

# NJ Real Estate Disclosure



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# Notice



- This is a SHORT course. It is intended as an overview of a complex area of the law, and we are just going to cover the basics.
- You'll get general information - not legal advice for any specific problem.
- Your sitting through it does not establish an attorney-client relationship with the speaker (but we can be friends).
- Course Identification/Reference Number is: **C20160147**

# A Boy's View of Agency



# A Student's View of Agency



# Introduction



- Held to a Higher Standard - The Realtor as Fiduciary
  - Overview of fiduciary agency
  - Sources of obligation
    - ✦ Law (State and Federal)
      - Case opinions
      - Statutes
      - Regulations
    - ✦ Industry Standards (Ethics)
    - ✦ Contract

# Introduction



Fiduciary

Agent

# Introduction



- [Ellsworth Dobbs, Inc. v. Johnson, 50 N.J. 528, 553, 236 A.2d 843, 856 \(1967\)](#):
- “There can be no doubt that the business of the real estate broker is affected with a public interest. The Legislature has marked it off as distinct from occupations which are pursued of common right without regulation or restriction. [Tanenbaum v. Sylvan Builders, Inc., 29 N.J. 63, 74, 148 A.2d 176 \(1959\)](#); N.J.S.A. 45:15--1 et seq.
- “ ...
- “Long before these enactments, the relationship between the broker and his principal was regarded as one affected by considerations of public policy. The broker was and is looked upon as a fiduciary and is required to exercise fidelity, good faith and primary devotion to the interests of his principal. *Wilcox v. Reynolds*, 169 Okl. 153, 36 P.2d 488 (1934); [Haydock v. Stow, 40 N.Y. 363 \(1869\)](#). He cannot permit his interests to interfere with those of his principal. As the Court of Errors and Appeals said in *Young v. Hughes*, 32 N.J.Eq. 372, pp. 384--385 (E. & A. 1880), the rule which applies to trustees has been equally applied to the relation between the real estate broker and his principal. He must show perfect good faith and openness of dealing. The rule was not intended to be remedial of actual wrong done alone, but also to be preventive of the possibility of it. He cannot engage in any unconscionable conduct toward his principal in the matter of his commission. [McKelvy v. Milford, 37 So.2d 370 \(La.App.1948\)](#); and see generally, 12 Am.Jur.2d, Brokers § 84 (1964).
- “Unless otherwise agreed, an agent employed to buy or to sell is subject to a [351 A.2d 388] duty to the principal, within the limits set by the principal's directions, to be loyal to the principal's interests and to use reasonable care to obtain terms which best satisfy the manifested purposes of the principal. (2 Restatement, Agency 2d, § 424 at 287 (1958))”

# Introduction



- N.J.S.A. 45:15-1 to -29.5, the Real Estate Brokers and Salesmen Act, governs real estate brokers and salespersons. This act was originally passed in 1921 and has been amended many times since.
- N.J.S.A. 45:15-42, Rules and regulations, provides:
  - “The Real Estate Commission is authorized to issue rules and regulations to implement the provisions of this act.”

L.1976, c. 112, s. 9, eff. Feb. 1, 1977.



# Introduction



- NJ Admin Code 11:5-6.4 Obligations of licensees to public and to each other
- (a) 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.
- ...

# Disclosures to the Principal (Client)



- Generally: known, relevant, and material information
  - Facts affecting the value or desirability of the property
  - Information is “material” if a reasonable person would attach importance to its existence or non-existence in deciding whether or how to proceed in the transaction, or if the licensee knows or has reason to know that the recipient of the information regards, or is likely to regard it as important in deciding whether or how to proceed, although a reasonable person would not so regard it.

# Disclosures to the Principal (Client)



- Examples of relevant information:
  - Physical condition of the property
    - ✦ Licensees shall disclose all information material to the physical condition of any property which they know or which a reasonable effort to ascertain such information would have revealed to their client or principal **and when appropriate to any other party to a transaction**. Licensees shall also disclose any actual or potential conflicts of interest which the licensee may reasonably anticipate. NJAC 11:5-6.4
  - the other party's bargaining position
  - the identity of all potential purchasers
  - price flexibility / deep pockets
  - any intent to subdivide or flip

# Private Standards



- Standard of Practice 1-13
- When entering into buyer/tenant agreements, REALTORS® must advise potential clients of:
  - the REALTOR®'s company policies regarding cooperation;
  - the amount of compensation to be paid by the client;
  - the potential for additional or offsetting compensation from other brokers, from the seller or landlord, or from other parties;
  - any potential for the buyer/tenant representative to act as a disclosed dual agent, e.g. listing broker, subagent, landlord's agent, etc., and
  - the possibility that sellers or sellers' representatives may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties. (Adopted 1/93, Renumbered 1/98, Amended 1/06)
    - Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS® *Effective January 1, 2012*

# Private Standards



- Standard of Practice 3-5

It is the obligation of subagents to promptly disclose all pertinent facts to the principal's agent prior to as well as after a purchase or lease agreement is executed. (Amended 1/93)

- Standard of Practice 3-6

REALTORS® shall disclose the existence of accepted offers, including offers with unresolved contingencies, to any broker seeking cooperation. (Adopted 5/86, Amended 1/04)

○ Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS® *Effective January 1, 2011*

# Disclosures to the Principal (Client)

- Licensee business relationships
  - Managing implicit and explicit conflicts
    - ✦ Administrative Regulations
    - ✦ Dual Representation
    - ✦ Consumer Information Statement on NJ Real Estate relationships
      - NJAC § 11:5-6.9
- The four business relationships are:
  - Buyer's agent
  - Seller's agent
  - Disclosed dual agent
  - Transaction broker

# Disclosures to the Principal (Client)

## CONSUMER INFORMATION STATEMENT ON NEW JERSEY REAL ESTATE RELATIONSHIPS

In New Jersey, real estate licensees are required to disclose how they intend to work with buyers and sellers in a real estate transaction. (In rental transactions, the terms "buyers" and "sellers" should be read as "tenants" and "landlords", respectively.)

1. AS A SELLER'S AGENT OR SUBAGENT, I, AS A LICENSEE, REPRESENT THE SELLER AND ALL MATERIAL INFORMATION SUPPLIED TO ME BY THE BUYER WILL BE TOLD TO THE SELLER.

2. AS A BUYER'S AGENT, I AS LICENSEE, REPRESENT THE BUYER AND ALL MATERIAL INFORMATION SUPPLIED TO ME BY THE SELLER WILL BE TOLD TO THE BUYER.

3. AS A DISCLOSED DUAL AGENT, I AS A LICENSEE, REPRESENT BOTH PARTIES, HOWEVER, I MAY NOT, WITHOUT EXPRESS PERMISSION, DISCLOSE THAT THE SELLER WILL ACCEPT A PRICE LESS THAN THE LISTING PRICE OR THAT THE BUYER WILL PAY A PRICE GREATER THAN THE OFFERED PRICE.

4. AS A TRANSACTION BROKER, I, AS A LICENSEE, DO NOT REPRESENT EITHER THE BUYER OR THE SELLER. ALL INFORMATION I ACQUIRE FROM ONE PARTY MAY BE TOLD TO THE OTHER PARTY.

Before you disclose confidential information to a real estate licensee regarding a real estate transaction, you should understand what type of business relationship you have with that licensee. There are four business relationships: (1) seller's agent; (2) buyer's agent; (3) disclosed dual agent; and (4) transaction broker. Each of these relationships imposes certain legal duties and responsibilities on the licensee as well as on the seller or buyer represented. These four relationships are defined in greater detail below. Please read carefully before making your choice.

### SELLERS' AGENT

A seller's agent WORKS ONLY FOR THE SELLER and has legal obligations, called fiduciary duties, to the seller. These include reasonable care, undivided loyalty, and confidentiality and full disclosure. Seller's agents often work with buyers, but do not represent the buyers. However, in working with buyers as a seller's agent must act honestly. In dealing with both parties, a seller's agent may not make any misrepresentations to either party on matters material to the transaction, such as the buyer's financial ability to pay, and must disclose

defects of a material nature affecting the physical condition of the property which a reasonable inspection by the licensee would disclose.

Seller's agents include all persons licensed with the brokerage firm, which has been authorized through a listing agreement to work as the seller's agent. In addition, other brokerage firms may accept an offer to work with the listing broker's firm as the seller's agents. In such cases, those firms and all persons licensed with such firms are called "sub-agents." Sellers who do not desire to have their property marketed through sub-agents should so inform the seller's agent.

