

ASSEMBLY, No. 373

STATE OF NEW JERSEY

213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Assemblyman PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Assemblyman JOSEPH VAS

District 19 (Middlesex)

SYNOPSIS

Permits real estate brokers, broker-salespersons, and salespersons to provide rebates to sellers or purchasers.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 1/16/2009)

1 AN ACT concerning certain real estate promotions and amending
2 R.S.45:15-17.

3

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

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7 1. R.S.45:15-17 is amended to read as follows:

8 45:15-17. The commission may, upon its own motion, and shall,
9 upon the verified complaint in writing of any person, investigate the
10 actions of any real estate broker, broker-salesperson or salesperson,
11 or any person who assumes, advertises or represents himself as
12 being authorized to act as a real estate broker, broker-salesperson or
13 salesperson or engages in any of the activities described in
14 R.S.45:15-3 without being licensed so to do. The lapse or
15 suspension of a license by operation of law or the voluntary
16 surrender of a license by a licensee shall not deprive the
17 commission of jurisdiction to proceed with any investigation as
18 herein provided or prevent the commission from taking any
19 regulatory action against such licensee, provided, however, that the
20 alleged charges arose while said licensee was duly licensed. Each
21 transaction shall be construed as a separate offense.

22 In conducting investigations, the commission may take testimony
23 by deposition as provided in R.S.45:15-18, require or permit any
24 person to file a statement in writing, under oath or otherwise as the
25 commission determines, as to all the facts and circumstances
26 concerning the matter under investigation, and, upon its own motion
27 or upon the request of any party, subpoena witnesses, compel their
28 attendance, take evidence, and require the production of any
29 material which is relevant to the investigation, including any and all
30 records of a licensee pertaining to his activities as a real estate
31 broker, broker-salesperson or salesperson. The commission may
32 also require the provision of any information concerning the
33 existence, description, nature, custody, condition and location of
34 any books, documents, or other tangible material and the identity
35 and location of persons having knowledge of relevant facts of any
36 other matter reasonably calculated to lead to the discovery of
37 material evidence. Upon failure to obey a subpoena or to answer
38 questions posed by an investigator or legal representative of the
39 commission and upon reasonable notice to all affected persons, the
40 commission may commence an administrative action as provided
41 below or apply to the Superior Court for an order compelling
42 compliance.

43 The commission may place on probation, suspend for a period
44 less than the unexpired portion of the license period, or may revoke

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.

1 any license issued under the provisions of this article, or the right of
2 licensure when such person is no longer the holder of a license at
3 the time of hearing, or may impose, in addition or as an alternative
4 to such probation, revocation or suspension, a penalty of not more
5 than \$5,000 for the first violation, and a penalty of not more than
6 \$10,000 for any subsequent violation, which penalty shall be sued
7 for and recovered by and in the name of the commission and shall
8 be collected and enforced by summary proceedings pursuant to the
9 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
10 et seq.), where the licensee or any person, in performing or
11 attempting to perform any of the acts mentioned herein, is deemed
12 to be guilty of:

13 a. Making any false promises or any substantial
14 misrepresentation; or

15 b. Acting for more than one party in a transaction without the
16 knowledge of all parties thereto; or

17 c. Pursuing a flagrant and continued course of
18 misrepresentation or making of false promises through agents,
19 broker-salespersons or salespersons, advertisements or otherwise; or

20 d. Failure to account for or to pay over any moneys belonging
21 to others, coming into the possession of the licensee; or

22 e. Any conduct which demonstrates unworthiness,
23 incompetency, bad faith or dishonesty. The failure of any person to
24 cooperate with the commission in the performance of its duties or to
25 comply with a subpoena issued by the commission compelling the
26 production of materials in the course of an investigation, or the
27 failure to give a verbal or written statement concerning a matter
28 under investigation may be construed as conduct demonstrating
29 unworthiness; or

30 f. Failure to provide his client with a fully executed copy of
31 any sale or exclusive sales or rental listing contract at the time of
32 execution thereof, or failure to specify therein a definite terminal
33 date which terminal date shall not be subject to any qualifying
34 terms or conditions; or

35 g. Using any plan, scheme or method for the sale or promotion
36 of the sale of real estate which involves a lottery, a contest, a game,
37 a prize, a drawing, or the offering of a lot or parcel or lots or parcels
38 for advertising purposes, provided, however, that a promotion or
39 offer of free, discounted or other services or products which does
40 not require that the recipient of any free, discounted or other
41 services or products enter into a sale, listing or other real estate
42 contract as a condition of the promotion or offer shall not constitute
43 a violation of this subsection if that promotion or offering does not
44 involve a lottery, a contest, a game, a drawing or the offering of a
45 lot or parcel or lots or parcels for advertising purposes. A broker
46 shall disclose in writing any compensation received for such
47 promotion or offer in the form and substance as required by the

