Understanding Agency Post RECPEA

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5 Business Relationships in NJ – Four Agency Relationships

- There are FOUR brokerage business relationships that create an **agency relationship** between a licensee and and a buyer or a seller of real estate: seller's agent, buyer's agent, disclosed dual agent and designated agent.
    - The creation of an agency relationship gives rise to fiduciary duties owed by a licensee to the party that licensee represents in the real estate transaction.

- In these 4 types of agency relationships, brokerage firms:
    - Act as fiduciaries to the party they represent
    - Maintain confidentiality
    - Account for all money and property received

5 Business Relationships – Agency: Designated Agent

- New form of agency relationship, N.J.S.A. 45:15-16.86.
- Requires the informed, written consent of both, buyer and seller—part of BSA.
- Occurs when a brokerage firm designates different individual licensees affiliated with the firm to solely represent the buyer as the **Buyer's Agent** and another to solely represent the seller as the **Seller's Agent**.
- Each designated agent has an agency relationship with and owes fiduciary duties exclusively to the **ONE** party they have been designated to represent—the seller **OR** the buyer. *A designated agent is **not** a dual agent.*
- The brokerage firm (other than those individual designated licensees) acts in the capacity of disclosed dual agent.

5 Business Relationships – Agency: Dual & Designated Agency

NJ Realtors® Exclusive Buyer Agency Agreement (Form #121, 10/2024)

9. DUAL AGENCY: Under New Jersey law, Broker may work with both Buyer and a seller in the same real estate transaction if both Buyer and seller agree to work with Broker as a "Disclosed Dual Agent". To work as a Disclosed Dual Agent, Broker must obtain the written informed consent from both Buyer and seller. Buyer understands that, by agreeing to allow Broker to work as a Disclosed Dual Agent, Broker will not be able to represent Buyer or seller fully and exclusively. As a Disclosed Dual Agent, Broker will not be able to put either Buyer's interests ahead of seller's interests nor seller's interests ahead of Buyer's interests**. Broker may act as a Disclosed Dual Agent only if Buyer agrees to sign the "Informed Consent to Dual Agency" form attached to this Agreement.**

10. DESIGNATED AGENCY: Under New Jersey law, Broker may designate two different licensees affiliated with Broker to work with Buyer and seller in the same real estate transaction if both Buyer and seller agree. In the context of designated agency, Broker remains neutral and oversees the transaction to ensure each designated licensee is maintaining the full range of fiduciary duties which are ordinarily owed by a licensee who represents solely Buyer as "Buyer's Agent" and by a licensee who represents solely seller as "seller's agent." **Broker may appoint a Designated Agent for Buyer only if Buyer agrees to sign the "Informed Consent to Designated Agency" form attached to this Agreement.**

5 Business Relationships – Agency: Dual & Designated Agency

NJ Realtors® Informed Consent Forms:
Dual Agency - #122A, #122B, #127A, #127B
Designated Agency - #130A, #130B, #131A, #131B

NEW JERSEY REALTORS

NEW JERSEY REALTORS® STANDARD FORM OF INFORMED CONSENT TO DUAL AGENCY (BUYER)

This Agreement evidences Buyer's consent that the Brokerage Firm, as Buyer's Agent, may act as a Disclosed Dual Agent in order to represent both Buyer and Seller in the same real estate transaction, and seeks Buyer's consent to allow Buyer's Agent to act as a Disclosed Dual Agent when the opportunity arises. Buyer should be aware that a real estate licensee may legally act as a Disclosed Dual Agent only with Buyer's and Seller's informed written consent.

Buyer understands that Disclosed Dual Agency (representing more than one party to a transaction) has the potential of creating a conflict of interest in that both Seller and Buyer may intend to rely on the Buyer's Agent's advice, and their respective interests may be adverse to each other. Therefore, when acting as a Disclosed Dual Agent, Buyer's Agent will not represent the interests of Buyer to the exclusion or detriment of the interests of a Seller; nor will Buyer's Agent represent the interests of Seller to the exclusion and detriment of the interests of Buyer.

As a Disclosed Dual Agent of both the Seller and the Buyer, Buyer's Agent will be working equally for both parties to the real estate transaction, and will provide services to complete the transaction **without** the full range of fiduciary duties ordinarily owed by an agent who represents Buyer alone, or the Seller alone. In the preparation of offers and counteroffers between Buyer and Seller, Buyer's Agent will act only as an intermediary to facilitate the transaction rather than as an active negotiator representing either the Buyer or Seller in a fiduciary capacity. By consenting to this dual agency, Buyer is giving up the right to undivided loyalty and will be owed only limited duties of disclosure by the Buyer's Agent.

5 Business Relationships – Non-Agency: Transaction Broker

- Non-Agency relationship
- Can provide transaction services to a buyer, seller **or** both.
- Provides services without creating an agency relationship with any party.
- Does not owe fiduciary duties to any party in the transaction.
- Cannot promote the interests of one party over the interests of another party.
- Is not required to keep any information confidential.
- Manages/facilitates the transaction and keeps parties fully informed.

