

ii. The requirement to include the clause cited in (j)3i above in licensee-prepared offers, contracts and leases shall not apply with respect to firms whose involvement in a transaction was limited to merely referring a party to another firm.

(k) Licensees shall disclose to other licensees what type of business relationship they have with the party with whom they have a brokerage agreement, and with any other parties with whom they may be working, in the following manner:

1. In all written or computer generated notices directed to other brokerage firms through a Multiple Listing Service or otherwise, the listing broker shall indicate whether they are working as a seller's agent or as a transaction broker. On listings where the listing broker is operating as a seller's agent, such notices shall also state:

i. Whether subagency is offered;

ii. Whether the seller has authorized the sharing of the listing broker's compensation with cooperating sub-agents and/or transaction brokers and/or buyer brokers; and

iii. The amount of compensation offered to cooperating subagents and/or transaction brokers and/or buyer brokers.

2. When a licensee with a listing broker receives an inquiry about a particular property from any other licensee, the licensee with the broker shall, before providing any information to the inquiring licensee beyond general information previously circulated about the listing, verbally ascertain from the inquiring licensee the capacity in which that licensee is operating or intends to operate (buyer-broker, subagent, disclosed dual agent or transaction broker). Inquiries from other licensees in the listing broker's firm shall also be responded to as set forth in this subsection.

(l) In transactions where brokers seek compensation for their brokerage services from a party to the transaction whom they are not representing or working with, the business relationship with the party they are representing or working with and the compensation arrangement shall also be disclosed to both parties as required by N.J.A.C. 11:5-7.1.

(m) Notwithstanding anything appearing in (g) and (h) above to the contrary, where a brokerage firm is itself the owner of the property being sold by individuals licensed through the broker-owner of the property, a Consumer Information Statement, revised as provided in this section, shall be delivered to prospective purchasers in accordance with the provisions of this rule.

1. On the line immediately below the title of the Consumer Information Statement, the following text shall appear in print larger than the predominant size print in the writing:

As the holder of a New Jersey real estate license, I am required by law to inform you how I will operate in this

transaction, should you pursue it, and to provide this statement to you.

My employer is the owner of the property(s) in which you have expressed an interest. For the purposes of its business relationship disclosure rules, the New Jersey Real Estate Commission deems brokers selling property they own and licensees employed or retained by such broker-owners to be operating as seller's agents when they sell property owned by the broker. The statements which follow with regard to licensees who act as sellers' agents apply to me and other persons employed or retained by the owner, particularly those statements concerning the obligation of sellers' agents to pass on to the sellers all material information they obtain with regard to the buyers' ability to pay.

New Rule, R.1995 d.110, effective February 21, 1995 (operative July 1, 1995).

See: 26 N.J.R. 3113(a), 27 N.J.R. 697(a).

Administrative corrections.

See: 27 N.J.R. 1191(a); 27 N.J.R. 1618(b).

Public Notice: Petition for rulemaking; Agency disclosure.

See: 27 N.J.R. 5058(b).

Public Notice: Notice of action on petition for rulemaking.

See: 28 N.J.R. 1412(d).

Public Notice: Notice of Action on Petition for Rulemaking.

See: 29 N.J.R. 385(a).

Amended by R.1998 d.245, effective May 18, 1998.

See: 29 N.J.R. 1663(b), 30 N.J.R. 1829(a).

Rewrote (a)6; in (e), rewrote 1iii, 2iii and inserted a new iv; in (h), amended the "Consumer Information Statement"; and in (j), amended the "declaration of business relationship" document and added a new (m).

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (g), (j) and (l), changed N.J.A.C. references.

Case Notes

Builder-developer of residential real estate or broker representing it may be liable for nondisclosure of off-site physical conditions known to it and unknown and not readily observable by purchaser if the existence of those conditions is of sufficient materiality to affect the habitability, use, or enjoyment of the property. *Strawn v. Canuso*, 140 N.J. 43, 657 A.2d 420 (1995).

SUBCHAPTER 7. PROHIBITED ACTIVITIES

11:5-7.1 Prohibition against licensees receiving dual compensation for dual representation in the sale or rental transaction

(a) Real estate licensees are prohibited from receiving compensation from both a seller and a buyer for representing both seller and buyer in the same real estate sales transaction. This prohibition applies even when the dual agency has been fully disclosed by the licensee to both parties.

(b) Real estate licensees are prohibited from receiving compensation from both a landlord and a tenant for representing both the landlord and the tenant in the same rental transaction. This prohibition applies even when the dual agency has been fully disclosed by the licensee to both parties.

