

# ASSEMBLY, No. 5536

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 5, 2021

**Sponsored by:**

**Assemblyman JOHN J. BURZICHELLI**  
**District 3 (Cumberland, Gloucester and Salem)**  
**Assemblyman THOMAS P. GIBLIN**  
**District 34 (Essex and Passaic)**

**Co-Sponsored by:**

**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: 6/14/2021)**

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)

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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<sup>1</sup>, 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<sup>2</sup>. 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.

47 The bill also provides that, if a broker participates in a promotion  
48 or offering of free, discounted or other services or products which

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1 confers upon the recipient a monetary benefit of greater than  
2 \$1,000, the broker is required to provide written disclosure of the  
3 benefit to the recipient and any information concerning the  
4 promotion or benefit as may be required by the commission.