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BULLETIN NO. 24-11

TO: REAL ESTATE LICENSEES AND OTHER INTERESTED PARTIES

FROM: JUSTIN ZIMMERMAN, ACTING COMMISSIONER

RE: CHANGES TO THE NEW JERSEY REAL ESTATE BROKER AND SALESPERSON ACT BY P.L. 2024, c.32: LICENSEE BUSINESS RELATIONSHIPS (INCLUDING DESIGNATED AGENCY); CONSUMER INFORMATION STATEMENT; BROKERAGE SERVICE AGREEMENTS; PROPERTY CONDITION DISCLOSURE STATEMENT; BROKER COMPENSATION; SIGNAGE AT SHOWINGS; AND NEW CONTINUING EDUCATION REQUIREMENT

P.L. 2024, c.32 (“Act”) was signed into law on July 10, 2024 and becomes effective on August 1, 2024. The Act supplements the New Jersey Real Estate Broker and Salesperson Act, N.J.S.A. 45:15-1 to -42. Pending the promulgation of regulations, the New Jersey Real Estate Commission (“Commission”) is issuing this bulletin to provide guidance to real estate licensees regarding requirements of the Act.

Specifically, the Act makes the following changes to current law: codifies the different types of permitted business relationships between real estate brokerage firms and principal, and the obligations applicable to each; creates a new type of agency relationship, called designated agency, necessitating changes to the text of the Consumer Information Statement as required by N.J.A.C. 11:5-6.9; requires that brokerage firms enter into a brokerage services agreement in all residential real estate transactions and when working with a seller in commercial real estate transactions¹; mandates that licensees obtain a signed property condition disclosure statement (which is promulgated by the New Jersey Division of Consumer Affairs) from the seller in

¹ “Commercial real estate” means a fee title interest, possessory estate, or lease in real property located in the State of New Jersey, other than an interest in real property that is: (1) improved with one single-family residential unit or one multifamily structure with four or fewer residential units; (2) unimproved and the maximum permitted development is one to four residential units or structures under applicable zoning regulations; (3) classified as farmland, timberland or other agricultural land for real estate tax assessment purposes; (4) improved with single-family residential units, such as condominiums, townhouses, timeshares, or stand-alone houses in a subdivision that may be legally sold, leased or otherwise disposed of on a unit-by-unit basis; (5) subject to an agreement that provides that the real estate should be considered residential; or (6) within the definition in this section as of the date of its disposition. P.L. 2024, c.32, s.1

residential real estate transactions; permits broker compensation by more than one party in a transaction involving dual agency and/or designated agency; mandates signage at all residential property showings; and imposes a new continuing education requirement (which must be met for the next license renewal in June 2025).

Real Estate Brokerage Business Relationships, Including Designated Agency

The Act defines five different business relationships available to consumers when working with a real estate brokerage firm² and sets forth the corresponding duties owed to parties to a real estate transaction by the brokerage firm. In addition to codifying the four business relationships currently existing (i.e., buyer's agent, seller's agent, disclosed dual agent, and transaction broker), the Act adds a new type of agency relationship, called designated agency. The business relationship between a brokerage firm and its principal should be established in the brokerage services agreement or a separate writing, signed by the principal. In the absence of an affirmative designation of a business relationship, the Act deems a brokerage firm that performs brokerage services on behalf of a buyer or seller, to be a buyer's agent or seller's agent, respectively, by default. See, P.L. 2024, c.32, s.3.a; s.5.a.

