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LAW/KER

[First Reprint]

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)

Co-Sponsored by:

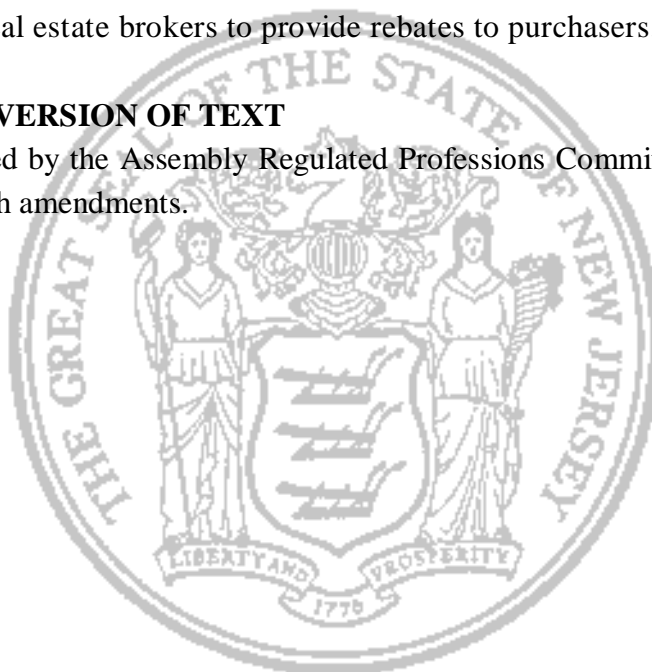
Assemblyman Wisniewski, Senators Scutari, Singer and Cardinale

SYNOPSIS

Permits real estate brokers to provide rebates to purchasers.

CURRENT VERSION OF TEXT

As reported by the Assembly Regulated Professions Committee on January 15, 2009, with amendments.



(Sponsorship Updated As Of: 1/8/2010)

1 AN ACT concerning certain real estate promotions **'[and] .'**
2 amending R.S.45:15-17 ¹and supplementing chapter 15 of Title 45
3 of the Revised Statutes¹.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

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

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

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ARP committee amendments adopted January 15, 2009.

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

15 a. Making any false promises or any substantial
16 misrepresentation; or

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

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

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

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

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

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

- 1 shall disclose in writing any compensation received for such
2 promotion or offer in the form and substance as required by the
3 federal "Real Estate Settlement Procedures Act of 1974," 12 U.S.C.
4 ss.2601 et seq., except that, notwithstanding the provisions of that
5 federal act, written disclosure shall be provided no later than when
6 the promotion or offer is extended by the broker to the consumer; or
- 7 h. Being convicted of a crime, knowledge of which the
8 commission did not have at the time of last issuing a real estate
9 license to the licensee; or
- 10 i. Collecting a commission as a real estate broker in a
11 transaction, when at the same time representing either party in a
12 transaction in a different capacity for a consideration; or
- 13 j. Using any trade name or insignia of membership in any real
14 estate organization of which the licensee is not a member; or
- 15 k. Paying any rebate, profit, compensation or commission to
16 anyone not possessed of a real estate license, except that: (1) free,
17 discounted or other services or products provided for in subsection
18 g. of this section shall not constitute a violation of this subsection;
19 and (2) a real estate '[licensee] broker' may provide a '[seller or]'
20 purchaser 'of residential real property, but no other third party' a
21 rebate of a portion of the commission paid to the '[licensee]
22 broker' in a transaction, so long as: the '[licensee] broker' and the
23 '[seller or]' purchaser contract for such a rebate '[in advance;
24 and] at the onset of the broker relationship in a written document,
25 electronic document or a buyer agency agreement; the '[licensee]
26 broker' complies with any State or federal requirements with
27 respect to the disclosure of the payment of the rebate '; and the
28 broker recommends to the purchaser that the purchaser contact a tax
29 professional concerning the tax implications of receiving that
30 rebate'. The rebate paid to the '[seller or]' purchaser '[may] shall'
31 be in the form of '[cash or other thing of value, including, but not
32 limited to, a gift certificate,] a credit, reducing the amount of the
33 commission payable to the broker, or a check paid by the closing
34 agent' and '[may] shall' be made at '[or after]' the 'time of'
35 closing; or
- 36 l. Any other conduct, whether of the same or a different
37 character than specified in this section, which constitutes fraud or
38 dishonest dealing; or
- 39 m. Accepting a commission or valuable consideration as a real
40 estate broker-salesperson or salesperson for the performance of any
41 of the acts specified in this act, from any person, except his
42 employing broker, who must be a licensed broker; or
- 43 n. Procuring a real estate license, for himself or anyone else, by
44 fraud, misrepresentation or deceit; or
- 45 o. Commingling the money or other property of his principals
46 with his own or failure to maintain and deposit in a special account,

