

Real Estate Consumer Protection Enhancement Act

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KEY DEFINITIONS

AGENT means a real estate brokerage firm, including affiliated brokers, broker-salespersons and salespersons, who are duly licensed, that has an agency relationship with a principal.

PRINCIPAL means a buyer or a seller who has an agency relationship with a brokerage firm.

BUYER'S AGENT means a brokerage firm, including brokers, broker-salespersons and salespersons affiliated with the brokerage firm, that has an agency relationship and works only with the buyer in a real estate transaction, and to whom the brokerage firm and its brokers, broker-salespersons and salespersons owe fiduciary duties.

SELLER'S AGENT means a brokerage firm, including brokers, broker-salespersons and salespersons affiliated with the brokerage firm, that has an agency relationship and works only with the seller in a real estate transaction, and to whom the brokerage firm and its brokers, broker-salespersons and salespersons owe fiduciary duties.

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KEY DEFINITIONS

DESIGNATED AGENT means, in any transaction where the buyer’s agent and the seller’s agent are affiliated with the same brokerage firm or are the same broker, broker-salesperson or salesperson, the broker, broker-salesperson or salesperson who has been designated by the brokerage firm, including but not limited to by a broker or managing broker of the brokerage firm, to solely represent the buyer as the buyer’s agent and another broker, broker-salesperson or salesperson who has been designated by the brokerage firm, including but not limited to a broker or managing broker of the brokerage firm, to solely represent the seller as the seller’s agent in a particular real estate transaction.

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KEY DEFINITIONS

DISCLOSED DUAL AGENT means a brokerage firm, including brokers, broker-salespersons and salespersons affiliated with the brokerage firm, that has an agency relationship and is working for both the buyer and seller in the same transaction.

TRANSACTION BROKER means a brokerage firm, including brokers, broker-salespersons or salespersons affiliated with the brokerage firm, that works with a buyer or a seller, or both, in a real estate transaction without representing either party and has no agency relationship and owes no fiduciary duties to either party to the transaction.

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KEY DEFINITIONS

The Act also Defines:

- Agency relationship
- Brokerage firm
- Brokerage services
- Brokerage services agreement
- Buyer
- Commercial real estate
- Confidential information
- Material information
- Real estate transaction
- Seller

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DUTIES TO PARTIES IN A TRANSACTION

Pursuant to the Act, agents in a real estate transaction owe the following duties to all parties in a transaction:

- to comply with the laws of agency and principles governing fiduciary relationships;
- to exercise reasonable skill and care;
- to deal honestly and in good faith;
- to present all written offers and counteroffers in a timely manner in accordance with applicable law, and to provide written confirmation of receipt to the other party of each written offer or counteroffer as soon as reasonably practicable, regardless of whether the property is subject to an existing contract for sale or the buyer is already a party to an existing contract to purchase another property;
- if acting as a “seller’s agent,” obtain a property disclosure statement filled out and signed by the seller;
- disclose all material information known by a real estate broker, real estate broker-salesperson or real estate salesperson acting on behalf of the brokerage firm or which a reasonable effort to ascertain the information would have revealed to their principal and when appropriate to any other party to the transaction concerning the physical condition of the property that is for sale.

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DUTIES TO PARTIES IN A TRANSACTION (CON'T)

- to provide an accounting to the principal as necessary in a timely manner for all money and property received from or on behalf of any party to the transaction;
- in a residential real estate transaction, to provide the consumer information statement in the form required by the New Jersey Real Estate Commission and obtain a signed receipt that the form was provided.
- to disclose in writing the relationship between the principal and agent in either the brokerage services agreement, in a separate paragraph, or in a separate documents and the terms of compensation, if any, offered to a party or the brokerage firm to another brokerage firm representing a different party;
- 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. The brokerage firm will not be held to the same standard as a licensed property inspector unless the broker, broker-salesperson or salesperson is in fact a licensed property inspector.

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BUYER'S AGENTS

Now required to enter into a brokerage services agreement with the buyer, before, or as soon as reasonably practicable after, the brokerage firm commences rendering real estate brokerage services to a buyer.

The brokerage services agreement must include:

- the term of the agreement, including, any period after the termination of the agreement that the brokerage firm will be protected with regard to any properties that the brokerage firm introduced to the buyer during the term of the agreement;
- that the brokerage firm is appointed as agent for the buyer;
- whether the agency relationship is exclusive or non-exclusive;
- if the buyer consents to the brokerage firm acting as disclosed dual agent or designated agent;
- the brokerage firm's compensation, including how the compensation will be calculated and if the compensation is to be shared with another brokerage firm that may have a brokerage relationship with another party to the transaction; and
- a disclosure expressly stating that broker compensation is fully negotiable and not set by law.