- 1 federal "Real Estate Settlement Procedures Act of 1974," 12 U.S.C.
2 ss.2601 et seq., except that, notwithstanding the provisions of that
3 federal act, written disclosure shall be provided no later than when
4 the promotion or offer is extended by the broker to the consumer; or
- 5 h. Being convicted of a crime, knowledge of which the
6 commission did not have at the time of last issuing a real estate
7 license to the licensee; or
- 8 i. Collecting a commission as a real estate broker in a
9 transaction, when at the same time representing either party in a
10 transaction in a different capacity for a consideration; or
- 11 j. Using any trade name or insignia of membership in any real
12 estate organization of which the licensee is not a member; or
- 13 k. Paying any rebate, profit, compensation or commission to
14 anyone not possessed of a real estate license, except that: (1) free,
15 discounted or other services or products provided for in subsection
16 g. of this section shall not constitute a violation of this subsection;
17 and (2) a real estate licensee may provide a seller or purchaser a
18 rebate of a portion of the commission paid to the licensee in a
19 transaction, so long as: the licensee and the seller or purchaser
20 contract for such a rebate in advance; and the licensee complies
21 with any State or federal requirements with respect to the disclosure
22 of the payment of the rebate. The rebate paid to the seller or
23 purchaser may be in the form of cash or other thing of value,
24 including, but not limited to, a gift certificate, and may be made at
25 or after the closing; or
- 26 l. Any other conduct, whether of the same or a different
27 character than specified in this section, which constitutes fraud or
28 dishonest dealing; or
- 29 m. Accepting a commission or valuable consideration as a real
30 estate broker-salesperson or salesperson for the performance of any
31 of the acts specified in this act, from any person, except his
32 employing broker, who must be a licensed broker; or
- 33 n. Procuring a real estate license, for himself or anyone else, by
34 fraud, misrepresentation or deceit; or
- 35 o. Commingling the money or other property of his principals
36 with his own or failure to maintain and deposit in a special account,
37 separate and apart from personal or other business accounts, all
38 moneys received by a real estate broker, acting in said capacity, or
39 as escrow agent, or the temporary custodian of the funds of others,
40 in a real estate transaction; or
- 41 p. Selling property in the ownership of which he is interested in
42 any manner whatsoever, unless he first discloses to the purchaser in
43 the contract of sale his interest therein and his status as a real estate
44 broker, broker-salesperson or salesperson; or
- 45 q. Purchasing any property unless he first discloses to the seller
46 in the contract of sale his status as a real estate broker, broker-
47 salesperson or salesperson; or

1 r. Charging or accepting any fee, commission or compensation
2 in exchange for providing information on purportedly available
3 rental housing, including lists of such units supplied verbally or in
4 written form, before a lease has been executed or, where no lease is
5 drawn, before the tenant has taken possession of the premises
6 without complying with all applicable rules promulgated by the
7 commission regulating these practices; or

8 s. Failing to notify the commission within 30 days of having
9 been convicted of any crime, misdemeanor or disorderly persons
10 offense, or of having been indicted, or of the filing of any formal
11 criminal charges, or of the suspension or revocation of any real
12 estate license issued by another state, or of the initiation of formal
13 disciplinary proceedings in another state affecting any real estate
14 license held, or failing to supply any documentation available to the
15 licensee that the commission may request in connection with such
16 matter; or

17 t. The violation of any of the provisions of this article or of the
18 administrative rules adopted by the commission pursuant to the
19 provisions of this article. The commission is expressly vested with
20 the power and authority to make, prescribe and enforce any and all
21 rules and regulations for the conduct of the real estate brokerage
22 business consistent with the provisions of chapter 15 of Title 45 of
23 the Revised Statutes.

24 If a licensee is deemed to be guilty of a third violation of any of
25 the provisions of this section, whether of the same provision or of
26 separate provisions, the commission may deem that person a repeat
27 offender, in which event the commission may direct that no license
28 as a real estate broker, broker-salesperson or salesperson shall
29 henceforth be issued to that person.

30 (cf: P.L.2001, c.68, s.1)

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32 2. This act shall take effect immediately.

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STATEMENT

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37 This bill amends R.S.45:15-17 to permit a real estate broker,
38 broker-salesperson or salesperson to give a client a rebate from the
39 commission that the real estate broker, broker-salesperson or
40 salesperson receives in a transaction. Specifically, the bill provides
41 that a real estate licensee may provide a seller or purchaser a rebate
42 of a portion of the commission paid to the licensee in a transaction,
43 so long as: the licensee and the seller or purchaser contract for such
44 a rebate in advance; and the licensee complies with any State or
45 federal requirements with respect to the disclosure of the payment
46 of the rebate. The rebate paid to the seller or purchaser may be in

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- 1 the form of cash or other thing of value, including, but not limited
- 2 to, a gift certificate, and may be made at or after the closing.