

RESTRICTIONS UPON BROKERAGE ACTIVITIES OF REFERRAL AGENTS

On January 16, 2010, P.L. 2009, c. 238 (the “Act”) was signed into law. The Act amended the Real Estate Brokers and Salespersons law to require real estate brokers, broker-salespersons and salespersons to complete continuing education courses as a condition to the biennial renewal of their licenses, and created the new license category of referral agent. Pursuant to N.J.S.A. 45:15-3 as amended by the Act, a referral agent is defined as a natural person whose brokerage-related activities are limited to referring prospects for the sale, purchase, exchange, leasing or rental of real estate to the broker through whom they are licensed. The Commission’s proposal of new and amended rules on referral agents will be published in the New Jersey Register and posted on the Department’s website on August 1, 2011, with a 60 day comment period to follow. One of the proposed new rules reflects the Commission’s construction of the statutory restriction upon the brokerage-related activity of referral agent licensees. The proposed rule lists the limitations upon brokerage activities of referral agents and specific examples of brokerage activity in which referral agents may not engage. That proposed rule states:

11:5-6.10 Referral Agents

(a) A licensed referral agent’s real estate brokerage-related activities shall be limited to:

- 1. Directing prospects to websites and other sources of information on real estate matters generally available to the general public; and**
- 2. Referring prospects for the sale, purchase, exchange, leasing or rental of real estate to the real estate broker through whom they are licensed as a referral agent.**

(b) A referral agent shall not be employed by or licensed with more than one real estate broker at any given time.

(c) No person shall be simultaneously licensed as a referral agent and a real estate broker, broker-salesperson or a salesperson in this state.

(d) Referral agents shall not engage in prohibited brokerage activity for their broker or for others, and shall not receive compensation from their broker or any other person for engaging in prohibited brokerage activity. For the purposes of this rule, prohibited brokerage activity includes, but is not limited to the following:

- 1. Negotiating the purchase, sale, or exchange of an interest in real estate;**
- 2. Leasing or renting or offering to lease or rent any interest in real estate;**
- 3. Collecting rents for the use of real estate or any other monies;**
- 4. Negotiating commissions or compensation rates and otherwise negotiating or signing listing or buyer-brokerage agreements;**
- 5. Negotiating or signing contracts of sale or leases of real estate;**
- 6. Accepting any funds of others to be held by a real estate broker acting in that capacity or as escrow agent or as the temporary custodian of the funds of others in a real estate transaction;**
- 7. Conducting a public or private competitive sale of land or any interest in lands;**

- 8. Negotiating, assisting in, or directing, the closing of any transaction which results or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate;**
- 9. Negotiating, offering, attempting to, or agreeing to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of any real estate;**
- 10. Conducting showings or open house presentations of properties;**
- 11. Participating in expositions, marketing shows or other presentations where information on specific properties or real estate interests marketed through a common promotional plan, including but not limited to planned unit developments, is provided to the public;**
- 12. Providing information on listings, either in person, or through electronic communication including telephone and the internet, beyond the information which referral agents are permitted to provide with respect to websites and other sources of information as referenced in (a) above; and**
- 13. Producing or presenting comparative market analyses or similar studies of real estate.**

Until such time as the proposed rules are formally adopted, brokers and referral agent licensees should be guided by these provisions with respect to the permissible and prohibited brokerage activities of referral agents.