The Act provides that all brokerage firms have the following duties, regardless of which business relationship is utilized:

- To deal competently, honestly and fairly with all parties to a transaction. See, P.L. 2024, c.32, s.2.c.; s.9.b(3).
- To present all written offers and counteroffers in a timely manner and provide written confirmation of receipt to the other party, its agent or transaction broker, regardless of whether the property is subject to a contract of sale, unless otherwise directed by the principal, in writing. P.L. 2024, c.32, s.2.d.; s.9.b(5).
- To advise the buyer or seller, as appropriate, to seek expert advice on matters relating to the transaction beyond the brokerage firm or individual licensee's expertise. P.L. 2024, c.32, s.4.a(3); s.6.a(3); s.7.b(3); s.9.b(8).
- To undertake a reasonable effort to obtain material information concerning the condition of every property for which the brokerage firm accepts an agency relationship or is retained to market as a transaction broker, and concerning the financial qualifications of every person for whom the brokerage firm submits an offer to the brokerage firm's principal. P.L. 2024, c.32, s.2.j; s.12.b; s.13.
- To disclose all existing material information known by the agent acting on behalf of the brokerage firm, or which a reasonable effort to ascertain the information would have revealed, to the principal and when appropriate to any other party to the transaction. P.L. 2024, c.32, s.2.f; s.12.b.
- Any additional duties agreed to in the brokerage services agreement or other writing signed by the brokerage firm or individual licensee. P.L. 2024, c.32, s.4.a(6); s.6.a(6); s.7.a(7); s.9.b(10).

² The term "brokerage firm" includes the individual licensed real estate brokers, broker-salespersons and salespersons associated with the firm, unless the context requires the terms to be considered separately. See, P.L. 2024, c.32, s.1.

The creation of an agency relationship gives rise to fiduciary duties owed by licensees to the party the licensee represents in a real estate transaction. N.J.A.C. 11:5-6.4(a). The law governing agency relationships and fiduciary duties owed by a licensee to its principal arise primarily from court-made law, or common law. The Act adds to these requirements but does not limit, or in any way impair, existing legal duties at common law. P.L. 2024, c.32, s.17.

Under the Act, there are four brokerage business relationships that create an agency relationship between a licensee and a buyer or seller of real estate³: (1) seller's agent; (2) buyer's agent; (3) disclosed dual agent; and (4) designated agent, which is newly created by the Act. See, P.L. 2024, c.32, s.1. In these four types of agency relationships, duties owed by brokerage firms to their principals include:

- To act as fiduciaries, bound by the duty of loyalty and must disclose any actual or potential conflicts of interest to their principal that the agent may reasonably anticipate in a timely manner. P.L. 2024, c.32, s.2.a; s.4.a(1); s.6.a(1).
- To not disclose any confidential information from or about their principal, except under subpoena, court order or otherwise as provided by law, or as expressly authorized by the principal, even after termination of the relationship. P.L. 2024, c.32, s.4(a)4; s.6(a)4; s.7(b)4.
- To provide an accounting to their principal as necessary for all money and property received from or on behalf of any party to the transaction. P.L. 2024, c.32, s.2.g.

Sellers' and buyers' agents work exclusively on behalf of their principal in a real estate transaction and owe fiduciary duties exclusively to the party they represent. P.L. 2024, c.32, s.2.a; s.4.a(1); s.6.a(1). The Act provides that sellers' and buyers' agents must be loyal to their principal by exercising primary devotion to the interests of the principal; and taking no action adverse or detrimental to their principal's interests. Ibid.

Disclosed dual agents represent both buyer and seller and act as a fiduciary to both parties in the same transaction. P.L. 2024, c.32, s.1. Brokerage firms acting as a disclosed dual agent are prohibited from prioritizing one party's interests over the other's and may not take any action that is detrimental to the interests of either party. See, P.L. 2024, c.32, s.7.b(1). Accordingly, disclosed dual agents are prohibited from disclosing confidential information regarding either side of the transaction, except under subpoena, court order or otherwise as provided by law, or as expressly authorized by a buyer or seller, even after termination of the relationship. P.L. 2024, c.32, s.7.b(4). A brokerage firm must obtain the informed consent of both parties to the transaction in order to act as a disclosed dual agent. P.L. 2024, c.32, s.7.a.