(c) Within the meaning of this section, the phrases "sales transaction" and "rental transaction" do not include any related transactions whether or not they are contingencies in the contract or lease. For example, where there is a mortgage contingency in a contract of sale, the mortgage loan is a related transaction between the buyer and lender; it is not the same transaction as the sale.

(d) A licensee who represents only one party to a sale or rental transaction may receive the entire compensation for such representation from either party or a portion of that compensation from both parties to the transaction, provided that where a licensee prepares a contract or lease full written disclosure of the agency relationship and of the compensation arrangement is made to both parties to the transaction in the contract or lease. Where a licensee does not prepare the contract or lease, but seeks compensation from a party whom he or she does not represent, that licensee's agency relationship and proposed compensation arrangement shall be disclosed to all parties in a separate writing prior to execution of the contract or lease.

(e) A licensee who represents any party to a sale or rental transaction may receive compensation from either party for providing actual services in related transactions, provided that the licensee discloses the related services, sources and amounts of compensation in writing to the parties to the sale or rental transaction. Where the related services to be provided by the licensee are mortgage financing services provided to the buyer for compensation or reimbursement, the written disclosures must comply with N.J.A.C. 11:5-6.7. The broker shall maintain records of such related transactions including all required written disclosures, which records shall be available to the Commission for inspection pursuant to N.J.A.C. 11:5-5.5.

(f) Except as provided in (g) below, when providing mortgage financing services related to the purchase or sale of a one to six family residential dwelling, a portion of which may be used for non-residential purposes, located in New Jersey:

1. A real estate broker shall not solicit or receive compensation or reimbursement pursuant to (e) above greater than the expense amount permitted at closing by rule of the Department of Banking and Insurance unless licensed as a mortgage broker or mortgage banker by the Department of Banking and Insurance pursuant to the New Jersey Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq.; and

2. A real estate salesperson or broker-salesperson shall not solicit or receive any compensation or reimbursement pursuant to (e) above from any person other than his or her employing real estate broker unless licensed as a mortgage broker or mortgage banker by the Department of Banking and Insurance pursuant to the New Jersey Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq.

(g) Any real estate licensee who is individually employed as a mortgage solicitor by a licensed mortgage banker or mortgage broker and registered in compliance with applicable law and the rules of the Department of Banking and Insurance may solicit and accept compensation from his or her licensed mortgage employer for providing mortgage services in residential mortgage transactions.

New Rule, R.1992 d.232, effective June 1, 1992.

See: 23 N.J.R. 3424(b), 24 N.J.R. 2058(b).

Amended by R.1992 d.468, effective November 16, 1992.

See: 24 N.J.R. 1957(a), 24 N.J.R. 2129(a), 24 N.J.R. 4268(a).

Added (f), limiting solicitation and receipt of compensation for mortgage financing services to \$250.00; and (g), permitting solicitation of mortgage banker or broker by real estate licensee who is also employed as a mortgage solicitor by said banker or broker.

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (e), changed N.J.A.C. references; and rewrote (f) and (g).

11:5-7.2 Prohibition against kickbacks for related business referrals

(a) Any real estate licensee who solicits or accepts any fee, kickback, compensation or thing of value merely for referring a customer or client to a lender, mortgage broker, or other provider of related services, shall be subject to sanction by the Commission for engaging in conduct demonstrating unworthiness, bad faith and dishonesty. Any compensation received by a real estate licensee, pursuant to N.J.A.C. 11:5-7.1(e), for services in related transactions must be for services actually performed by the licensee beyond mere referral. Compliance with the anti-kickback provisions of the Federal Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2607, the regulations thereunder, or any opinion regarding RESPA issued by the Federal Department of Housing and Urban Development will be considered to be in compliance with this subsection.

(b) Real estate brokers are prohibited from offering incentives to the salespersons or broker-salespersons licensed under them for merely referring clients or customers to a particular lender, mortgage broker or other provider of related services. Any compensation paid by a real estate broker to a salesperson for services in transactions related to a sale or rental transaction must be for services actually performed by the salesperson beyond mere referral. For example, a real estate broker who provides in-house mortgage services may compensate a salesperson licensed with that broker who performs actual mortgage services. However, the broker is prohibited from offering bonuses or any extra consideration of any kind to salespersons for merely referring buyers to the in-house mortgage service or any particular lender or mortgage broker. For example, a real estate broker shall not offer or pay a salesperson a higher commission rate on a real estate transaction because the mortgage is placed through the in-house mortgage service or affiliated lender. A broker shall not award prizes or bonuses to salespersons based upon the number of customer referrals made to the in-house mortgage service or to a particular lender.