### BUYER'S AGENT

A buyer's agent WORKS ONLY FOR THE BUYER. A buyer's agent has fiduciary duties to the buyer, which include reasonable care, undivided loyalty, and confidentiality and full disclosure. However, in dealing with sellers, a buyer's agent must act honestly. In dealing with both parties, a buyer's agent may not make any misrepresentations on matters material to the transaction, such as the buyer's financial ability to pay, and must disclose defects of a material nature affecting the physical condition of the property which a reasonable inspection by the licensee would disclose.

A buyer wishing to be represented by a buyer's agent is advised to enter into a separate written buyer agency contract with the brokerage firm, which is to work as their agent.

### DISCLOSED DUAL AGENT

A disclosed dual agent WORKS FOR BOTH THE BUYER AND SELLER. To work as a dual agent, a firm must first obtain the informed written consent of the buyer and the seller. Therefore, before acting as a disclosed dual agent, brokerage firms must make written disclosure to both parties. Disclosed dual agency is most likely to occur when a licensee with a real estate firm working as a buyer's agent shows the buyer properties owned by sellers for whom that firm is also working as a seller's agent or sub-agent.

A real estate licensee working as a disclosed dual agent must carefully explain to each party, that, in addition to working as their agent, their firm will also work as the agent for the party. They must also explain what effect their working as a disclosed dual agent will have on the fiduciary duties their firm owes to the buyer and to the seller. When working as a disclosed dual agent, a brokerage firm must have the express permission of the party prior to disclosing confidential information to the other party. Such information includes the highest price a buyer can afford to pay and the lowest price a seller will accept and the parties' motivation to buy or sell.

Remember, a brokerage firm acting as a disclosed dual agent will not be able to put one party's interests ahead of those of the other party and cannot advise or counsel either party on how to gain an advantage at the expense of the other party on the basis of confidential information obtained from or about the other party.

If you decide to enter into an agency relationship with a firm, which is to work as a disclosed dual agent, you are advised to sign a written agreement with that firm.

### TRANSACTION BROKER

The New Jersey Real Estate Licensing Law does not require licensees to work in the capacity of an "agent" when providing brokerage services. A transaction broker works with a buyer or a seller or both in the sales transaction without representing anyone. A TRANSACTION BROKER DOES NOT PROMOTE THE INTERESTS OF ONE PARTY OVER THOSE OF THE OTHER PARTY TO THE TRANSACTION. Licensees with such a firm would be required to treat all parties honestly and to act in a competent manner, but they would not be required to keep confidential any information. A transaction broker can locate qualified buyers for a seller or suitable properties for a buyer. They can then work with both parties in an effort to arrive at an agreement on the sale or rental of real estate and perform tasks to facilitate the closing of a transaction.

A transaction broker primarily serves as a manager of the transaction, communicating information between the parties to assist them in arriving at a mutually acceptable agreement and in closing the transaction, but cannot advise or counsel either party on how to gain an advantage at the expense of the other party. Owners considering working with transaction brokers are advised to sign a written agreement with that firm which clearly states what services that firm will perform and how it will be paid. In addition, any transaction brokerage agreement with a seller or landlord should specifically state whether a notice on the property to be rented or sold will or will not be circulated in any or all Multiple Listing System(s) of which that firm is a member.

YOU MAY OBTAIN LEGAL ADVICE ABOUT THESE BUSINESS RELATIONSHIPS FROM YOUR OWN LAWYER.

THIS STATEMENT IS NOT A CONTRACT AND IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

ACKNOWLEDGEMENT OF RECEIPT OF CONSUMER INFORMATION STATEMENT (CIS)

### FOR SELLERS AND LANDLORDS

"By signing this Consumer Information Statement, I acknowledge that I received this Statement from \_\_\_\_\_ (Name of Brokerage Firm) prior to discussing my motivation to sell or lease or my desired selling or leasing price with one of its representatives."

Signed \_\_\_\_\_

### FOR BUYERS AND TENANTS

"By signing this Consumer Information Statement, I acknowledge that I received this Statement from \_\_\_\_\_ (Name of Brokerage Firm) prior to discussing my motivation or financial ability to buy or lease with one of its representatives."

Signed \_\_\_\_\_

### DECLARATION OF BUSINESS RELATIONSHIP

I, \_\_\_\_\_  
(name of licensee)  
as an authorized representative of \_\_\_\_\_

(name of brokerage firm)  
intend, as of this time, to work with you as a:  
(indicate one of the following)

- ☐ seller's agent only
- ☐ buyer's agent only
- ☐ seller's agent and disclosed dual agent if the opportunity arises
- ☐ buyer's agent and disclosed dual agent if the opportunity arises
- ☐ transaction broker only
- ☐ seller's agent on properties on which this firm is acting as the seller's agent and transaction broker on other properties

DATE \_\_\_\_\_

5/98 CIS (A)

## Consumer Information Statement

# Private Standards



- Standard of Practice 3-4
- REALTORS<sup>®</sup>, acting as listing brokers, have an affirmative obligation to disclose the existence of dual or variable rate commission arrangements (i.e., listings where one amount of commission is payable if the listing broker's firm is the procuring cause of sale/lease and a different amount of commission is payable if the sale/lease results through the efforts of the seller/ landlord or a cooperating broker). The listing broker shall, as soon as practical, disclose the existence of such arrangements to potential cooperating brokers and shall, in response to inquiries from cooperating brokers, disclose the differential that would result in a cooperative transaction or in a sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease. (Amended 1/02)
- Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS<sup>®</sup>  
*Effective January 1, 2012*



# Acting as a Principal



- NJSA 45:15-17. Investigation of actions of licensees; suspension or revocation of licenses and causes therefor.
- ...
- The commission may place on probation, suspend for a period less than the unexpired portion of the license period, or may revoke any license issued under the provisions of R.S.45:15-1 et seq., or the right of licensure when such person is no longer the holder of a license at the time of hearing, or may impose, in addition or as an alternative to such probation, revocation or suspension, a penalty of not more than \$5,000 for the first violation, and a penalty of not more than \$10,000 for any subsequent violation, which penalty shall be sued for and recovered by and in the name of the commission and shall be collected and enforced by summary proceedings pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), where the licensee or any person, in performing or attempting to perform any of the acts mentioned herein, is deemed to be guilty of:
- ...
- p. Selling property in the ownership of which he is interested in any manner whatsoever, unless he first discloses to the purchaser in the contract of sale his interest therein and his status as a real estate broker, broker-salesperson, salesperson or referral agent; or

# Acting as a Principal



- Standard of Practice 3-7

When seeking information from another REALTOR® concerning property under a management or listing agreement, REALTORS® shall disclose their REALTOR® status and whether their interest is personal or on behalf of a client and, if on behalf of a client, their relationship with the client. (Amended 1/11)

- Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS® *Effective January 1, 2012*

# Acting as a Principal



- Article 5  
REALTORS® shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.
- Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®  
*Effective January 1, 2012*

# Spiffs



- Article 6  
REALTORS® shall not accept any commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent.
- When recommending real estate products or services (e.g., homeowner's insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS® shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTOR® or REALTOR®'s firm may receive as a direct result of such recommendation. (Amended 1/99)
  - Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®  
*Effective January 1, 2012*
- See also, NJAC § 11:5-7.2 Prohibition against kickbacks for related business referrals

# Interests



- Standard of Practice 6-1  
REALTORS® shall not recommend or suggest to a client or a customer the use of services of another organization or business entity in which they have a direct interest without disclosing such interest at the time of the recommendation or suggestion. (Amended 5/88)
  - Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®  
*Effective January 1, 2012*

# Rebates



- NJSA 45:15-16a. Rebate paid by broker to purchaser.
  - 2. a. Any rebate paid by a broker to a purchaser of residential real property pursuant to paragraph (2) of subsection k. of R.S.45:15-17 shall be:
    - (1) Calculated after the purchaser negotiates the rebate commission rate;
    - (2) Memorialized in a written document, electronic document or a buyer agency agreement provided by the broker to the purchaser at the outset of the broker relationship, which document or agreement shall provide the terms of any rebate credited or paid by the broker to the purchaser; and
    - (3) Disclosed to all parties involved in the transaction, including, but not limited to, any mortgage lender.
- ...

# Rebates



- NJSA 45:15-16b. Advertisement for rebate.

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

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

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

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

L.2009, c.273, s.3.

# Consumer Fraud Act



- In relevant part, the Consumer Fraud Act declares as an unlawful practice the knowing "concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any ... real estate." N.J.S.A. 56:8-2.