Designated agency entails a transaction in which a brokerage firm designates different individual licensees affiliated with the firm to solely represent the buyer as the buyer's agent and another to solely represent the seller as the seller's agent. P.L. 2024, c.32, s.1. Each designated agent solely represents, and has an agency relationship with, the party whom they have been designated to represent. See, P.L. 2024, c.32, s.8.a. For the purposes of designated agency, the seller's designated agent and the buyer's designated agent are not dual agents and owe fiduciary duties solely to their respective principals. P.L. 2024, c.32; s.8.a(1). However, in transactions

³ The terms buyer and seller include tenants and landlords, unless the context requires them to be considered separately. See, P.L. 2024, c.32, s.1.

involving designated agency, the brokerage firm (other than those individual licensees that are designated to represent the buyer and seller) acts in the capacity of disclosed dual agent. See, P.L. 2024, c.32, s.1; s.7.a. In order for a designated agency relationship to take effect, the brokerage firm must obtain the informed written consent of both parties to the transaction. P.L. 2024, c.32, s.8.a(2).

The fifth brokerage business relationship under the Act is transaction broker. P.L. 2024, c.32, s.1; s.9.a. A transaction broker renders real estate brokerage services without creating an agency relationship between the brokerage firm and buyer or seller of real estate; and thus, does not owe fiduciary duties to the parties to a transaction. Ibid. A brokerage firm that has been engaged as a transaction broker by a buyer, a seller, or both, may not promote the interests of one party over the interest of the other; and is not required to keep any information confidential. Ibid. Transaction brokers serve as manager of the real estate transaction, keeping parties fully informed and performing tasks to facilitate the closing of the transaction. P.L. 2024, c.32, s.9.b.

Consumer Information Statement

N.J.A.C. 11:5-6.9 requires that real estate licensees supply information regarding their working relationship with parties to a residential real estate transaction. Licensees are required to verbally inform buyers and sellers in residential real estate transactions of the different types of brokerage business relationships and deliver a copy of the Consumer Information Statement (“CIS”), prior to working with them in residential real estate transactions. See, N.J.A.C. 11:5-6.9(e). The CIS is an informational document that summarizes the various business relationships and accompanying legal duties to help ensure that buyers and sellers make informed decisions regarding business relationships with brokerage firms.

The Act requires brokerage firms to provide buyers and sellers with the CIS and obtain a signed acknowledgement of receipt in certain contexts. P.L. 2024, c.32, s.2.h. Furthermore, the CIS must be included as part of the brokerage services agreement. Ibid. Brokerage firms must deliver the CIS to any party to whom the firm renders real estate brokerage services as soon as reasonably practical but no later than at the time the party signs a brokerage services agreement; and to any party not represented by a brokerage firm in a transaction before the party signs an offer or as soon as reasonably practical thereafter. Ibid. The Act does not require brokerage firms to obtain a signed acknowledgment of receipt of the CIS from an unrepresented buyer as a precondition to view a property (i.e. at an open house).

The required text of the CIS is set forth in N.J.A.C. 11:5-6.9(h). Because of the addition of the designated agency business relationship, the Commission is issuing a revised CIS form under cover of this bulletin, attached hereto as **Appendix A**, which must be used by real estate licensees in lieu of the text set out at N.J.A.C. 11:5-6.9(h). The Commission is working to promulgate regulations to conform its rules to the requirements of the Act, including the addition of designated agency and the codification of an updated CIS.

Until such time that the Commission promulgates regulations implementing the Act, real estate licensees must utilize the form attached hereto as **Appendix A** whenever use of the CIS is required by the Act or the Commission’s regulations.

