

11:5-1.40 Disclosures by licensees providing mortgage financing services to buyers for a fee

(a) Every real estate licensee who provides mortgage financing services to buyers must provide written disclosure to the buyer/borrower and to the seller as required in this rule as a condition to receiving, in addition to a share of the brokerage commission on the sale, any compensation, reimbursement or thing of value from the buyer, or any other source. These disclosures are required whenever the real estate brokerage agency, any division therein, or any individual licensed or employed by the agency will receive compensation or reimbursement for providing mortgage financing services related to the sales transaction, even if that particular division or individual will not share in the sales commission. Copies of all written disclosures required by this rule must be retained by the broker as business records pursuant to N.J.A.C. 11:5-1.12. The broker shall maintain records of such related mortgage transactions which shall be available to the Commission for inspection pursuant to N.J.A.C. 11:5-1.13.

(b) The licensee must provide written disclosure as required by (a) above to the buyer/borrower before charging or accepting or contracting for any fees for mortgage financing services and providing such services other than prequalification. The written disclosure to the buyer must include the following information:

1. The amount of all fees which the buyer will be expected to pay to the licensee for mortgage services, and whether and under what circumstances such fees are refundable;
2. The amount and source of any compensation or reimbursement which the licensee will receive for providing mortgage financing services to the buyer;
3. Where the licensee takes applications for or places loans exclusively with any three or fewer lenders, or is affiliated with any lender or mortgage broker as defined in N.J.A.C. 11:5-1.41, the disclosure must advise the buyer of that fact, give the names of such lenders and state (indent, single space and all capital letters):

YOU ARE UNDER NO OBLIGATION TO USE THE MORTGAGE SERVICES OFFERED BY THIS REAL ESTATE LICENSEE. YOU MAY OBTAIN YOUR MORTGAGE LOAN FROM ANOTHER SOURCE.

4. Where the licensee or agency is also representing the seller in the sales transaction, the disclosure to the buyer/borrower must include the statement set forth in (e) below.

(c) Real estate licensees who are dually licensed as mortgage bankers or brokers may combine the disclosures to buyers required in this rule with the written disclosure to borrowers required by the Department of Banking pursuant to N.J.A.C. 3:1-16.3 or N.J.A.C. 3:1-16.11.

(d) A listing broker who represents only the seller and who offers to provide mortgage financing services to buyers for compensation or reimbursement shall provide written disclosure to the seller by including the following statement in the listing agreement. A selling broker who represents only the seller as subagent of the listing broker, and who offers to provide mortgage financing services to buyers for compensation or reimbursement, shall provide the following disclosure statement (indent, single space and all capital letters) to the seller, with a copy to the listing broker, at the time any written offer is presented.

THIS REAL ESTATE AGENCY MAY OFFER TO PROVIDE MORTGAGE FINANCING SERVICES TO THE BUYER FOR A FEE IN ADDITION TO THE SALES COMMISSION. AS AGENT OF THE SELLER, THIS REAL ESTATE AGENCY HAS A FIDUCIARY DUTY TO YOU, THE SELLER, WHICH WILL NOT CHANGE SHOULD MORTGAGE FINANCING SERVICES BE PROVIDED. IN THE EVENT THAT MORTGAGE FINANCING SERVICES ARE PROVIDED TO THE BUYER, THIS AGENCY SHALL NOT UNDERTAKE REPRESENTATION OF THE BUYER IN THIS REAL ESTATE SALE.

(e) Where the licensee or agency does provide mortgage financing services to the buyer for compensation or reimbursement and also represents only the seller in the sales transaction, the following statement must be included in the written disclosure to the buyer required by (b) or (c) above. The licensee or agency must also promptly send or deliver the following written disclosure statement (indent, single space and all capital letters) to the seller, with a copy to the listing broker, at the time a mortgage application is submitted on behalf of the buyer/borrower.

(name of licensee and brokerage agency)

REPRESENTS THE SELLER IN THIS REAL ESTATE SALES TRANSACTION. UPON CLOSING OF TITLE, THIS REAL ESTATE AGENCY WILL RECEIVE A SALES COMMISSION FOR REPRESENTING THE SELLER. THIS REAL ESTATE AGENCY ALSO PROVIDES MORTGAGE FINANCING SERVICES TO THE BUYER FOR A FEE IN THE AMOUNT OF _____. AS AGENT OF THE SELLER, THIS REAL ESTATE AGENCY HAS A FIDUCIARY DUTY TO THE SELLER WHICH IS NOT CHANGED BY PROVIDING MORTGAGE SERVICES TO THE BUYER. THIS AGENCY DOES NOT REPRESENT THE BUYER IN THIS REAL ESTATE SALE.