# Off-Site Conditions



- Strawn v. Canuso 140 N.J. 43 (1995) 657 A.2d 420 established an affirmative duty for professional sellers of residential land to inform buyers about material off-site conditions that affect the property value.
- Three restrictions limiting duty to disclose off-site conditions:
  - the duty only applies to professional sellers and commercial brokers of residential housing
  - actual knowledge of the condition (known or should have known)
  - only need to disclose matters not reasonably ascertainable by the buyer

# Off-Site Conditions



- In Strawn, Justice O'Hern, writing for a unanimous Court, held that pursuant to the Consumer Fraud Act and corollary common law principles, the defendants were subject to a duty to disclose off-site conditions affecting the value of the properties:
- [A] builder-developer of residential real estate or a broker representing it is not only liable to a purchaser for affirmative and intentional misrepresentation, but is also liable for nondisclosure of off-site physical conditions known to it and unknown and not readily observable by the buyer if the existence of those conditions is of sufficient materiality to affect the habitability, use, or enjoyment of the property and, therefore, render the property substantially less desirable or valuable to the objectively reasonable buyer.
- [Id. at 65, 657 A.2d 420.]

# Off-Site Conditions

- Five months after the New Jersey Supreme Court decided Strawn, the Legislature enacted the New Residential Real Estate Off-Site Conditions Disclosure Act (“Disclosure Act”), N.J.S.A. 46:3C-1 to -12, L. 1995, c. 253 (eff.Sept.12, 1995).
- The legislative history demonstrates that the Disclosure Act was passed in order to overturn Strawn.



# Off-Site Conditions

- Even still, the disclosure scheme created in Sections 6, 8 and 9 of the Disclosure Act reaffirms the basic principle of Strawn—that home purchasers are entitled to disclosure of information respecting off-site conditions that may affect the value of their properties.
- Section 2 of the Disclosure Act, entitled “Legislative findings and declaration,” provides:

# Off-Site Conditions



- The Legislature finds and declares that the purchase of a residence involves a substantial portion of the average household's net worth, and the decision to purchase a particular residence requires consideration of a wide range of factors concerning the area in which the residential real estate is located; that the professionals who engage in the business of selling newly-constructed residential real estate can facilitate prudent decision-making with respect to the purchase of residences by advising purchasers of the availability of information concerning factors which can reasonably be determined to exist and which may affect the value of the residence; that the due diligence responsibilities of purchasers and the disclosure duties of sellers of residential real estate are mutually interdependent and, therefore, ambiguity in the definition and assignment of the sellers' disclosure duties may inadvertently diminish the due diligence efforts of purchasers, or unnecessarily increase the costs of residential real estate transactions; and that there currently exists ambiguity concerning the disclosure duties of the sellers of residential real estate.
- The Legislature therefore determines that it is in the public interest to define the entirety of the disclosure duties of the sellers of newly-constructed residential real estate and to create a public repository of relevant off-site conditions which may be accessed by purchasers of such real estate.
- [N.J.S.A. 46:3C-2 (emphasis added).]

# Off-Site Conditions



- The Act creates a disclosure scheme requiring persons who own, lease or maintain potentially dangerous off-site conditions as enumerated by the Act to provide the municipal clerk of each municipality in which the conditions exist a list of those conditions and their location, and to update the list annually. N.J.S.A. 46:3C-5.
- In addition, the Commissioner of the Department of Environmental Protection is required to provide all municipal clerks with lists of off-site conditions that are located within their respective jurisdictions. N.J.S.A. 46:3C-6.

# Off-Site Conditions



- The Act requires the seller of new real estate construction to provide the prospective purchaser with a notice, as prescribed by the Act, of the availability of the lists of off-site conditions in the municipal clerk's office and of the buyer's right to cancel the contract within five days after its execution. N.J.S.A. 46:3C-8 to -9.

# Off-Site Conditions



- “Off-site conditions” refers to the following conditions as set forth in the New Residential Construction Off-Site Conditions Disclosure Act, N.J.S.A. 46:3C-3 (P.L. 1995 c.253), or as amended:
- (1) The latest Department of Environmental Protection listing of sites included on the National Priorities List pursuant to the “Comprehensive Environmental Response, Compensation and Liability Act of 1980,” 42 U.S.C. §§ 9601 et seq.;
- (2) The latest sites known to and confirmed by the Department of Environmental Protection and included on the New Jersey master list of known hazardous discharge sites, prepared pursuant to P.L. 1982, c.202 (N.J.S.A. 58:10-23.15 et seq.);
- (3) Overhead electric utility transmission lines conducting 240,000 volts or more;
- (4) Electrical transformer substations;
- (5) Underground gas transmission lines as defined in 49 C.F.R. 192.3;
- (6) Sewer pump stations of a capacity equal to, or in excess of 0.5 million gallons per day and sewer trunk lines in excess of 15 inches in diameter;
- (7) Sanitary landfill facilities as defined pursuant to section 3 of P.L. 1970, c.39 (N.J.S.A. 13:1E-3);
- (8) Public wastewater treatment facilities; and
- (9) Airport safety zones as defined pursuant to section 3 of P.L. 1983, c.260 (N.J.S.A. 6:1-82).



# Off-Site Conditions



- Sections 2, 10(a) and 10(b) of the Disclosure Act make clear that satisfaction of the disclosure responsibilities specified by the Act “shall be deemed to have satisfied fully the seller's disclosure duties pursuant to New Jersey law.” N.J.S.A. 46:3C-10(a).
- Nevertheless, the Act preserves off-site disclosure responsibilities contained in two specific acts - the Planned Real Estate Development Full Disclosure Act (PREDFDA), N.J.S.A. 45:22A-21 to -56, and the Air Safety and Zoning Act of 1983, N.J.S.A. 6:1-80 to -88 - in addition to “any other statutory provision.” N.J.S.A. 46:3C-10(d).

# Off-Site Conditions



- Distinguish between newly constructed residential real estate and other than newly constructed.
  - “Newly constructed” means any dwelling unit not previously occupied, excluding dwelling units constructed solely for lease and units governed by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §§ 5402 et seq. NJAC 11:5-6.4.c.3.i.
  - New Residential Construction Off-Site Conditions Disclosure Act, N.J.S.A. 46:3C-3 applies only to “newly constructed”

# Off-Site Conditions



- **Newly constructed residential real estate**

With respect to off-site conditions which may materially affect the value of the residential real estate, in all sales contracts involving newly constructed residential real estate they prepare, licensees shall include a statement as set forth below. By including this statement in a contract of sale prepared by the licensee, the licensee shall be deemed to have fulfilled his or her disclosure obligations under (c) above with respect to such off-site conditions. The statement shall be in print as large as the predominant size print in the document and shall read as follows:

**"NOTIFICATION REGARDING OFF-SITE CONDITIONS**

Pursuant to the New Residential Construction Off-Site Conditions Disclosure Act, P.L. 1995, c.253 (C.46:3C-1 et seq.), sellers of newly constructed residential real estate are required to notify purchasers of the availability of lists disclosing the existence and location of off-site conditions which may affect the value of the residential real estate being sold. The lists are to be made available by the municipal clerk of the municipality within which the residential real estate is located and in other municipalities which are within one-half mile of the residential real estate. The address(es) and telephone number(s) of the municipalities relevant to this project and the appropriate municipal offices where the lists are made available are listed below. Purchasers are encouraged to exercise all due diligence in order to obtain any additional or more recent information that they believe may be relevant to their decision to purchase the residential real estate. Purchasers are also encouraged to undertake an independent examination of the general area within which the residential real estate is located in order to become familiar with any and all conditions which may affect the value of the residential real estate.

The purchaser has five (5) business days from the date the contract is executed by the purchaser and the seller to send notice of cancellation of the contract to the seller. The notice of cancellation shall be sent by certified mail. The cancellation will be effective upon the notice of cancellation being mailed. If the purchaser does not send a notice of cancellation to the seller in the time or manner described above, the purchaser will lose the right to cancel the contract as provided in this notice.

Municipality \_\_\_\_\_

Address \_\_\_\_\_

Telephone Number \_\_\_\_\_"

The statement shall either be included in the text of the contract itself or attached to the contract as an Addendum.

- ***NJAC § 11:5-6.4 Obligations of licensees to public and to each other***

# Off-Site Conditions



- **Residential real estate other than newly constructed**

2. In all residential real estate sale contracts they prepare except contracts for newly constructed residential real estate, licensees shall include a statement as set forth below. The statement shall be in print as large as the predominant size print in the document and shall read as follows:

**“NOTICE ON OFF-SITE CONDITIONS**

Pursuant to the New Residential Construction Off-site Conditions Disclosure Act, P.L. 1995, c.253 the clerks of municipalities in New Jersey maintain lists of off-site conditions which may affect the value of residential properties in the vicinity of the off-site condition. Purchasers may examine the lists and are encouraged to independently investigate the area surrounding this property in order to become familiar with any off-site conditions which may affect the value of the property. In cases where a property is located near the border of a municipality, purchasers may wish to also examine the list maintained by the neighboring municipality."