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DUTIES OF BUYER’S AGENTS

The duties of a buyer’s agent includes:

- to be loyal to the buyer by taking no action that is adverse or detrimental to the buyer’s interest in a transaction and “to exercise primary devotion to the buyer’s interests”;
- to timely disclose any actual or potential conflicts of interest “which the buyer’s agent may reasonably anticipate”;
- to advise the buyer to seek expert advice on matters relating to the transaction that are beyond the agent’s expertise;
- to not disclose confidential information from or about the buyer, except under subpoena, court order or otherwise as provided by law, or as expressly authorized by the buyer, even after termination of the agency relationship;
- unless otherwise agreed to in writing, to make a good faith and continuous effort to find a property for the buyer, except that a buyer’s agent is not obligated to find additional properties to purchase while the buyer is a party to an existing contract to purchase while the buyer is a party to an existing contract to purchase that is no longer subject to the attorney-review period, if applicable; and
- any additional duties agreed to in writing signed by the buyer’s agent or authorized representative of the brokerage firm.

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SELLER’S AGENTS

Now required to enter into a brokerage services agreement with the seller, before, or as soon as reasonably practicable after, the brokerage firm commences rendering real estate brokerage services to a seller.

The brokerage services agreement must include:

- the term of the agreement, including, any period after the termination of the agreement that the brokerage firm will be protected;
- that the brokerage firm is appointed as agent for the seller;
- whether the agency relationship is exclusive or non-exclusive. The brokerage services agreement must include an option for the seller to select whether the relationship is exclusive or non-exclusive;
- if the buyer consents to the brokerage firm acting as disclosed dual agent or designated agent;
- the brokerage firm’s compensation, including how the compensation will be calculated and if the compensation is to be shared with another brokerage firm that may have a brokerage relationship with another party to the transaction; and
- an indication whether the property will be circulated in a database established to provide data about properties for sale, such as a multiple listing service, of which the brokerage firm is a member, except that the seller’s agent shall not submit any notice to the service stating whether the seller authorized the sharing of the compensation of the seller’s agent with cooperating sub-agents, transaction brokers, or the buyer’s agents, or the amount of the shared compensation to any service that prohibits an offer from being displayed.

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DUTIES OF SELLER'S AGENTS

The duties of a seller's agent includes:

- to be loyal to the seller by taking no action that is adverse or detrimental to the seller's interest in a transaction and "to exercise primary devotion to the seller's interests";
- to timely disclose any actual or potential conflicts of interest "which the seller's agent may reasonably anticipate";
- to advise the seller to seek expert advice on matters relating to the transaction that are beyond the agent's expertise;
- to not disclose confidential information from or about the seller, except under subpoena, court order or otherwise as provided by law, or as expressly authorized by the seller, even after termination of the agency relationship;
- unless otherwise agreed to in writing, to make a good faith and continuous effort to find a buyer for the property, except that a seller's agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale that is no longer subject to the attorney-review period, if applicable; and
- any additional duties agreed to in writing signed by the buyer's agent or authorized representative of the brokerage firm.

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DISCLOSED DUAL AGENCY

A brokerage firm may act as a disclosed dual agency only with the informed consent of both parties to the transaction.

The duties of a disclosed dual agent include:

- the same duties as seller's agents and buyer's agents regarding not taking action detrimental to the parties' interests, disclosing any conflicts of interest, advising the parties to seek expert advice and the disclosure of confidential information;
- unless otherwise agreed to in writing, unless otherwise agreed to in writing, to make a good faith and continuous effort to find a property for the buyer, except that a buyer's agent is not obligated to find additional properties to purchase while the buyer is a party to an existing contract to purchase while the buyer is a party to an existing contract to purchase that is no longer subject to the attorney-review period, if applicable;
- unless otherwise agreed to in writing, to make a good faith and continuous effort to find a buyer for the property, except that a seller's agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale that is no longer subject to the attorney-review period, if applicable; and
- any additional duties that are agreed to in writing signed by a disclosed dual agent or a representative of the brokerage firm and each of the parties.

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DISCLOSED DUAL AGENCY

Disclosed dual agents may:

- Receive compensation from both a buyer and seller on the same transaction;
- Show the property to other buyers without violating the duties of a disclosed dual agent;
- Show other properties to buyers without violating the duties of a disclosed dual agent;
- Represent sellers of competing properties without violating the duties of a disclosed dual agent; and
- Represent more than one potential buyer interested in the same property.

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DESIGNATED AGENCY

Designated agency, which enables a brokerage to appoint different agents to represent both the seller and the buyer with full fiduciary duties at the client's request, is now permissible

The duties of a designated agent include:

- the same duties as seller's agents and buyer's agents regarding not taking action detrimental to the parties' interests, disclosing any conflicts of interest, advising the parties to seek expert advice and the disclosure of confidential information;
- unless otherwise agreed to in writing, to make a good faith and continuous effort to find a property for the buyer, except that a buyer's agent is not obligated to find additional properties to purchase while the buyer is a party to an existing contract to purchase while the buyer is a party to an existing contract to purchase that is no longer subject to the attorney-review period, if applicable;
- unless otherwise agreed to in writing, to make a good faith and continuous effort to find a buyer for the property, except that a seller's agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale that is no longer subject to the attorney-review period, if applicable; and
- any additional duties that are agreed to in writing signed by a disclosed dual agent or a representative of the brokerage firm and each of the parties.