Where the precise amount of the compensation to the licensee or agency for providing mortgage services has not yet been established, the maximum estimated amount of compensation should be included in this disclosure. The compensation received by the licensee may not be increased

above the amount disclosed here without written notice to both parties, with a copy to the listing broker.

New Rule, R.1992 d.232, effective June 1, 1992.
See: 23 N.J.R. 3424(b), 24 N.J.R. 2058(b).

Case Notes

Requiring real estate brokers give vendors and purchasers notice and disclosure and accept no more than \$250 for providing mortgage related services was consistent with statute. Mortgage Bankers Ass'n of New Jersey v. New Jersey Real Estate Com'n, 283 N.J.Super. 233, 661 A.2d 832 (A.D.1995).

11:5-1.41 Disclosure of licensee's affiliation with a mortgage lender or mortgage broker to whom the licensee refers buyers

(a) Whenever a real estate licensee refers a buyer/borrower to a mortgage lender or mortgage broker with whom the licensee is affiliated, the licensee must provide written disclosure of the affiliation to the buyer. This disclosure must be made even though the licensee will receive no fees or compensation for the referral, see N.J.A.C. 11:5-1.39, and even though the licensee also refers the buyer to other, unaffiliated sources of mortgage financing. The disclosure must include the following statement (indent, single space and all capital letters):

YOU ARE UNDER NO OBLIGATION TO USE THE MORTGAGE SERVICES OF _____ WHO/WHICH IS AFFILIATED WITH THIS REAL ESTATE LICENSEE. YOU MAY OBTAIN YOUR MORTGAGE LOAN FROM ANOTHER SOURCE.

(b) For the purposes of this rule, a real estate licensee is considered to be affiliated with a mortgage lender or mortgage broker when:

1. The licensee, or the licensee's spouse, parent or child, is an officer, director or employee of the lender or mortgage broker, or works as a solicitor for the lender or mortgage broker;
2. The licensee, either alone or with spouse, parent or child, owns more than one percent of the lender or mortgage broker; the licensee is more than one percent owned by the lender or mortgage broker; or the licensee owns more than one percent or is more than one percent owned by a corporate parent, holding company or other business entity which is a majority shareholder in the lender or mortgage broker;
3. The licensee is a franchisee of a franchiser which owns more than one percent of the lender or mortgage broker or the licensee itself is the franchiser or franchisee of a mortgage lending franchise; or
4. The licensee shares office space or other facilities, or staff, with the lender or mortgage broker.

(c) Where an employing broker or broker of record of a real estate agency has an individual or corporate affiliation with a lender or mortgage broker, all licensees licensed with that real estate broker must provide the required disclosures to buyers referred to the affiliate.

1. Where an office manager has such an individual affiliation, the manager and all licensees working under his or her supervision must provide the disclosure to all buyers referred to the affiliate by that office.
2. Where a salesperson or broker-salesperson has such an individual affiliation, he or she must provide the disclosure to all buyers he or she refers to the affiliate.

(d) The disclosure required by this section may be combined with the disclosure of affiliation required under RES-PA, 12 U.S.C. § 2601 et seq. Copies of all written disclosures required by this rule must be retained by the broker as business records available for inspection pursuant to N.J.A.C. 11:5-1.12 and 1.13.

New Rule, R.1992 d.232, effective June 1, 1992.
See: 23 N.J.R. 3424(b), 24 N.J.R. 2058(b).

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11:5-1.42 Licensees with in-house mortgage services prohibited from excluding all outside mortgage solicitors

Real estate brokers who provide mortgage financing services to buyer/borrowers in-house, whether through computerized loan origination systems, or affiliated lenders or affiliated mortgage brokers, etc., are prohibited from limiting buyer's choices by denying outside lenders reasonable access to solicit mortgage loans in their real estate offices. Reasonable access will be presumed where three or more outside, non-affiliated lenders are permitted to send solicitors into the real estate office during business hours to contact salespersons. The reasonableness of the broker's overall office policy concerning rate sheets, and access by outside lenders, other visitors and solicitors, will also be considered. In no event shall this rule be interpreted to require any real estate broker to permit any one specific lender to solicit loans inside the real estate office or to require the real estate broker to set aside any particular space or facilities inside the real estate office for the use of outside mortgage solicitors.

New Rule, R.1992 d.232, effective June 1, 1992.
See: 23 N.J.R. 3424(b), 24 N.J.R. 2058(b).
Public Notice: Petition for Rulemaking.
See: 28 N.J.R. 1412(c).
Public Notice: Action on petition for rulemaking.
See: 28 N.J.R. 2414(a).