

SENATE, No. 3590

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 25, 2021

Sponsored by:

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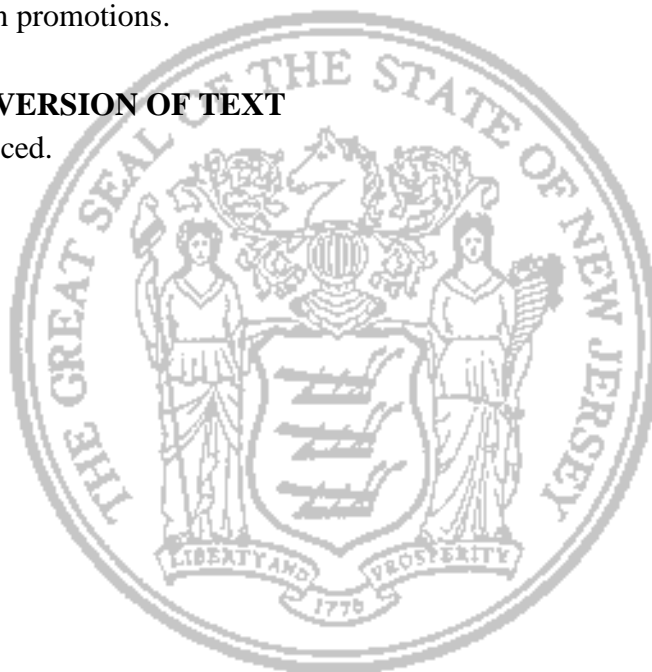
Assemblywoman Jimenez

SYNOPSIS

Allows formation of limited liability companies by real estate salespersons and broker-salespersons to receive commission income and requires certain disclosures on promotions.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/24/2021)

1 AN ACT concerning real estate brokers, broker-salespersons and
2 salespersons, and amending R.S.45:15-16 and R.S.45:15-17.

3

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

6

7 1. R.S.45:15-16 is amended to read as follows:

8 45:15-16. a. No real estate salesperson or broker-salesperson
9 shall accept a commission or valuable consideration for the
10 performance of any of the acts herein specified, from any person
11 except his employer or contracting broker, who must be a licensed
12 real estate broker.

13 b. A real estate salesperson or broker-salesperson may form a
14 limited liability company pursuant to the "Revised Uniform Limited
15 Liability Company Act," P.L.2012, c.50 (C.42:2C-1 et seq.), or any
16 other entity permitted by law, in order to receive a commission or
17 other valuable consideration pursuant to subsection a. of this
18 section, and the real estate salesperson or broker-salesperson may
19 accept payment of the commission or other valuable consideration
20 or any part thereof from the limited liability corporation or other
21 entity. Notwithstanding the formation of such an entity, a
22 salesperson or broker-salesperson who satisfies the requirements of
23 subparagraph (K) of paragraph (7) of subsection (i) of R.S.43:21-19
24 shall not be considered an employee pursuant to that law.

25 c. The New Jersey Real Estate Commission shall create a
26 registration process for a limited liability company and other entity
27 to receive a commission or other valuable consideration pursuant to
28 subsection a. of this section.

29 (cf: P.L.2018, c.71, s.12)

30

31 2. R.S.45:15-17 is amended to read as follows:

32 45:15-17. The commission may, upon its own motion, and
33 shall, upon the verified complaint in writing of any person,
34 investigate the actions of any real estate broker, broker-salesperson,
35 or salesperson, or any person who assumes, advertises or represents
36 himself as being authorized to act as a real estate broker, broker-
37 salesperson, or salesperson or engages in any of the activities
38 described in R.S.45:15-3 without being licensed so to do. The lapse
39 or suspension of a license by operation of law or the voluntary
40 surrender of a license by a licensee shall not deprive the
41 commission of jurisdiction to proceed with any investigation as
42 herein provided or prevent the commission from taking any
43 regulatory action against such licensee, provided, however, that the
44 alleged charges arose while said licensee was duly licensed. Each
45 transaction shall be construed as a separate offense.