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TRANSACTION BROKER

Transaction brokers shall not represent or act as an agent for any of the parties to a transaction, promote the interest of one party over another or be required to keep any information confidential.

The duties of a transaction broker include:

- Performing in accordance with the terms of any brokerage service agreement;
- Ensuring that when working with a seller, that the brokerage service agreement states whether a notice on the property to be sold will be circulated in a database established to provide data about properties for sale, such as a multiple listing service, of which the brokerage firm is a member, except that the seller's agent shall not submit any notice to the service stating whether the seller authorized the sharing of the compensation of the seller's agent with cooperating sub-agents, transaction brokers, or the buyer's agents, or the amount of the shared compensation to any service that prohibits an offer from being displayed.

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TRANSACTION BROKER

The duties of a transaction broker include (con't):

- Treating all parties honestly and acting in a competent manner;
- Locating qualified buyers for a seller or suitable properties for a buyer;
- Presenting all offers and counteroffers, and written confirmations of offers and counteroffers, in a timely manner;
- Keeping all parties fully informed of the status of the transaction;
- Communicating and working with the parties in effort to arrive at an acceptable agreement without providing advice to any party on how to gain an advantage at the expense of the other party;
- Advise the parties to seek expert advice on matters relating to the transaction;
- Manage the transaction and perform tasks to facilitate the closing; and
- Any additional duties agreed to in writing.

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TERMINATION OF RELATIONSHIPS

Agency or transaction broker relationships shall continue until the earliest of:

- completion of performance;
- expiration of the term agreed upon by the parties;
- termination of the relationship by mutual agreement (requires written notice); or
- termination of the relationship by either party as provided in the brokerage services agreement (requires written notice).

After termination of the relationship, the duties owed by the brokerage firm are:

- to provide an accounting to its principal as necessary in a timely manner for all moneys and property received; and
- to not disclose confidential information if there was an agency agreement, except under subpoena, court order or otherwise as provided by law, or as expressly authorized by the applicable party.

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COMPENSATION

Brokerage Firms can accept payment from one or more parties to any real estate transaction. There is no longer a prohibition on a disclosed dual agent accepting payment from both parties.

Compensation can be based upon a flat fee arrangement, a percentage of the purchase price or any other method permitted by law, all of which shall be considered a commission payment for purposes of any real estate brokerage services rendered.

Brokerage firms may receive compensation for the preparation of broker price opinions, comparative market analyses, or referrals, if the referring firm provided no real estate brokerage services, without a brokerage services agreement.

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COMPENSATION

In order to receive compensation for brokerage services, there must be a written brokerage services agreement which includes:

- the terms of compensation, including the amount of compensation, whether there is approval for any compensation sharing and the terms of any compensation sharing; and
- in a brokerage agreement with a buyer, whether the buyer will pay the difference between any compensation offer by a seller and the amount of compensation identified in the brokerage services agreement, and if not, how to proceed in such a situation, including, but not limited to, the buyer 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;

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LIABILITY

A principal is not liable for an act, error or omission by an agent or transaction broker of the principal arising out of the relationship

- unless the principal participated in or authorized the error, act or omission; or
- except to the extent that the principal benefitted from the act, error or omission, in which case the principal's liability shall be limited to the monetary benefit unless some form of punitive damages are awarded.

A brokerage firm is not liable for information that is to be disclosed by a seller in a property condition disclosure statement or that the brokerage firm requested the seller provide and was not provided to the brokerage firm, provided that the broker, broker-salesperson or salesperson acting on behalf of the brokerage firm made reasonable efforts to ascertain all material information concerning the physical condition, including, but not limited to, making inquiries to the seller about any physical conditions that may affect the property and performing a visual inspection of the property to determine if there are any readily observable physical conditions affecting the property, and made disclosure of such information to appropriate parties to a transaction as required by law.

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KNOWLEDGE

Unless otherwise agreed to in writing, a principal may not be charged with knowledge or notice of any facts known by a brokerage firm representing or working with the principal that are not actually known by the principal.

A brokerage firm may not be charged with knowledge or notice of any facts known by the principal that are not actually known by the brokerage firm, provided that the broker, broker-salesperson or salesperson acting on behalf of the brokerage firm made reasonable efforts to ascertain all material information concerning the physical condition, including, but not limited to, making inquiries to the seller about any physical conditions that may affect the property and performing a visual inspection of the property to determine if there are any readily observable physical conditions affecting the property

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NEW REQUIREMENT FOR OPEN HOUSES

At any residential open house, a sign shall be posted at the entrance or at a sign-in sheet advising prospective buyers that the brokerage firm hosting the open house represents the seller only and has not relationship with the prospective buyer, except if the buyer does not have an exclusive buyer agency agreement with another brokerage firm and agrees to the Seller's Agent becoming a disclosed dual agent or designated agent.

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NEW REQUIREMENT FOR OPEN HOUSES

The sign or notice must state:

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 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."

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CONTINUING EDUCATION

Licensees must complete continuing education courses every two years.

One course on agency will be added to the New Jersey Real Estate Commission continuing education requirements.

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