1 separate and apart from personal or other business accounts, all
2 moneys received by a real estate broker, acting in said capacity, or
3 as escrow agent, or the temporary custodian of the funds of others,
4 in a real estate transaction; or

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

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

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

19 s. Failing to notify the commission within 30 days of having
20 been convicted of any crime, misdemeanor or disorderly persons
21 offense, or of having been indicted, or of the filing of any formal
22 criminal charges, or of the suspension or revocation of any real
23 estate license issued by another state, or of the initiation of formal
24 disciplinary proceedings in another state affecting any real estate
25 license held, or failing to supply any documentation available to the
26 licensee that the commission may request in connection with such
27 matter; or

28 t. The violation of any of the provisions of this article or of the
29 administrative rules adopted by the commission pursuant to the
30 provisions of this article. The commission is expressly vested with
31 the power and authority to make, prescribe and enforce any and all
32 rules and regulations for the conduct of the real estate brokerage
33 business consistent with the provisions of chapter 15 of Title 45 of
34 the Revised Statutes.

35 If a licensee is deemed to be guilty of a third violation of any of
36 the provisions of this section, whether of the same provision or of
37 separate provisions, the commission may deem that person a repeat
38 offender, in which event the commission may direct that no license
39 as a real estate broker, broker-salesperson or salesperson shall
40 henceforth be issued to that person.

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

42

43 12. (New section) a. Any rebate paid by a broker to a purchaser
44 of residential real property pursuant to paragraph (2) of subsection
45 k. of R.S.45:15-17 shall be:

46 (1) Calculated after the purchaser negotiates the rebate
47 commission rate;

1 (2) Memorialized in a written document, electronic document or
2 a buyer agency agreement provided by the broker to the purchaser
3 at the outset of the broker relationship, which document or
4 agreement shall provide the terms of any rebate credited or paid by
5 the broker to the purchaser; and

6 (3) Disclosed to all parties involved in the transaction,
7 including, but not limited to, any mortgage lender.

8 b. A rebate shall not be:

9 (1) Paid to a person not licensed as a real estate broker for any
10 act that requires licensure;

11 (2) Contingent upon the use of other services or products being
12 offered by a broker or an affiliate of a broker; or

13 (3) Based on the use of a lottery, contest or game.¹

14
15 ¹3. (New section) a. Any advertisement for a rebate allowed
16 pursuant to paragraph (2) of subsection k. of R.S.45:15-17 shall
17 include:

18 (1) A disclosure concerning the purchaser's obligation to pay
19 any applicable taxes for receipt of the rebate; and

20 (2) A notice that the purchaser should contact a tax professional
21 concerning the tax implications of receiving the rebate.

22 b. The disclosure and notice required pursuant subsection a. of
23 this section shall be clearly and conspicuously displayed in the
24 advertisement and the size of the text in the notice and disclosure
25 shall be equal to or larger than the size of the text used for the
26 advertisement.¹

27
28 ¹4. (New section) The New Jersey Real Estate Commission may
29 promulgate regulations pursuant to the "Administrative Procedure
30 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate
31 the provisions of this act.¹

32
33 ¹[2.] 5.¹ This act shall take effect immediately.

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:

6

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)

31

32 2. This act shall take effect immediately.

33

34

35 STATEMENT

36

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

A373 DIEGNAN, MORIARTY

6

- 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.

ASSEMBLY REGULATED PROFESSIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 373

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 15, 2009

The Assembly Regulated Professions Committee reports favorably and with committee amendments, Assembly Bill No. 373.

As amended, this bill amends R.S.45:15-17 to permit a real estate broker to give a purchaser of residential real property, but no other third party, a rebate from the commission that the real estate broker receives in a transaction. Specifically, the bill provides that a real estate broker may provide a purchaser of residential real property a rebate of a portion of the commission paid to the broker in a transaction, so long as: the broker and the purchaser contract for such a rebate at the onset of the broker relationship in a written document, electronic document or a buyer agency agreement; the broker complies with any State or federal requirements with respect to the disclosure of the payment of the rebate; and the broker recommends to the purchaser that the purchaser contact a tax professional concerning the tax implications of receiving that rebate. The rebate paid to the purchaser shall be in the form of a credit, reducing the amount of the commission payable to the broker, or a check paid by the closing agent and shall be made at the time of closing.