The statement shall either be included in the text of the contract itself or attached to the contract as an Addendum.

*NJAC § 11:5-6.4    Obligations of licensees to public and to each other*

# Off-Site Conditions



- Residential real estate other than newly constructed :
- i. Licensees who possess actual knowledge of an off-site condition which may materially affect the value of residential real estate **other than** newly constructed properties shall disclose that information to prospective purchasers of such residential real estate affected by the condition. That disclosure shall be made prior to the signing of the contract by a prospective purchaser.
- ii. In cases where the licensee did not possess actual knowledge of the presence of an off-site condition which might materially affect the value of the residential real estate, by virtue of including the foregoing statement in a contract of sale prepared by him or her, the licensee shall be deemed to have fulfilled his or her disclosure obligations under (c) above with respect to such off-site conditions.

*NJAC § 11:5-6.4    Obligations of licensees to public and to each other*

# Consumer Fraud Act



- In Nobrega v. Edison Glen Associates, 167 N.J. 520, 772 A. 2d 368 (N.J., 2001), the NJ Supreme Court held that the New Residential Real Estate Off-Site Conditions Disclosure Act ("Disclosure Act" or "Act"), N.J.S.A. 46:3C-1 to -12, precludes plaintiffs from suing sellers and developers of real estate under the Consumer Fraud Act for failure to disclose off-site conditions, provided that the sellers and developers satisfy their disclosure obligations under Section 8 and 9 of the Act.
  - ✦ i.e., notice, as prescribed by the Act, of the availability of the lists of off-site conditions in the municipal clerk's office and of the buyer's right to cancel the contract within five days after its execution.

# Off-Site Conditions



- ...(e) In all contracts and leases on residential real estate they prepare, licensees shall include the following statement in print as large as the predominant size print in the document:
  - MEGAN'S LAW STATEMENT—Under New Jersey law, the county prosecutor determines whether and how to provide notice of the presence of convicted sex offenders in an area.
  - In their professional capacity, real estate licensees are not entitled to notification by the county prosecutor under Megan's Law and are unable to obtain such information for you. Upon closing the county prosecutor may be contacted for such further information as may be disclosable to you.
    - ✦ *NJ Admin Code 11:5-6.4 Obligations of licensees to public and to each other*

# Real Estate Sales Full Disclosure Act



- Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq. regulates the marketing and sale in New Jersey of out-of-state properties such as time-shares, land subdivisions, condominiums, cooperatives, retirement communities
- 45:15-16.30. Conditions for disposition of subdivided lands  
Unless the subdivided lands or the transaction is exempt pursuant to section 6 of this act:
  - a. No person may offer, dispose or participate in this State in the disposition of subdivided lands or of any interest in subdivided lands unless in accordance with the provisions of this act.
  - b. No person may dispose or participate in the disposition of any interest in subdivided lands unless a current public offering statement, disclosing fully all information required in section 12 of this act, is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement prior to the disposition.
- The public offering statement must receive prior approval by the NJ Real Estate Commission, who will examine it to confirm that it provides information concerning improvements, including hospitals, health and recreational facilities of any kind, streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities and customary utilities, a seven day right of rescission, estimated completion dates for improvements, a statement of all existing taxes and existing or proposed special taxes or assessments which affect the lands, fees for services and amenities, proximity to hospitals, schools, fire and police, the type of title and ownership interest being offered, as well as any hazards, risks or nuisances in or around the subdivision. N.J.S.A. 45:15-16.38



# Planned Real Estate Full Disclosure Act



- Planned Real Estate Full Disclosure Act (N.J.S.A. 45:22A-21 et seq.) became effective November 22, 1978
- *N.J.A.C. 5:26*: ... "Planned Real Estate Development" or "development" means any real property situated within this State, whether contiguous or not, which consists of, or will consist of, separately owned areas, irrespective of form, be it lots, parcels, units or interests, and which are offered or disposed of pursuant to a common promotional plan, and providing for common or shared elements or interests in real property. This definition shall include, but not be limited to, planned unit development" and "planned unit residential development" as defined in the Municipal Land Use Law, P.L. 1975, c. 291 (*N.J.S.A. 40:55D-6*). This definition shall not include any form of timesharing subject to the New Jersey Real Estate Timeshare Act, P.L. 2006, c. 63.
- NJAC § 5:26-4.1 Public offering statement required
- (a) No developer may dispose of any lot, parcel, unit or interest in a planned real estate development or retirement community unless said developer delivers to the purchaser a current public offering statement on or before the contract date. 1. The Public Offering Statement for new construction applications may be prepared in two parts. Part I shall be in narrative form and shall consist of the information required by N.J.A.C. 5:26-4.2(a)1 through 6, 7i, 8, 9i, 10, 12, 14 and 15 through 23. Part II shall consist of the documents required by N.J.A.C. 5:26-4.2(a)7ii through 9ii, 11, 13 and 22.

# Retirement Community Full Disclosure Act



- Retirement Community Full Disclosure Act, P.L. 1969, c.215 (N.J.S.A. 45:22A-1 et seq.)
- 45:22A-5. Necessity of registration; public offering statement  
Unless the retirement subdivisions or community lands or the transaction is exempt by section 4:
  - (a) No person may offer or dispose of any lot or unit in any retirement subdivision or community located in this State, nor offer or dispose in this State of any lot or unit in any retirement subdivision or community located without this State prior to the time such division or community is registered in the manner prescribed by this act;
  - (b) No person may dispose of any lot or unit in any retirement subdivision or community unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity, under no circumstances less than 48 hours, to examine the public offering statement prior to the disposition.

# Real Estate Timeshare Act



- New Jersey Real Estate Timeshare Act, NJSA 45:15-16.50 et. seq.
- 45:15-16.59. Public offering, disclosure statements; requirements.
  - 10. a. A developer shall: (1) prepare a public offering statement; (2) provide the statement to each purchaser of a timeshare interest in any timeshare plan at the time of purchase; and (3) fully and accurately disclose those facts concerning the timeshare developer and timeshare plan that are required by this act or by regulations promulgated by the commission.
- ... (Voluminous disclosure requirements)

# Interstate Land Sales Full Disclosure Act



- "Interstate Land Sales Full Disclosure Act," Pub.L.90-448 (15 U.S.C. § 1701 et seq.) administered by the Office of Interstate Land Sales Registration, in the Department of Housing and Urban Development
- Applies to the sale or lease of lots in a subdivision, and “lot” includes condominiums, cooperative units and campsites per the HUD Guidelines for Exemptions
- Contains provisions for the prevention of fraud and misrepresentation in interstate land sales
- Requires a Property Report , i.e., a narrative disclosure, delivered to prospective purchasers or lessees before signing, which includes detailed information about the community, environment, development plans, title, roads, financing, climate, and land use restrictions

# Air Safety and Zoning Act of 1983

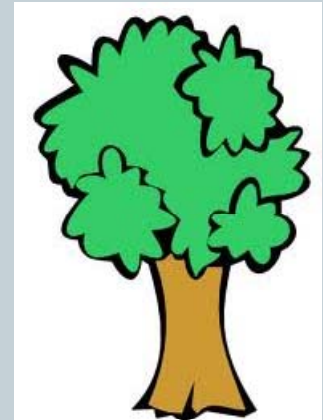


- 6:1-85.2. Sellers' notice to buyers  
12. Any person who sells or transfers a property in an airport safety zone delineated under the "Air Safety and Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.) and appearing in a municipal map used for tax purposes pursuant to subsection b. of section 11 of this 1991 amendatory and supplementary act, shall provide notice to a prospective buyer that the property is located in an airport safety zone prior to the signing of a contract of sale. Failure to provide notice required by this section may result in the suspension or revocation of the person's license to engage in real estate sales in this State or other appropriate disciplinary action by the New Jersey Real Estate Commission in the case of a person subject to the jurisdiction of the commission.

L.1991,c.445,s.12.

# Air Safety and Zoning Act of 1983

- NJSA 6:1-82.g. "Tree" means an object of natural vegetative growth.



