



## State of New Jersey

DEPARTMENT OF BANKING AND INSURANCE

REAL ESTATE COMMISSION

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### BULLETIN NO. 10-03

**TO: ALL NEW JERSEY REAL ESTATE LICENSEES, SCHOOL DIRECTORS AND INSTRUCTORS**

**FROM: ROBERT PIMIENTA, PRESIDENT**

**RE: REBATES OF REAL ESTATE COMMISSIONS**

**DATE: FEBRUARY 5, 2010**

On January 17, 2010, P.L. 2009, c. 273 ("the Act") was signed into law. The Act permits licensed real estate brokers to provide a purchaser of residential real property a rebate from the commission the broker receives. The law is effective immediately and is a significant change to prior New Jersey law. The Real Estate Commission intends to promulgate regulations to effectuate the provisions of this law. In the meantime, however, the Real Estate Commission urges real estate licensees to be guided by the provisions of the Act and by this bulletin.

While rebates are now permitted in New Jersey, the statute imposes several restrictions on who may provide and receive a rebate, conditions concerning the providing of a rebate, limitations on the nature of the rebate that may be paid and requirements on the advertisement of rebates. Those provisions are summarized below.

#### Who may provide/receive a rebate and conditions concerning the providing of a rebate.

- Only a real estate broker may provide the rebate. A broker-salesperson or salesperson may not provide a rebate.
- A rebate may only be provided to a purchaser of residential real property. A rebate may not be provided to a seller or to a lessor or lessee.
- The broker and the purchaser must contract for a rebate at the onset of the brokerage relationship in a written document, an electronic document or a buyer agency agreement. The document or agreement must specify the terms of any rebate to be credited or paid by the broker to the purchaser. The broker must provide the document or agreement to the purchaser at the outset of the brokerage relationship.
- The broker must comply with any State or federal requirements regarding the disclosure of the payment of the rebate.
- The broker must recommend to the purchaser that the purchaser contact a tax professional concerning the tax implications of receiving the rebate.

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- The broker must disclose the payment of the rebate to all parties involved in the transaction, including any mortgage lender.

The nature of the rebate that may be paid.

- The rebate must be-
  - in the form of a credit to the purchaser and reducing the amount of the commission payable to the broker paying the rebate or a check paid by the closing agent made at the time of closing; and
  - calculated after the purchaser negotiates the rebate commission rate with the broker paying the rebate.
- The rebate must not be-
  - paid to an unlicensed person for any act that requires licensure;
  - contingent upon the use of other services or products being offered by a broker or an affiliate of a broker; and
  - based on the use of a lottery, contest or game.

Advertisements of rebates.

- Advertisements regarding permitted rebates 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 concerning the tax implications of receiving the rebate.
- In all such advertisements, the required disclosure and notice must be conspicuously displayed in the advertisement and the size of the text shall be equal to or larger than the size of the text used for the advertisement.

Licensees contemplating offering rebates to purchasers are also reminded that other Commission rules that guide their conduct continue to apply. For example, advertisements regarding rebates must also comply with N.J.A.C. 11:5-6.2(r) which provides that no advertisement shall contain false, misleading or deceptive claims or misrepresentations. Moreover, when acting as an agent for a client, licensees operate as fiduciaries who must protect and promote the interests of their client. See N.J.A.C. 11:5-6.4(a). Licensees are prohibited from making any false promise or any substantial misrepresentation. See N.J.S.A. 45:15-17(a).

All brokers are urged to provide a copy of this bulletin to all salespersons and broker-salespersons in their firms. All school directors are urged to provide a copy of this bulletin to all instructors.



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Robert Pimienta  
President  
New Jersey Real Estate Commission