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 In conducting investigations, the commission may take testimony
2 by deposition as provided in R.S.45:15-18, require or permit any
3 person to file a statement in writing, under oath or otherwise as the
4 commission determines, as to all the facts and circumstances
5 concerning the matter under investigation, and, upon its own motion
6 or upon the request of any party, subpoena witnesses, compel their
7 attendance, take evidence, and require the production of any
8 material which is relevant to the investigation, including any and all
9 records of a licensee pertaining to his activities as a real estate
10 broker, broker-salesperson, or salesperson. The commission may
11 also require the provision of any information concerning the
12 existence, description, nature, custody, condition and location of
13 any books, documents, or other tangible material and the identity
14 and location of persons having knowledge of relevant facts of any
15 other matter reasonably calculated to lead to the discovery of
16 material evidence. Upon failure to obey a subpoena or to answer
17 questions posed by an investigator or legal representative of the
18 commission and upon reasonable notice to all affected persons, the
19 commission may commence an administrative action as provided
20 below or apply to the Superior Court for an order compelling
21 compliance.

22 The commission may place on probation, suspend for a period
23 less than the unexpired portion of the license period, or may revoke
24 any license issued under the provisions of R.S.45:15-1 et seq., or
25 the right of licensure when such person is no longer the holder of a
26 license at the time of hearing, or may impose, in addition or as an
27 alternative to such probation, revocation or suspension, a penalty of
28 not more than \$5,000 for the first violation, and a penalty of not
29 more than \$10,000 for any subsequent violation, which penalty
30 shall be sued for and recovered by and in the name of the
31 commission and shall be collected and enforced by summary
32 proceedings pursuant to the "Penalty Enforcement Law of 1999,"
33 P.L.1999, c.274 (C.2A:58-10 et seq.), where the licensee or any
34 person, in performing or attempting to perform any of the acts
35 mentioned herein, is deemed to be guilty of:

36 a. Making any false promises or any substantial
37 misrepresentation; or

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

40 c. Pursuing a flagrant and continued course of
41 misrepresentation or making of false promises through agents,
42 broker-salespersons, or salespersons, advertisements or otherwise;
43 or

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

46 e. Any conduct which demonstrates unworthiness,
47 incompetency, bad faith or dishonesty. The failure of any person to
48 cooperate with the commission in the performance of its duties or to

1 comply with a subpoena issued by the commission compelling the
2 production of materials in the course of an investigation, or the
3 failure to give a verbal or written statement concerning a matter
4 under investigation may be construed as conduct demonstrating
5 unworthiness; or

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

11 g. Using any plan, scheme or method for the sale or promotion
12 of the sale of real estate which involves a lottery, a contest, a game,
13 a prize, a drawing, or the offering of a lot or parcel or lots or parcels
14 for advertising purposes], provided, however, that a promotion or
15 offer of free, discounted or other services or products which does
16 not require that the recipient of any free, discounted or other
17 services or products enter into a sale, listing or other real estate
18 contract as a condition of the promotion or offer shall not constitute
19 a violation of this subsection if that promotion or offering does not
20 involve a lottery, a contest, a game, a drawing or the offering of a
21 lot or parcel or lots or parcels for advertising purposes]. If a broker
22 participates in a promotion or offering of free, discounted, or other
23 services or products which confers upon the recipient a monetary
24 benefit of greater than \$1,000, the broker shall provide written
25 disclosure of the benefit to the recipient and any information
26 concerning the promotion or benefit as may be required by the
27 commission. A broker shall disclose in writing any compensation
28 received for such promotion or offer in the form and substance as
29 required by the federal "Real Estate Settlement Procedures Act of
30 1974," 12 U.S.C. ss.2601 et seq., except that, notwithstanding the
31 provisions of that federal act, written disclosure shall be provided
32 no later than when the promotion or offer is extended by the broker
33 to the consumer; or

34 h. Being convicted of a crime, knowledge of which the
35 commission did not have at the time of last issuing a real estate
36 license to the licensee; or

37 i. Collecting a commission as a real estate broker in a
38 transaction, when at the same time representing either party in a
39 transaction in a different capacity for a consideration; or

40 j. Using any trade name or insignia of membership in any real
41 estate organization of which the licensee is not a member; or

42 k. Paying any rebate, profit, compensation or commission to
43 anyone not possessed of a real estate license, except that: (1) free,
44 discounted or other services or products provided for in subsection
45 g. of this section shall not constitute a violation of this subsection;
46 and (2) a real estate broker may provide a purchaser of residential
47 real property, but no other third party a rebate of a portion of the
48 commission paid to the broker in a transaction, so long as: the