Brokerage Duties under RECPEA - Section 2

a. Comply with laws of agency and the principles governing fiduciary duties;
b. Exercise reasonable skill and care;
c. Deal honestly and in good faith;
d. Present all written offers and counteroffers in a timely manner and provide written confirmation of receipt to the other party, its agent or transaction broker, as soon as reasonably practicable;
e. Obtain a completed and signed Seller's Property Condition Disclosure Statement before buyer becomes obligated to purchase the property (residential only);
f. Disclose all known existing material information concerning the physical condition of the property, or which a reasonable effort to ascertain the information would have revealed;
g. Provide an accounting in a timely manner of all money and property received from any party;
h. Provide the Consumer Information Statement and obtain a signed receipt (residential only);
i. Disclose in writing the relationship between the parties and the terms of all compensation, if any; and
j. Undertake a reasonable effort to obtain material information concerning the condition of the property and the financial qualifications of every buyer for whom the brokerage firm submits an offer.

Seller's Property Condition Disclosure Statement ("SPCD") – Section 2(e)

- Applies to residential **sellers** only; does **not** apply to landlords or rentals.
- Format and content promulgated by the NJ Div. of Consumer Affairs.
- Must be completed in its entirety and signed by **all sellers**:
  - even in FSBOs, estate administrators and bank-owned properties.
  - Must be provided to a prospective buyer **before** they become obligated under a contract to purchase the property (includes vacant land and new construction).
- Applies to all residential sellers, only flood risk addendum for commercial sellers.
- Protection when used properly, including treble damages.

Seller's Property Condition Disclosure Statement ("SPCD") – Section 2(e)

NJ Realtors® Residential Listing Agreement (Form #150, 7/2025)

12. PROPERTY CONDITION DISCLOSURE:

(a) **Sale:** As required by New Jersey law, Seller/Landlord shall provide Broker with a signed property condition disclosure statement filled out by Seller/Landlord. Seller/Landlord shall disclose to Broker all material information concerning the physical condition of the Property not otherwise disclosed in the statement. Seller/Landlord agrees to indemnify and hold Broker harmless from and against any and all claims arising from or related to false and/or incomplete information provided by Seller/Landlord. Such indemnification shall include but not be limited to reimbursement for Broker's attorneys' fees and costs.

(b) **Lease:** Seller/Landlord shall provide Broker with a Landlord's Notice to Tenant Regarding Flood Risk filled out and signed by Seller/Landlord. Seller/Landlord agrees to indemnify and hold Broker harmless from and against any and all claims arising from or related to false or incomplete information provided by Seller/Landlord included in, or relating to, the Landlord's Notice to Tenant Regarding Flood Risk. Such indemnification shall include but not be limited to reimbursement for Broker's attorneys' fees and costs.

Consumer Information Statement (“CIS”) – Section 2(b)(h)

- Sets forth 5 permissible business relationships—4 agency and 1 non-agency
  - Must **verbally inform** buyers and sellers in residential transactions. N.J.A.C. 11:5-6.9(e)
- Must be provided in the form required by the NJ Real Estate Commission and **signed**, acknowledging receipt:
  - Must be provided to and signed by **all buyers/tenants and sellers/landlords before receiving brokerage services.**
  - Becomes a part of the brokerage services agreement (attached).
  - Must be provided to and signed by **all unrepresented buyers/tenants before they make an offer to purchase/lease.**
  - residential sales and rentals transactions only, does not apply to commercial.

Consumer Information Statement ("CIS") – Section 2(b)(h)

NJ Realtors® Residential Listing Agreement (Form #150, 7/2025)

11. CONSUMER INFORMATION STATEMENT/MEMORANDUM: Seller/Landlord acknowledges receipt of the attached Consumer Information Statement on New Jersey Real Estate Relationships and the Memorandum of the Attorney General about Housing Discrimination Laws, and Seller/Landlord agrees to abide by the Memorandum.

NJ Realtors® Exclusive Buyer Agency Agreement (Form #121, 10/2024)

14. CONSUMER INFORMATION STATEMENT: Buyer acknowledges receipt of the attached Consumer Information Statement on New Jersey Real Estate Relationships.

NJ Realtors® Exclusive Tenant Agency Agreement (Form #126, 10/2024)

14. CONSUMER INFORMATION STATEMENT: Tenant acknowledges receipt of the attached Consumer Information Statement on New Jersey Real Estate Relationships.

Brokerage Services Agreements ("BSA") – Sections 3, 5 and 11

Brokerage firms must enter into a written BSA with:

- the **buyer/tenant** and **seller/landlord** in all residential real estate transactions, and
- **only sellers/landlords** in commercial real estate transactions.
  - Ex: sale and rental listing agreements; buyer/lessee agency agreements; and transaction broker, dual agency and designated agency agreements.
- A BSA must be signed before, or as soon as reasonably practical after, providing real estate brokerage services for a party—prior to **"working with"** the party
- A BSA is **NOT** required when the services provided are limited to a broker's price opinion, comparative market analysis, or a referral (if not providing real estate brokerage services), **or when showing your brokerage's listing to an unrepresented buyer/tenant**.

