwise by law or that the brokerage firm requested the seller to
38 provide and was not provided to the brokerage firm¹; provided a real
39 estate broker, real estate broker-salesperson, or real estate salesperson
40 acting on behalf of the brokerage firm made reasonable efforts to
41 ascertain all material information concerning the physical condition,
42 including but not limited to making inquiries to the seller about any
43 physical conditions that may affect the property and performing a
44 visual inspection of the property to determine if there are any readily
45 observable physical conditions affecting the property, and made
46 disclosure of such information to appropriate parties to a transaction as
47 required by law¹.

1 13. (New section) Unless otherwise agreed to in writing, a
2 principal may not be charged with knowledge or notice of any facts
3 known by a brokerage firm representing or working with the
4 principal that are not actually known by the principal ¹[and a]. A¹
5 brokerage firm representing or working with the principal may not
6 be charged with knowledge or notice of any facts known by the
7 principal that are not actually known by the brokerage firm¹;
8 provided a real estate broker, real estate broker-salesperson, or real
9 estate salesperson acting on behalf of the brokerage firm made
10 reasonable efforts to ascertain all material information concerning the
11 physical condition, including but not limited to making inquiries to the
12 seller about any physical conditions that may affect the property and
13 performing a visual inspection of the property to determine if there are
14 any readily observable physical conditions affecting the property¹.
15

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

24 b. For the avoidance of doubt and to ensure uniformity at public
25 real estate open houses across the State, the sign shall clearly read:
26 "ATTENTION PROSPECTIVE PURCHASERS - PLEASE READ
27 THIS SIGN CAREFULLY. This is to advise you that the agent who
28 is conducting this Open House REPRESENTS THE SELLER AND
29 IS REQUIRED BY LAW TO PROMOTE THE INTERESTS OF
30 THE SELLER. ANY INFORMATION YOU GIVE THIS AGENT
31 IS NOT CONSIDERED CONFIDENTIAL under New Jersey law
32 and could be disclosed to the Seller of this property. You, as the
33 Buyer, are entitled to have someone represent you as a Buyer's
34 Agent if you are interested in this property. The duties of a Buyer's
35 Agent include helping you evaluate the property, prepare an offer on
36 the property and negotiate in your best interests. If you, as the
37 Buyer, are already exclusively represented by a Buyer's Agent, you
38 are required to disclose this representation on the sign-in sheet. If
39 you, as the Buyer, are not already exclusively represented by a
40 Buyer's Agent, please be advised that the Open House agent is not
41 precluded from being a disclosed dual agent or designated agent and
42 can enter into any relationship with you as explained in the
43 Consumer Information Statement."
44

45 15. (New section) ¹[Notwithstanding the provisions of
46 P.L. , c. (C.) (pending before the Legislature as this bill),
47 the] The¹ New Jersey Real Estate Commission may promulgate
48 regulations ¹pursuant to the "Administrative Procedure Act,"

1 P.L.1968, c.410 (C.52:14B-1 et seq.) to effectuate the purposes of
2 P.L. , c. (C.) (pending before the Legislature as this bill),
3 including regulations¹ to address other types of agency or business
4 relationships for real estate brokerage firms.

5
6 16. Section 27 of P.L.2009, c.238 (C.45:15-16.2e) is amended to
7 read as follows:

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

- 12 (1) Agency;
- 13 (2) Disclosure;
- 14 (3) Legal issues;
- 15 (4) Ethics, which shall not be less than two hours;
- 16 (5) Fair housing;
- 17 (6) Rules and regulations;
- 18 (7) Real estate licensee safety;
- 19 (8) Financial literacy and planning; and
- 20 (9) Any other core topics that the New Jersey Real Estate
21 Commission may prescribe by rule.

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

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

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

33 d. Notwithstanding the provisions of subsection a. of this
34 section, the commission shall require that a continuing education
35 course on agency be completed by a broker, broker-salesperson and
36 salesperson as a condition for license renewal during each biennial
37 license term.

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

39
40 ¹17. The rights, remedies, and prohibitions accorded by the
41 provisions of P.L. , c. (C.) (pending before the Legislature as this
42 bill), are hereby declared to be in addition to and cumulative of any
43 other right, remedy, or prohibition accorded by the common law or
44 statutes of the United States or of this State, and nothing herein shall
45 be construed to deny, abrogate, or impair any such common law or
46 statutory right, remedy, or prohibition.¹

47
48 ¹[17.] 18.¹ This act shall take effect on August 1, 2024.