1 broker and the purchaser contract for such a rebate at the onset of
2 the broker relationship in a written document, electronic document
3 or a buyer agency agreement; the broker complies with any State or
4 federal requirements with respect to the disclosure of the payment
5 of the rebate; and the broker recommends to the purchaser that the
6 purchaser contact a tax professional concerning the tax implications
7 of receiving that rebate. The rebate paid to the purchaser shall be in
8 the form of a credit, reducing the amount of the commission
9 payable to the broker, or a check paid by the closing agent and shall
10 be made at the time of closing; or

11 l. Any other conduct, whether of the same or a different
12 character than specified in this section, which constitutes fraud or
13 dishonest dealing; or

14 m. Accepting a commission or valuable consideration as a real
15 estate broker-salesperson or salesperson for the performance of any
16 of the acts specified in this act, from any person, except his
17 employing or contracting broker, who must be a licensed broker; or

18 n. Procuring a real estate license, for himself or anyone else, by
19 fraud, misrepresentation or deceit; or

20 o. Commingling the money or other property of his principals
21 with his own or failure to maintain and deposit in a special account,
22 separate and apart from personal or other business accounts, all
23 moneys received by a real estate broker, acting in said capacity, or
24 as escrow agent, or the temporary custodian of the funds of others,
25 in a real estate transaction; or

26 p. Selling property in the ownership of which he is interested in
27 any manner whatsoever, unless he first discloses to the purchaser in
28 the contract of sale his interest therein and his status as a real estate
29 broker, broker-salesperson, or salesperson; or

30 q. Purchasing any property unless he first discloses to the seller
31 in the contract of sale his status as a real estate broker, broker-
32 salesperson, or salesperson; or

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

40 s. Failing to notify the commission within 30 days of having
41 been convicted of any crime, including any sex offense that would
42 qualify the licensee for registration pursuant to section 2 of
43 P.L.1994, c.133 (C.2C:7-2) or under an equivalent statute of
44 another state or jurisdiction, misdemeanor or disorderly persons
45 offense, or of having been indicted, or of the filing of any formal
46 criminal charges, or of the suspension or revocation of any real
47 estate license issued by another state, or of the initiation of formal
48 disciplinary proceedings in another state affecting any real estate

1 license held, or failing to supply any documentation available to the
2 licensee that the commission may request in connection with such
3 matter; or

4 t. The violation of any of the provisions of R.S.45:15-1 et seq.
5 or of the administrative rules adopted by the commission pursuant
6 to the provisions of R.S.45:15-1 et seq. The commission is
7 expressly vested with the power and authority to make, prescribe
8 and enforce any and all rules and regulations for the conduct of the
9 real estate brokerage business consistent with the provisions of
10 chapter 15 of Title 45 of the Revised Statutes.

11 If a licensee is deemed to be guilty of a third violation of any of
12 the provisions of this section, whether of the same provision or of
13 separate provisions, the commission may deem that person a repeat
14 offender, in which event the commission may direct that no license
15 as a real estate broker, broker-salesperson, or salesperson shall
16 henceforth be issued to that person.

17 (cf: P.L.2018, c.71, s.16)

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19 3. This act shall take effect on the first day of the sixth month
20 next following the promulgation of regulations by the New Jersey
21 Real Estate Commission to effectuate the purposes of this act.

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STATEMENT

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26 This bill allows real estate salespersons or broker-salespersons,
27 to form a limited liability company, or any other entity permitted by
28 law, to receive commission income from the licensed real estate
29 broker with whom the salesperson is contracted or employed to
30 provide his or her services. The specific permission for a
31 salesperson or broker-salesperson to operate through a limited
32 liability company or other entity is intended to eliminate any
33 confusion as to whether they may take advantage of the pass-
34 through business income deduction made available under section
35 199A of the Federal Internal Revenue Code as part of the federal
36 tax reforms of the 2017 "Tax Cut and Jobs Act."

37 The bill provides that, notwithstanding the formation of limited
38 liability company or other entity, a salesperson or broker-
39 salesperson who is compensated wholly on a commission basis will
40 not be considered an employee pursuant to the State unemployment
41 compensation law, and certain other labor laws that determine
42 eligibility based on that law.

43 The bill requires the New Jersey Real Estate Commission to
44 create a registration process for limited liability companies and
45 other entities to receive a commission or other valuable
46 consideration.

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1 The bill also provides that, if a broker participates in a promotion
2 or offering of free, discounted or other services or products which
3 confers upon the recipient a monetary benefit of greater than
4 \$1,000, the broker is required to provide written disclosure of the
5 benefit to the recipient and any information concerning the
6 promotion or benefit as may be required by the commission.