Buyer's / Tenant's BSA – Required

The BSA with a buyer/tenant must include:

- the **term** of the agreement, including, any **protection period** after termination the brokerage firm will be protected concerning properties introduced to the buyer during the term;
- the "Agency Disclosure", specifying the business relationship;
- whether the agency relationship is **exclusive** or **non-exclusive**;
- if the buyer consents to **disclosed dual agency** or **designated agency**;
- the brokerage firm's **compensation**, and how it will be calculated and if the compensation is to be shared with another (cooperating) brokerage firm; and
- a **disclosure** stating that compensation is fully negotiable and not set by law.

Compensation Under CPEA

- Brokerage Firms can accept payment from one or more parties in a transaction.
    - including, in the context of dual and designated agency.
- Exact compensation and how it will be calculated must be disclosed in the BSA.
    - Compensation can be a flat fee arrangement, a percentage of the purchase price or any other method permitted by law.
- Terms of cooperative compensation offer, if any, offered by a party or brokerage firm to another brokerage must be disclosed in the BSA.
    - Buyer's BSA must address how to proceed if no offer or a limited offer from seller or another party to compensate buyer's brokerage firm.
- **Mandatory Disclosure**: brokerage compensation is fully negotiable and not set by law, and must be in writing.

Seller's / Landlord's BSA – Required

The BSA with a seller/landlord must include:

- the **term** of the agreement, including, any **protection period**;
- the "Agency Disclosure", specifying the business relationship;
- include an **option** for seller to choose if the agency relationship is **exclusive** or **non-exclusive**;
- if the seller consents to **disclosed dual agency** or **designated agency**;
- the brokerage firm's **compensation**, if any, how it will be calculated and if seller is authorizing commission sharing with a cooperating broker;
- whether the property will be **circulated for sale on the MLS**; and
- a **disclosure** stating that compensation is fully negotiable and not set by law.

Compensation Under CPEA – Listing Agreement (Section 7)

NJ Realtors® Residential Listing Agreement (Form #150, 7/2025)

7. COMMISSION TO COOPERATING BROKER: As mandated by N.J.A.C. 11:5-6.4(f)(3), the following provision must be included in all written listing agreements prepared by licensees:

COMMISSION SPLITS:

LISTING BROKERS USUALLY COOPERATE WITH OTHER BROKERAGE FIRMS BY SHARING INFORMATION ABOUT THEIR LISTINGS AND OFFERING TO PAY PART OF THEIR COMMISSION TO THE FIRM THAT PRODUCES A BUYER. THIS IS GENERALLY REFERRED TO AS THE "COMMISSION SPLIT".

SOME LISTING BROKERS OFFER TO PAY COMMISSION SPLITS OF A PORTION OF THE GROSS COMMISSION, USUALLY EXPRESSED AS A PERCENTAGE OF THE SELLING PRICE, LESS A SIGNIFICANT DOLLAR AMOUNT. OTHER LISTING BROKERS OFFER A PORTION OF THE GROSS COMMISSION LESS ONLY A MINIMAL LISTING FEE OR LESS ZERO.

THE AMOUNT OF COMMISSION SPLIT YOUR BROKER OFFERS CAN AFFECT THE EXTENT TO WHICH YOUR PROPERTY IS EXPOSED TO PROSPECTIVE BUYERS WORKING WITH LICENSEES FROM OTHER BROKERAGE FIRMS.

ON THIS LISTING, THE BROKER IS OFFERING A COMMISSION SPLIT OF ______________ MINUS ______________ TO POTENTIAL COOPERATING FIRMS.

Compensation Under CPEA – Contract of Sale (Section 30)

NJ Realtors® Real Estate Sales Contract (Form #118, 7/2025.2)

Listing Broker:	REC License ID:	**Participating Broker:**	REC License ID:
Agent at Listing Broker:	REC License ID:	**Agent at Participating Broker:**	REC License ID:
Address:		Address:	
Office Phone:	Fax:	Office Phone:	Fax:
Agent Cell Phone:	E-mail:	Agent Cell Phone:	E-mail:
Commission due Listing Broker Per Listing or Other Written Agreement From Seller:	From Buyer:	**Commission due Participating Broker** Per Buyer Agency or Other Written Agreement From Seller:	From Buyer:

Under New Jersey law, the brokerage services agreement(s) between the broker(s) and the Buyer and the Seller, respectively, set forth the commission to be paid to the broker(s) and may not be modified or otherwise changed, except in writing by the broker(s).

NJ Real Estate Broker and Salesperson Act - Reminder

*All licensees are subject to and shall strictly comply with the **laws of agency** and the **principles governing fiduciary relationships**. In accepting employment as an agent, the licensee **pledges** himself to **protect and promote**, as he would his own, the interests of the client or principal he has undertaken to represent; this obligation of **absolute fidelity** to the client's or principal's interest is primary **but does not relieve the licensee from the obligation of dealing fairly with all parties to the transaction**.*

N.J.S.A. 11:5-6.4(a)

THANK YOU

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