Brokerage Services Agreement

The Act requires brokerage firms to enter into a written agreement, called a brokerage services agreement (“BSA”), with the buyer or seller, as applicable, in all residential real estate transactions, and with sellers in commercial real estate transactions. See, P.L. 2024, c.32, s.3.b; s.5.b.; s.11.g. BSAs include, but are not limited to, sale and rental listing agreements; buyer-lessee agency agreements; and transaction broker, dual agency and designated agency agreements. P.L. 2024, c.32, s.1. The Act requires brokerage firms to obtain a BSA, signed by appropriate parties, “before, or as soon as reasonably practical after, the firm commences rendering real estate brokerage services on behalf of” such parties. P.L. 2024, c.32, s.3.b; s.5.b. A BSA is not required when the services provided by a brokerage firm are limited to providing a broker’s price opinion, comparative market analysis, or a referral by one firm to another if the referring firm provided no real estate brokerage services in the transaction. P.L. 2024, c.32, s.11.h.

In the BSA, brokerage firms must disclose the type of business relationship it has with the principal. P.L. 2024, c.32, s.2.i(1). The disclosure shall be set forth in a separate paragraph titled “Agency Disclosure” in the BSA.⁴ Ibid. Additionally, the Act requires that the CIS be included as part of the agreement. P.L. 2024, c.32, s.2.h. If the brokerage firm has an agency relationship with the principal, the agreement must specify whether the agency is exclusive or non-exclusive. P.L. 2024, c.32, s.3b(2)(c); s.5.b(2)(c). BSAs must also contain the written consent of the principal to the brokerage firm acting as disclosed dual agent or designated agent, as applicable, in residential real estate transactions. P.L. 2024, c.32, s.7.a.; s.8.a(2).

BSAs must specify the term of the agreement and set forth the amount of the brokerage firm’s compensation as well as how it will be calculated. P.L. 2024, c.32, s.3.b(2)(a), (f); s. 5.b(2)(a), (f). If applicable, the BSA must include the principal’s consent, if any, to the brokerage firm acting as a disclosed dual agent or designated agent, and the principal’s consent, if any, to their agent acting as a disclosed dual agent and any terms of consent, including if the compensation will be shared with another brokerage firm that may have a brokerage relationship with another party to the transaction. to compensation sharing between brokerage firms, parties sharing the payment of the compensation and compensation of the brokerage firm by more than one party. P.L. 2024, c.32, s.3.b(2)(d)-(f); s.5.b(2)(d)-(f). If the principal is a seller, the BSA must include whether a notice on the property will be circulated in any databases, such as a multiple listing service.⁵ P.L. 2024, c.32, s.5.b(2)(g). However, the Commission is eliminating the requirement in N.J.A.C. 11:5-6.9(k)(1)(iii) for brokerage firms working with sellers to state the amount of compensation sharing on any databases, such as a multiple listing service, and is working to promulgate conforming regulations. If the principal is a buyer, the BSA must specifically address how to proceed in the event that there is no offer, or a limited offer by any other party to pay

⁴ The Act provides that this disclosure may also be accomplished in a separate written document titled “Agency Disclosure” that is signed by the principal. Ibid.

⁵ Licensees are prohibited from submitting any notice regarding the existence or amount of any commission sharing authorized by the seller in any service that prohibits the display of such offers. P.L. 2024, c.32, s.5.b(2)(g); s.9.b(2).

compensation to the brokerage firm.⁶ P.L. 2024, c.32, s.11.g(2). BSAs are required to include a disclosure expressly stating that broker compensation is fully negotiable and not set by law. P.L. 2024, c.32, s.3.b(2)(g); s.5.b(2)(g).

Property Condition Disclosure Statement

The Act requires that a brokerage firm obtain a signed property condition disclosure statement that is provided for in N.J.S.A 56:8-19.1 (“PCDS”) from the seller in a real estate transaction. P.L. 2024, c.32, s.2.e. In real estate transactions where the seller is not represented or working with a brokerage firm, the Act states that such a seller shall be required to provide the PCDS to the buyer before the buyer becomes obligated under any contract for the purchase of the property. Ibid. The PCDS is promulgated by the New Jersey Division of Consumer Affairs and set forth at N.J.A.C. 13:45A-29.1(d).