# Break - Ten Minutes



# On-Site Conditions



- Administrative Regulations
  - Licensees shall disclose all information material to the physical condition of any property which they know or which a reasonable effort to ascertain such information would have revealed to their client or principal **and when appropriate to any other party to a transaction**. Licensees shall also disclose any actual or potential conflicts of interest which the licensee may reasonably anticipate. NJAC 11:5-6.4
- Common Law
  - Seller of residential real estate has a duty to disclose any and all latent defects regarding the property.
- Concealed / Latent Defects (You'll Know Them When You See Them)
  - A latent condition is a condition that is not observable, i.e, concealed.
  - By contrast, apparent defects are flaws that should be noticed by a reasonably observant individual, i.e., "readily ascertainable."
- Consumer Fraud – N.J.S.A. 56:8-19.1



# On-Site Conditions



- Consumer Fraud – N.J.S.A. 56:8-19.1
- **56:8-19.1. Exemption from consumer fraud law, certain real estate licensees, circumstances.**
  1. Notwithstanding any provision of P.L.1960, c.39 (C.56:8-1 et seq.) to the contrary, there shall be no right of recovery of punitive damages, attorney fees, or both, under section 7 of P.L.1971, c.247 (C.56:8-19), against a real estate broker, broker-salesperson or salesperson licensed under R.S.45:15-1 et seq. for the communication of any false, misleading or deceptive information provided to the real estate broker, broker-salesperson or salesperson, by or on behalf of the seller of real estate located in New Jersey, if the real estate broker, broker-salesperson or salesperson demonstrates that he:
    - a. Had no actual knowledge of the false, misleading or deceptive character of the information; and
    - b. Made a reasonable and diligent inquiry to ascertain whether the information is of a false, misleading or deceptive character. For purposes of this section, communications by a real estate broker, broker-salesperson or salesperson which shall be deemed to satisfy the requirements of a "reasonable and diligent inquiry" include, but shall not be limited to, communications which disclose information:
      - (1) provided in a report or upon a representation by a person, licensed or certified by the State of New Jersey, including, but not limited to, an appraiser, home inspector, plumber or electrical contractor, or an unlicensed home inspector until December 30, 2005, of a particular physical condition pertaining to the real estate derived from inspection of the real estate by that person;
- (cont'd)

# On-Site Conditions



- Consumer Fraud – N.J.S.A. 56:8-19.1 (cont'd)
- **56:8-19.1. Exemption from consumer fraud law, certain real estate licensees, circumstances.**

...

(2) provided in a report or upon a representation by any governmental official or employee, if the particular information of a physical condition is likely to be within the knowledge of that governmental official or employee; or

(3) that the real estate broker, broker-salesperson or salesperson obtained from the seller in a property condition disclosure statement, which form shall comply with regulations promulgated by the director in consultation with the New Jersey Real Estate Commission, provided that the real estate broker, broker-salesperson or salesperson informed the buyer that the seller is the source of the information and that, prior to making that communication to the buyer, the real estate broker, broker-salesperson or salesperson visually inspected the property with reasonable diligence to ascertain the accuracy of the information disclosed by the seller.

Nothing in this section shall be interpreted to affect the obligations of a real estate broker, broker-salesperson or salesperson pursuant to the "New Residential Construction Off-Site Conditions Disclosure Act," P.L.1995, c.253 (C.46:3C-1 et seq.), or any other law or regulation.

L.1999,c.76,s.1; amended 2004, c.18, s.2.

# On-Site Conditions



- **NJAC 13:45A-29.1(c)** A real estate licensee shall not be subject to punitive damages, attorneys fees, or both under N.J.S.A. 56:8-19 for the communication of any false, misleading or deceptive information to a buyer which had been provided to the real estate licensee by or on behalf of the seller of real estate located in the State of New Jersey if the real estate licensee:
  - 1. Had no actual knowledge of the false, misleading or deceptive character of the information; and
  - 2. Made a reasonable and diligent inquiry to ascertain whether the information is of a false, misleading or deceptive character. A real estate licensee will have been deemed to have made a "reasonable and diligent inquiry" in circumstances including, but not limited to, those in which the false information communicated to the buyer can be shown to have been:
    - i. Provided in a report or upon a representation by a person, licensed or certified by the State of New Jersey, including, but not limited to, an appraiser, engineer, architect, home inspector, plumber or electrical contractor, of a particular physical condition pertaining to the real estate derived from inspection of the real estate by that person;
    - ii. Provided in a report or upon a representation by any governmental official or employee, if the particular information of a physical condition is likely to be within the knowledge of that governmental official or employee; or
    - iii. Obtained from the seller in a property condition disclosure statement as set forth in (d) below, so long as the buyer is informed by the real estate licensee that the seller is the source of the information, and that prior to advising the buyer that the seller is the source of information, the real estate licensee visually inspected the property with reasonable diligence to ascertain the accuracy of the information disclosed by the seller.
- (d) The property condition disclosure statement shall be in the following form and contain, at a minimum, the following information. Additional information may be requested if, in the opinion of the real estate licensee, and under the facts and circumstances of a particular real estate transaction, it would be appropriate to do so.

# Seller's Disclosure Statement

**NEW JERSEY ASSOCIATION OF REALTORS® STANDARD FORM OF  
SELLER'S PROPERTY CONDITION DISCLOSURE STATEMENT**

Property Address: \_\_\_\_\_

Seller: \_\_\_\_\_

The purpose of this Disclosure Statement is to disclose, to the best of Seller's knowledge, the condition of the Property, as of the date set forth below. The Seller acknowledges that he/she is under an obligation to disclose any known material defects in the Property even if not addressed in this printed form. Seller alone is the source of all information contained in this form. All prospective buyers of the Property are cautioned to carefully inspect the Property and to carefully inspect the surrounding area for any off-site conditions that may adversely affect the Property. Moreover, this Disclosure Statement is not intended to be a substitute for prospective buyer's hiring of qualified experts to inspect the Property.

If your property consists of multiple units, systems and/or features, please provide complete answers on all such units, systems and/or features even if the question is phrased in the singular, such as if a duplex has multiple furnaces, water heaters and fireplaces.

**OCCUPANCY**

Yes No Unknown

1. Age of House, if known \_\_\_\_\_

2. Does the Seller currently occupy this property? \_\_\_\_\_

3. If not how long has it been since Seller occupied the property? \_\_\_\_\_

3a. Do you have in your possession the original or a copy of the deed evidencing your ownership of the property? If "yes," please attach a copy of it to this form \_\_\_\_\_

**ROOF**

Yes No Unknown

4. Age of roof \_\_\_\_\_

5. Has roof been replaced or repaired since seller bought the property? \_\_\_\_\_

6. Are you aware of any roof leaks? \_\_\_\_\_

7. Explain any "yes" answers that you give in this section: \_\_\_\_\_

**ATTICS, BASEMENTS AND CRAWL SPACES** (Complete only if applicable)

Yes No Unknown

8. Does the property have one or more sump pumps? \_\_\_\_\_

8a. Are there any problems with the operation of any sump pump? \_\_\_\_\_

9. Are you aware of any water leakage, accumulation, or dampness within the basement or crawl spaces or any other areas within any of the structures on the property? \_\_\_\_\_

9a. Are you aware of the presence of any mold or similar natural substance within the basement or crawl spaces or any other areas within any of the structures on the property? \_\_\_\_\_

10. Are you aware of any repairs or other attempts to control any water or dampness problem in the basement or crawlspace? If "yes," describe the location, nature and date of the repairs: \_\_\_\_\_

11. Are you aware of any cracks or bulges in the floor or foundation walls? If "yes," specify location: \_\_\_\_\_

12. Are you aware of any restrictions on how the attic may be used as a result of the manner in which the attic or roof was constructed? \_\_\_\_\_

13. Is the attic or house ventilated by: ☐ a whole house fan? ☐ an attic fan? \_\_\_\_\_

13a. Are you aware of any problems with the operation of such a fan? \_\_\_\_\_

14. In what manner is access to the attic space provided? ☐ staircase ☐ pull down stairs ☐ crawl space with aid of ladder or other device ☐ other \_\_\_\_\_

15. Explain any "yes" answers that you give in this section: \_\_\_\_\_

**TERMITES/WOOD DESTROYING INSECTS, DRY ROT, PESTS**

Yes No Unknown

16. Are you aware of any termites/wood destroying insects, dry rot, pests affecting the property? \_\_\_\_\_

17. Are you aware of any damage to the property caused by termites/wood destroying insects, dry rot, or pests? \_\_\_\_\_

18. If "yes," has work been performed to repair the damage? \_\_\_\_\_

19. Is your property currently under contract by a licensed pest control company? If "yes," state the name and address of licensed pest control company: \_\_\_\_\_

20. Are you aware of any termite/pest control inspections or treatments for the property in the past? \_\_\_\_\_

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21. Explain any "yes" answer that you give in this section: \_\_\_\_\_

**STRUCTURAL ITEMS**

Yes No

22. Are you aware of any movement, shifting, or other problems with walls, floors or foundations including any restrictions on how any space, other than the attic or roof, may be used as a result of the manner in which it was constructed? \_\_\_\_\_

23. Are you aware if the property or any of the structures on it have ever been damaged by fire, smoke, wind or flood? \_\_\_\_\_