The bill also provides that any rebate paid by a broker to a purchaser shall be:

- calculated after the purchaser negotiates the rebate commission rate;
- memorialized in a written document, electronic document or a buyer agency agreement; and
- disclosed to all parties involved in the transaction.

The bill further provides that any advertisement for a rebate shall include:

- a disclosure concerning the purchaser's obligation to pay any applicable taxes for receipt of the rebate; and
- a notice that the purchaser should contact a tax professional concerning the tax implications of receiving the rebate.

This bill was pre-filed for introduction in the 2008-2009 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS

The committee amended the bill to:

- Remove the provisions in the bill that allowed a seller, in addition to a purchaser, to receive a rebate;
- Clarify that a rebate may only be paid to a purchaser of residential real property;
- Provide that only a real estate broker may provide a rebate. The bill, as introduced, allowed a licensee, which includes a real estate broker, broker-salesperson or salesperson, to provide a rebate;
- Provide that a broker and purchaser must contract for a rebate at the onset of the broker relationship in a written document, electronic document or a buyer agency agreement;
- Provide that a broker recommends to the purchaser that the purchaser contact a tax professional regarding any potential tax implications of receiving a rebate;
- Provide that a rebate paid to a purchaser must be in the form of a credit or a check paid by the closing agent at the time of closing. The bill, as introduced, stated that a rebate might be in the form of cash or other thing of value, such as a gift certificate, and made at or after the time of closing.

The committee also added provisions to the bill stipulating that any rebate paid by a broker to a purchaser must: be calculated after the purchaser negotiates the rebate commission rate; memorialized in a document providing the terms of the rebate; and disclosed to all parties involved in the transaction. The rebate, however, must not be: paid to a person not licensed as a real estate broker for any act that requires licensure; contingent upon the use of other services being offered by a broker or an affiliate of a broker; or based on the use of a lottery, contest or game.

The amendments also provide that any advertisement for a rebate must include a disclosure concerning the purchaser's obligation to pay any applicable taxes for receipt of the rebate; and a notice that the purchaser should contact a tax professional regarding the tax implications of receiving a rebate. In addition, the disclosure and notice must be clearly and conspicuously displayed in the advertisement, and the size of the text in the disclosure and notice shall be equal to or larger than the size of the text used in the advertisement.

SENATE COMMERCE COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 373

STATE OF NEW JERSEY

DATED: DECEMBER 14, 2009

The Senate Commerce Committee reports favorably Assembly Bill No. 373 (1R).

This bill amends R.S.45:15-17 to permit a real estate broker to give a purchaser of residential real property, but no other third party, a rebate from the commission that the real estate broker receives in a transaction. Specifically, the bill provides that a real estate broker may provide a purchaser of residential real property a rebate of a portion of the commission paid to the broker in a transaction, so long as: the broker and the purchaser contract for such a rebate at the onset of the broker relationship in a written document, electronic document or a buyer agency agreement; the broker complies with any State or federal requirements with respect to the disclosure of the payment of the rebate; and the broker recommends to the purchaser that the purchaser contact a tax professional concerning the tax implications of receiving that rebate. The rebate paid to the purchaser shall be in the form of a credit, reducing the amount of the commission payable to the broker, or a check paid by the closing agent, and shall be made at the time of closing.

The bill also provides that any rebate paid by a broker to a purchaser shall be: calculated after the purchaser negotiates the rebate commission rate; memorialized in a written document, electronic document or a buyer agency agreement; and disclosed to all parties involved in the transaction.

The bill further provides for advertising requirements, ensuring that appropriate disclosures and notices about rebates are presented to prospective purchasers. Any advertisement for a rebate shall include: a disclosure concerning the purchaser's obligation to pay any applicable taxes for receipt of the rebate; and a notice that the purchaser should contact a tax professional concerning the tax implications of receiving the rebate. With respect to the rebate advertising requirements, it is the intent of the legislation that any liability set forth in the bill concerning a violation of such requirements not be imposed on any newspaper or other form of print media carrying any rebate advertisement.

This bill is identical to Senate Bill No. 139, as amended by the committee, which is also reported by the committee today.