Brokerage Firm Compensation

The Act provides that a brokerage firm may be compensated by more than one party for real estate brokerage services in a real estate transaction regardless of the agency or transaction broker relationship the brokerage firm has with the parties. P.L. 2024, c.32, s.11.e. In any real estate transaction, a brokerage firm’s compensation may be paid by one or more of the following: the seller; the buyer; a third party; or by sharing the compensation between brokerage firms. P.L. 2024, c.32, s.11.a. A brokerage firm may receive compensation based upon a flat fee arrangement, a percentage of the purchase price, or other method permitted by law, all of which are considered to be a commission. P.L. 2024, c.32, s.11.f.

In order to receive compensation for rendering real estate brokerage services a brokerage firm must have a written brokerage services agreement with the buyer or the seller, as applicable, in a residential real estate transaction and a written brokerage services agreement with the seller, but not with the buyer, in a commercial real estate transaction. P.L. 2024, c.32, s.11.g. As summarized above, the agreement must specify the terms of compensation and include the principal’s consent, if applicable, to arrangements involving the sharing of compensation among brokerage firms or payment by multiple parties. Ibid.

Residential Property Showing Signage

At any residential property showing that is generally open to the public, the Act requires that real estate licensees post a sign either at the entrance or at a sign-in sheet that shall clearly read exactly as follows:

ATTENTION PROSPECTIVE PURCHASERS - PLEASE READ THIS SIGN CAREFULLY. This is to advise you that the agent who is conducting this Open House REPRESENTS THE SELLER AND IS REQUIRED BY LAW TO

⁶Specifically, the BSA must address if the buyer will pay the difference between the compensation offer of another party and the compensation the buyer has agreed is due to the buyer's agent and, if not, the buyer’s agreement as to how to proceed in this situation, including, but not limited to, directing the buyer’s agent not to introduce the buyer to properties where the seller is not offering compensation or is offering less compensation to the buyer’s agent than the buyer agreed is due to the buyer’s agent. P.L. 2024, c.32, s.11.g(2).

PROMOTE THE INTERESTS OF THE SELLER. ANY INFORMATION YOU GIVE THIS AGENT IS NOT CONSIDERED CONFIDENTIAL under New Jersey law and could be disclosed to the Seller of this property. You, as the Buyer, are entitled to have someone represent you as a Buyer's Agent if you are interested in this property. The duties of a Buyer's Agent include helping you evaluate the property, prepare an offer on the property and negotiate in your best interests. If you, as the Buyer, are already exclusively represented by a Buyer's Agent, you are required to disclose this representation on the sign-in sheet. If you, as the Buyer, are not already exclusively represented by a Buyer's Agent, please be advised that the Open House agent is not precluded from being a disclosed dual agent or designated agent and can enter into any relationship with you as explained in the Consumer Information Statement.

[P.L. 2024, c.32, s.14.]


New Continuing Education Requirement

The Act amends N.J.S.A. 45:15-16.2e to require that real estate licensees complete at least one continuing education course in the topic area of "agency" as a condition for license renewal during each biennial license term. P.L. 2024, c.32, s.16. The Commission will enforce this requirement as part of the next upcoming license renewal cycle. **All individual real estate broker, broker-salesperson and salesperson licensees will be required to submit proof that at least one out of the 12 continuing education credits completed was in the core topic area of "agency" as a condition for license renewal for the 2025-2027 biennial license term.**

The Act may be found here: [3192_R1.PDF \(state.nj.us\)](#). The Commission intends to promulgate regulations to implement the provisions of the Act in the near future. Brokerage firms are again reminded to utilize the form attached hereto as **Appendix A** whenever use of the CIS is required by the Act or the Commission's regulations.

All questions regarding this bulletin may be directed to: realestate@dobi.nj.gov.

08/01/2024
Date



Justin Zimmerman
Acting Commissioner