24. Are you aware of any fire retardant plywood used in the construction? \_\_\_\_\_

25. Are you aware of any current or past problems with driveways, walkways, patios, sinkholes, or retaining walls on the property? \_\_\_\_\_

26. Are you aware of any present or past efforts made to repair any problems with the items in this section? \_\_\_\_\_

27. Explain any "yes" answers that you give in this section. Please describe the location and nature of \_\_\_\_\_

**ADDITIONS/REMODELS**

Yes No Unknown

28. Are you aware of any additions, structural changes or other alterations to the structures on the property made by any present or past owners? \_\_\_\_\_

29. Were the proper building permits and approvals obtained? Explain any "yes" answers you give in this section: \_\_\_\_\_

**PLUMBING, WATER AND SEWAGE**

Yes No Unknown

30. What is the source of your drinking water? ☐ Public ☐ Community System ☐ Well on property ☐ Other (explain) \_\_\_\_\_

31. If your drinking water supply is not public have you performed any tests on the water? If so when? \_\_\_\_\_

32. Does the wastewater from any clothes washer, dishwasher, or other appliance discharge to any location other than the sewer, septic, or other system that services the rest of the property? Attach a copy of or describe the results. \_\_\_\_\_

33. When was well installed? \_\_\_\_\_

34. Do you have a softener, filter, or other water purification system? ☐ Leased ☐ Owned \_\_\_\_\_

35. What is the type of sewage system? ☐ Public Sewer ☐ Private Sewer ☐ Septic System ☐ Cesspool ☐ Other (explain) \_\_\_\_\_

36. If you answered "septic system," have you ever had the system inspected to confirm that it is a true septic system and not a cesspool? \_\_\_\_\_

37. If Septic System, when was it installed? \_\_\_\_\_

38. When was the Septic System or Cesspool last cleaned and/or serviced? \_\_\_\_\_

39. Are you aware of any abandoned Septic Systems or Cesspools on your property? \_\_\_\_\_

39a. If "yes," is the closure in accordance with the municipality's ordinance? (explain) \_\_\_\_\_

40. Are you aware of any leaks, backups, or other problems relating to any of the plumbing systems and fixtures (including pipes, sinks, tubs and showers), or of any other water or sewage related problems? If "yes," explain: \_\_\_\_\_

41. Are you aware of any shut off, disconnected, or abandoned wells, underground water or sewage tanks, or dry wells on the property? \_\_\_\_\_

42. Is either the private water or sewage system shared? If "yes," explain: \_\_\_\_\_

43. Water Heater: ☐ Electric ☐ Fuel Oil ☐ Gas \_\_\_\_\_

43a. Age of Water Heater \_\_\_\_\_

44. Are you aware of any problems with the water heater? \_\_\_\_\_

44. Explain any "yes" answers that you give in this section: \_\_\_\_\_

**HEATING AND AIR CONDITIONING**

Yes No Unknown

45. Type of air conditioning: ☐ Central one zone ☐ Central multiple zone ☐ Wall/Window Unit ☐ None \_\_\_\_\_

46. List any areas of the house that are not air conditioned: \_\_\_\_\_

47. What is the age of Air Conditioning System \_\_\_\_\_

48. Type of heat: ☐ Electric ☐ Fuel Oil ☐ Natural Gas ☐ Propane ☐ Unheated ☐ Other \_\_\_\_\_

49. What is the type of heating system? (for example, forced air, hot water or base board, radiator, steam heat) \_\_\_\_\_

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# Seller's Disclosure Statement

305 If you responded "yes," answer the following questions. If you responded "no," proceed to the next section.  
306  
307 Yes No Unknown  
308 [ ] [ ] 99. Are you aware if the property has been tested for radon gas? (Attach a copy of each test  
309 report if available.)  
310 [ ] [ ] 100. Are you aware if the property has been treated in an effort to mitigate the presence of radon  
311 gas? (If "yes," attach a copy of any evidence of such mitigation or treatment.)  
312 [ ] [ ] 101. Is radon remediation equipment now present in the property?  
313 [ ] [ ] 101a. If "yes," is such equipment in good working order?  
314  
315  
316 **MAJOR APPLIANCES AND OTHER ITEMS**  
317 The terms of any final contract executed by the seller shall be controlling as to what appliances or other items, if any, shall  
318 be included in the sale of the property. Which of the following items are present in the property? (For items that are not present,  
319 indicate "not applicable.")  
320  
321 Yes No Unknown N/A  
322 [ ] [ ] [ ] 102. Electric Garage Door Opener  
323 [ ] [ ] [ ] 102a. If "yes," are they reversible? Number of Transmitters \_\_\_\_\_  
324 [ ] [ ] [ ] 103. Smoke Detectors  
325 ☐ Battery ☐ Electric ☐ Both How many \_\_\_\_\_  
326 ☐ Carbon Monoxide Detectors How many \_\_\_\_\_  
327 Location \_\_\_\_\_  
328 [ ] [ ] [ ] 104. With regard to the above items, are you aware that any item is not in working  
329 order?  
330 104a. If "yes," identify each item that is not in working order or defective and explain the  
331 nature of the problem:  
332 \_\_\_\_\_  
333 \_\_\_\_\_  
334 \_\_\_\_\_  
335 [ ] [ ] [ ] 105. ☐ In-ground pool ☐ Above-ground pool ☐ Pool Heater ☐ Spa/Hot Tub  
336 [ ] [ ] [ ] 105a. Were proper permits and approvals obtained?  
337 [ ] [ ] [ ] 105b. Are you aware of any leaks or other defects with the filter or the walls or other  
338 structural or mechanical components of the pool or spa/hot tub?  
339 [ ] [ ] [ ] 105c. If an in-ground pool, are you aware of any water seeping behind the walls of the  
340 pool?  
341 106. Indicate which of the following may be included in the sale? (Indicate Y for yes N  
342 for no.)  
343 ☐ Refrigerator  
344 ☐ Range  
345 ☐ Microwave Oven  
346 ☐ Dishwasher  
347 ☐ Trash Compactor  
348 ☐ Garbage Disposal  
349 ☐ In-Ground Sprinkler System  
350 ☐ Central Vacuum System  
351 ☐ Security System  
352 ☐ Washer  
353 ☐ Dryer  
354 ☐ Intercom  
355 ☐ Other  
356 [ ] [ ] 107. Of those that may be included, is each in working order? If "no," identify each item  
357 not in working order, explain the nature of the problem:  
358 \_\_\_\_\_  
359 \_\_\_\_\_  
360 \_\_\_\_\_  
361  
362 **ACKNOWLEDGMENT OF SELLER**  
363 The undersigned Seller affirms that the information set forth in this Disclosure Statement is accurate and complete to the  
364 best of Seller's knowledge, but is not a warranty as to the condition of the Property. Seller hereby authorizes the real estate  
365 brokerage firm representing or assisting the seller to provide this Disclosure Statement to all prospective buyers of the  
366 Property, and to other real estate agents. Seller alone is the source of all information contained in this statement. If the Seller  
367 relied upon any credible representations of another, the Seller should state the name(s) of the person(s) who made the  
368 representation(s) and describe the information that was relied upon.  
369 \_\_\_\_\_  
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381 \_\_\_\_\_

382 **EXECUTOR, ADMINISTRATOR, TRUSTEE**  
383 (If applicable) The undersigned has never occupied the property and lacks the personal knowledge necessary to complete  
384 this Disclosure Statement.  
385 \_\_\_\_\_  
386 \_\_\_\_\_  
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397 **RECEIPT AND ACKNOWLEDGMENT BY PROSPECTIVE BUYER**  
398 The undersigned Prospective Buyer acknowledges receipt of this Disclosure Statement prior to signing a Contract of Sale  
399 pertaining to this Property. Prospective Buyer acknowledges that this Disclosure Statement is not a warranty by Seller and that  
400 it is Prospective Buyer's responsibility to satisfy himself or herself as to the condition of the Property. Prospective Buyer  
401 acknowledges that the Property may be inspected by qualified professionals, at Prospective Buyer's expense, to determine the  
402 actual condition of the Property. Prospective Buyer further acknowledges that this form is intended to provide information  
403 relating to the condition of the land, structures, major systems and amenities, if any, included in the sale. This form does not  
404 address local conditions which may affect a purchaser's use and enjoyment of the property such as noise, odors, traffic volume,  
405 etc. Prospective Buyer acknowledges that they may independently investigate such local conditions before entering into a  
406 binding contract to purchase the property. Prospective Buyer acknowledges that he or she understands that the visual inspection  
407 performed by the Seller's real estate broker/broker-salesperson/salesperson does not constitute a professional home inspection  
408 as performed by a licensed home inspector.  
409 \_\_\_\_\_  
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424 \_\_\_\_\_  
425 **ACKNOWLEDGMENT OF REAL ESTATE BROKER/BROKER-SALESPERSON/SALESPERSON**  
426 The undersigned Seller's real estate broker/broker-salesperson/salesperson acknowledges receipt of the Property  
427 Disclosure Statement form and that the information contained in the form was provided by the Seller.  
428 The Seller's real estate broker/broker-salesperson/salesperson also confirms that he or she visually inspected the property  
429 with reasonable diligence to ascertain the accuracy of the information disclosed by the seller, prior to providing a copy of the  
430 property disclosure statement to the buyer.  
431 The Prospective Buyer's real estate broker/broker-salesperson/salesperson also acknowledges receipt of the Property  
432 Disclosure Statement form for the purpose of providing it to the Prospective Buyer.  
433 \_\_\_\_\_  
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**ACKNOWLEDGMENT OF REAL ESTATE BROKER/BROKER-SALESPERSON/SALESPERSON**

The undersigned Seller's real estate broker/broker-salesperson/salesperson acknowledges receipt of the Property Disclosure Statement form and that the information contained in the form was provided by the Seller.