SENATE, No. 139

STATE OF NEW JERSEY 213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Senator ROBERT W. SINGER

District 30 (Burlington, Mercer, Monmouth and Ocean)

Co-Sponsored by:

Senator Cardinale

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: 12/15/2009)

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:

6

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
45 any license issued under the provisions of this article, or the right of

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

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

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

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

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

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

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

34 g. Using any plan, scheme or method for the sale or promotion
35 of the sale of real estate which involves a lottery, a contest, a game,
36 a prize, a drawing, or the offering of a lot or parcel or lots or parcels
37 for advertising purposes, provided, however, that a promotion or
38 offer of free, discounted or other services or products which does
39 not require that the recipient of any free, discounted or other
40 services or products enter into a sale, listing or other real estate
41 contract as a condition of the promotion or offer shall not constitute
42 a violation of this subsection if that promotion or offering does not
43 involve a lottery, a contest, a game, a drawing or the offering of a
44 lot or parcel or lots or parcels for advertising purposes. A broker
45 shall disclose in writing any compensation received for such
46 promotion or offer in the form and substance as required by the
47 federal "Real Estate Settlement Procedures Act of 1974," 12U.S.C.
48 ss.2601 et seq., except that, notwithstanding the provisions of that

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

1 written form, before a lease has been executed or, where no lease is
2 drawn, before the tenant has taken possession of the premises
3 without complying with all applicable rules promulgated by the
4 commission regulating these practices; or

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

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

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

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

28

29 2. This act shall take effect immediately.

30

31

32

STATEMENT

33

34 This bill amends R.S.45:15-17 to permit a real estate broker,
35 broker-salesperson or salesperson to give a client a rebate from the
36 commission that the real estate broker, broker-salesperson or
37 salesperson receives in a transaction. Specifically, the bill provides
38 that a real estate licensee may provide a seller or purchaser a rebate
39 of a portion of the commission paid to the licensee in a transaction,
40 so long as: the licensee and the seller or purchaser contract for such
41 a rebate in advance; and the licensee complies with any State or
42 federal requirements with respect to the disclosure of the payment
43 of the rebate. The rebate paid to the seller or purchaser may be in
44 the form of cash or other thing of value, including, but not limited
45 to, a gift certificate, and may be made at or after the closing.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 139

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 14, 2009

The Senate Commerce Committee reports favorably, and with committee amendments, Senate Bill No. 139.

As amended, this bill permits a real estate broker to give a purchaser of residential real property, but no other third party, a rebate from the commission that the real estate broker receives in a transaction. Specifically, the bill provides that a real estate broker may provide a purchaser of residential real property a rebate of a portion of the commission paid to the broker in a transaction, so long as: the broker and the purchaser contract for such a rebate at the onset of the broker relationship in a written document, electronic document or a buyer agency agreement; the broker complies with any State or federal requirements with respect to the disclosure of the payment of the rebate; and the broker recommends to the purchaser that the purchaser contact a tax professional concerning the tax implications of receiving that rebate. The rebate paid to the purchaser shall be in the form of a credit, reducing the amount of the commission payable to the broker, or a check paid by the closing agent, and shall be made at the time of closing.

The bill also provides that any rebate paid by a broker to a purchaser shall be: calculated after the purchaser negotiates the rebate commission rate; memorialized in a written document, electronic document or a buyer agency agreement; and disclosed to all parties involved in the transaction.

The bill further provides for advertising requirements, ensuring that appropriate disclosures and notices about rebates are presented to prospective purchasers. Any advertisement for a rebate shall include: a disclosure concerning the purchaser's obligation to pay any applicable taxes for receipt of the rebate; and a notice that the purchaser should contact a tax professional concerning the tax implications of receiving the rebate. With respect to the rebate advertising requirements, it is the intent of the legislation that any liability set forth in the bill concerning a violation of such requirements not be imposed on any newspaper or other form of print media carrying any rebate advertisement.

The committee amendments to the bill:

- remove provisions that allowed a seller, in addition to a purchaser, to receive a rebate;
- provide that only a real estate broker may provide a rebate, as opposed to any real estate licensee as provided under the bill as introduced;
- require that a real estate broker and purchaser contract for a rebate at the onset of the broker relationship in a written document, electronic document, or a buyer agency agreement, and that the rebate be disclosed to all parties involved in the real estate transaction;
- require the broker to recommend to the purchaser that he contact a tax professional concerning the tax implications of receiving a rebate;
- establish that a rebate shall be calculated after the purchaser negotiates the rebate commission rate;
- limit the form of rebate to a credit, reducing the amount of commission payable to a broker, or a check paid by a closing agent, and shall be made at the time of closing; and
- provide for advertising requirements, ensuring that appropriate disclosures and notices about rebates are presented to prospective purchasers.

This bill, as amended, is identical to Assembly Bill No. 373 (1R), which is also reported by the committee today.

This bill was pre-filed for introduction in the 2008-2009 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.