The Seller's real estate broker/broker-salesperson/salesperson also confirms that he or she visually inspected the property with reasonable diligence to ascertain the accuracy of the information disclosed by the seller, prior to providing a copy of the property disclosure statement to the buyer.

The Prospective Buyer's real estate broker/broker-salesperson/salesperson also acknowledges receipt of the Property Disclosure Statement form for the purpose of providing it to the Prospective Buyer.

\_\_\_\_\_  
SELLER'S REAL ESTATE BROKER/  
BROKER-SALESPERSON/SALESPERSON:

\_\_\_\_\_  
DATE:

\_\_\_\_\_  
PROSPECTIVE BUYER'S REAL ESTATE BROKER/  
BROKER-SALESPERSON/SALESPERSON:

\_\_\_\_\_  
DATE:

# On-Site Conditions

- To combat childhood lead poisoning, the EPA requires landlords and property owners to give renters and buyers of houses built before 1978 a pamphlet titled [Protect Your Family from Lead in Your Home.](#)
- Landlords and sellers must also inform renters and buyers if there is known lead-based paint in the home.
- Buyers also have the option to have the property inspected by a certified lead-hazards firm at their own expense.



# On-Site Conditions



- Septic Systems – get a report consistent with Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A, also known as Chapter 199
- Other Hazardous On-site Conditions
  - - e.g., Bedbugs



# On-Site Conditions



- Water Problems - Private Well Testing Act N.J.S.A. 58:12A-26 to 37

## **58:12A-27. Water testing of private well as provision of contract of sale; reviewing water testing results**

2. a. Every contract of sale of (1) real property the potable water supply for which is a private well located on the property, or (2) any other real property the potable water supply for which is a well that has less than 15 service connections or that does not regularly serve an average of at least 25 individuals daily at least 60 days out of the year, shall include a provision requiring, as a condition of the sale, the testing of that water supply for at least the parameters prescribed pursuant to sections 3 and 4 of this act.

b. Closing of title on the sale of the real property shall not occur unless both the buyer and the seller have received and reviewed a copy of the water test results. At closing, the buyer and seller both shall certify in writing that they have received and reviewed the water test results.

L.2001,c.40,s.2.

# On-Site Conditions



- Water Problems - Private Well Testing Act N.J.S.A. 58:12A-26 to 37
- **58:12A-32. Lessor's water testing responsibilities for private wells.**

7. Within 18 months after September 14, 2002, and at least once every five years thereafter, the lessor of any real property the potable water supply for which is a private well for which testing of the water is not required pursuant to any other State law, shall test that water supply in the manner established pursuant to P.L.2001, c.40 (C.58:12A-26 et seq.) for at least the parameters required pursuant to sections 3 and 4 of P.L.2001, c.40 (C.58:12A-28 and 29). Within 30 days after receipt of the test results, the lessor shall provide a written copy thereof to each rental unit on the property. The lessor shall also provide a written copy of the most recent test results to a new lessee of a rental unit on the property. In the case of the seasonal use or rental of real property as "seasonal use or rental" is defined at section 1 of P.L.1967, c.265 (C.46:8-19), the lessor of such property shall post the test results in a readily visible location inside the seasonal use or rental unit or the lessor shall provide a written copy of the most recent test results to the new lessee of a seasonal use or rental unit.

L.2001,c.40,s.7; amended 2003, c.236.

# On-Site Conditions



- RADON GAS - "Radiation Protection Act." NJSA 26:2D-1, et seq.
- N.J.S.A. 26:2D-73

- **26:2D-73. Confidentiality**

No person shall disclose to any person, except to the Department of Environmental Protection or the Department of Health, the address or owner of a nonpublic building that the person tested or treated for the presence of radon gas and radon progeny, unless the owner of the building waives, in writing, this right of confidentiality.

The provisions of this section shall not apply to a person performing testing or treatment on a building which he owns, or to instances where disclosure is necessary to contract for further testing or to contract for the mitigating and safeguarding of a building from the presence of radon gas and radon progeny. In the case of a prospective sale of a building which has been tested for radon gas and radon progeny, the seller shall provide the buyer, at the time the contract of sale is entered into, with a copy of the results of that test and evidence of any subsequent mitigation or treatment, and any prospective buyer who contracts for the testing shall have the right to receive the results of that testing.

L. 1986, c. 83, s. 4, eff. Aug. 14, 1986.

# On-Site Conditions



- From the required form of Seller's property condition disclosure statement:
- RADON GAS
- Instructions to Owners
- By law (N.J.S.A. 26:2D-73), a property owner who has had his or her property tested or treated for radon gas may require that information about such testing and treatment be kept confidential until the time that the owner and a buyer enter into a contract of sale, at which time a copy of the test results and evidence of any subsequent mitigation or treatment shall be provided to the buyer. The law also provides that owners may waive, in writing, this right of confidentiality. As the owner(s) of this property, do you wish to waive this right?  
Yes No \_\_\_\_\_  
(Initials) (Initials)
- If you responded "yes," answer the following questions. If you responded "no," proceed to the next section.
- Yes No Unknown
- 99. Are you aware if the property has been tested for radon gas? (Attach a copy of each test report if available.)
- 100. Are you aware if the property has been treated in an effort to mitigate the presence of radon gas? (If "yes," attach a copy of any evidence of such mitigation or treatment.)
- 101. Is radon remediation equipment now present in the property?
- 101a. If "yes," is such equipment in good working order?
- **NJAC 13:45A-29.1**

# On-Site Conditions



- Window guards - notification to tenants N.J.S.A. 55:13A-7.13. The law requires landlords to give tenants an annual notice that tells tenants that they can make a written request to have window guards installed. This notice must also be contained in the lease. NJAC 5:10-27.1 et seq.
- MODEL LEASE AND NOTICE PROVISION
- The owner (landlord) is required by law to provide, install and maintain window guards in the apartment if a child or children 10 years of age or younger is, or will be, living in the apartment or is, or will be, regularly present there for a substantial period of time if the tenant gives the owner (landlord) a written request that the window guards be installed. The owner (landlord) is also required, upon the written request of the tenant, to provide, install and maintain window guards in the hallways to which persons in the tenant's unit have access without having to go out of the building. If the building is a condominium, cooperative or mutual housing building, the owner (landlord) of the apartment is responsible for installing and maintaining window guards in the apartment and the association is responsible for installing and maintaining window guards in hallway windows. Window guards are only required to be provided in first floor windows where the window sill is more than six feet above grade or there are other hazardous conditions that make installation of window guards necessary to protect the safety of children.

New Jersey Administrative Code APPENDIX 27A

# Truth-in-Renting Act



- Truth-in-Renting Act (N.J.S.A. 46:8-43 through 50)

46:8-45. Statement of legal rights and responsibilities of tenants and landlords of rental dwelling units

3. a. The department shall, as soon as practicable and annually thereafter, after public hearing, prepare and make available at no cost to the public, to the extent that funding has been made available to the department for free distribution, a statement, in a form and size suitable for posting and distributing pursuant to the provisions of this act, of the primary clearly established legal rights and responsibilities of tenants and landlords of rental dwelling units. This statement shall be printed in both the English and Spanish languages and shall be posted on the department's Internet website, in an easily printable format, and updated annually. The statement shall serve as an informational document, and nothing therein shall be construed as binding on or affecting a judicial determination under section 6 of P.L.1975, c.310 (C.46:8-48) of what constitutes a lease provision which violates clearly established legal rights of tenants or responsibilities of landlords.
- b. Where practical considerations make it necessary for the department to limit the extent of the statement, items to be included shall be selected on the basis of the importance of their inclusion in protecting the rights of the public.

L.1975, c.310, s.3; amended 1990, c.37; 2007, c.177, s.1.

46:8-46. Statement; distribution and posting by landlords

Every landlord shall distribute one copy of the statement prepared and made available pursuant to the provisions of this act to each of their tenants within 30 days after it has been made available by the department and shall thereafter provide a copy of the current statement to each new tenant at or prior to the time he assumes occupancy of the dwelling. In addition, every landlord shall keep a copy of the current statement posted in one or more locations so that the statement is prominent and accessible to all his tenants.

L.1975, c. 310, s. 4.

# Truth-in-Renting Act



**DEPARTMENT OF COMMUNITY AFFAIRS**  
DIVISION OF CODES AND STANDARDS  
LANDLORD/TENANT INFORMATION SERVICE  
101 South Broad Street  
PO Box 805  
Trenton, NJ 08625-0805  
[www.nj.gov/dca/divisions/tenants](http://www.nj.gov/dca/divisions/tenants)

## TRUTH IN RENTING

*A guide to the rights and responsibilities of residential tenants and landlords in New Jersey*

New Jersey Department of  
**COMMUNITY AFFAIRS**  
101 South Broad Street,  
PO Box 805  
Trenton, NJ 08625-0805  
[www.nj.gov/dca](http://www.nj.gov/dca)  
To view the complete DCA Programs Book, please visit  
[www.nj.gov/dca/publications](http://www.nj.gov/dca/publications)



# Truth-in-Renting Act



- Truth-in-Renting Act (N.J.S.A. 46:8-43 through 50)
  - 46:8-50. Notification to tenants if property is in flood zone
  - 1. Every landlord shall notify each of the landlord's tenants upon the event that the rental property which is the subject of a lease has been determined to be located in a flood zone or area. Each new tenant shall be notified prior to the time that occupancy of the rental unit is assumed. For the purposes of this section, "landlord" means any person who rents or leases, for a term of at least one month, commercial space or residential dwelling units other than dwelling units in a premises containing not more than two such units, or in an owner-occupied premises of not more than three dwelling units, or in hotels, motels, or other guest houses serving transient or seasonal guests.



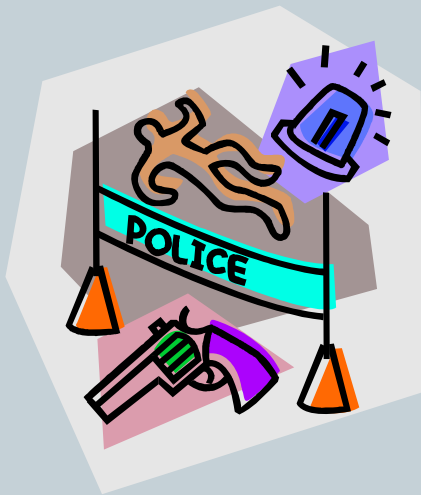
# Stigmatized Property



- (Allegedly) haunted houses
- Homes of notorious criminals
- Scene of gruesome crime
- The NJ Supreme Court in Strawn v. Canuso, 140 N.J. 43, 58-59; 657 A. 2d 420 (1995):
  - “We need not debate the outer limits of the duty to disclose. Some courts have gone well beyond the confines of this case. In Reed v. King, 145 Cal. App.3d 261, 193 Cal. Rptr. 130 (1983), the court imposed a duty on the seller to disclose that a property had been the scene of a mass murder several years earlier. And in New York's so-called "poltergeist case," the purchaser argued that the presence of such spirits in his new home was a material 58\*58 element of the sale that should have been disclosed. The court agreed and imposed a duty on the seller to disclose that the property had been haunted. Stamovsky v. Ackley, 169 A.D.2d 254, 572 N.Y.S.2d 672 (1991).<sup>[1]</sup>”

# Stigmatized Property

- Strawn v. Canuso, 140 N.J. 43, 58-59; 657 A. 2d 420 (1995):



[1] *Stambovsky* and *Reed* involved "stigmatized property," which has been defined as "property psychologically impacted by an event which occurred or was suspected to have occurred on the property, such event being one that has no physical impact of any kind." National Association of Realtors, *Study Guide: Stigmatized Property 2* (1990), quoted in Robert M. Morgan, *The Expansion of the Duty of Disclosure in Real Estate Transactions: It's Not Just For Sellers Anymore*, *Fla.B.J.*, Feb. 1994, at 31. Some states have enacted legislation to provide guidance regarding the types of nonphysical or emotional defects that are material. See, e.g., *Fla. Stat. Ann.* § 689.25. New Jersey has no such legislation, and we do not address the materiality of such conditions.

# Stigmatized Property



- NJ Admin Code 11:5-6.4 Obligations of licensees to public and to each other ...
- (d) Information about social conditions or psychological impairments of a property is not considered information which affects the physical condition of a property. Subject to (d)3 below, licensees are not required by (c) above to disclose such information.
  - 1. As used in this section, the term “social conditions” includes, but is not limited to, neighborhood conditions such as barking dogs, boisterous neighbors, and other conditions which do not impact upon or adversely affect the physical condition of the property.
  - 2. As used in this section, the term “psychological impairments” includes, but is not limited to, a murder or suicide which occurred on a property, or a property purportedly being haunted.
  - 3. Except as provided below, upon receipt of an inquiry from a prospective purchaser or tenant about whether a particular property may be affected by a social condition or psychological impairment, licensees shall provide whatever information they know about the social conditions or psychological impairments that might affect the property.

# Duties to Refrain from Disclosure



- NJ Admin Code 11:5-6.4 Obligations of licensees to public and to each other
- 3. Except as provided below, upon receipt of an inquiry from a prospective purchaser or tenant about whether a particular property may be affected by a social condition or psychological impairment, licensees shall provide whatever information they know about the social conditions or psychological impairments that might affect the property.
- i. In accordance with N.J.S.A. 10:5-1 et seq. (the “**Law Against Discrimination**”), licensees shall make no inquiry and provide no information on the racial composition of, or the presence of a group home in, a neighborhood. In response to requests for such information, licensees shall inform the persons making the inquiry that they may conduct their own investigation. This paragraph does not apply to the owner of a multiple dwelling or his agent to the extent that such inquiries are necessary for compliance with N.J.A.C. 13:10
- ii....

# Duties to Refrain from Disclosure



- NJ Admin Code 11:5-6.4 Obligations of licensees to public and to each other
- ...
- 3. Except as provided below, upon receipt of an inquiry from a prospective purchaser or tenant about whether a particular property may be affected by a social condition or psychological impairment, licensees shall provide whatever information they know about the social conditions or psychological impairments that might affect the property.
- i....
- ii. In accordance with N.J.S.A. 2C:7-6 through 11 (“**Megan’s Law**”) and the guidelines promulgated thereunder, licensees shall make no inquiry about and provide no information on notifications from a county prosecutor issued pursuant to that law. In response to requests for such information, licensees shall inform the person making the inquiry that information about registered sex offenders is maintained by the county prosecutor.

# Duties to Refrain from Disclosure



- Information that may weaken a principal's bargaining position
- Privacy
- Sensitive cases



# Duties to Refrain from Disclosure



- Confidentiality
- “The obligation of REALTORS® to preserve confidential information (as defined by state law) provided by their clients in the course of any agency relationship or non-agency relationship recognized by law continues after termination of agency relationships or any non-agency relationships recognized by law. REALTORS® shall not knowingly, during or following the termination of professional relationships with their clients:
  - “reveal confidential information of clients; or
  - “use confidential information of clients to the disadvantage of clients; or
  - “use confidential information of clients for the REALTOR®’s advantage or the advantage of third parties unless:
    - ✦ “clients consent after full disclosure; or
    - ✦ “REALTORS® are required by court order; or
    - ✦ “it is the intention of a client to commit a crime and the information is necessary to prevent the crime; or
    - ✦ “it is necessary to defend a REALTOR® or the REALTOR®’s employees or associates against an accusation of wrongful conduct.
- “Information concerning latent material defects is not considered confidential information under this Code of Ethics. (Adopted 1/93, Amended 1/01)”
- -- 2012 Code of Ethics and Standards of Practice of the National Association of REALTORS® Standard of Practice 1-9
-

# Financial and Legal Qualification



- NJAC 11:5-6.4 Obligations of licensees to public and to each other
- ...
- (b) Every licensee shall make reasonable effort to ascertain all material information concerning the physical condition of every property for which he or she accepts an agency or which he or she is retained to market as a transaction broker, **and concerning the financial qualifications of every person for whom he or she submits an offer to his or her client or principal. ...**



# Financial and Legal Qualification



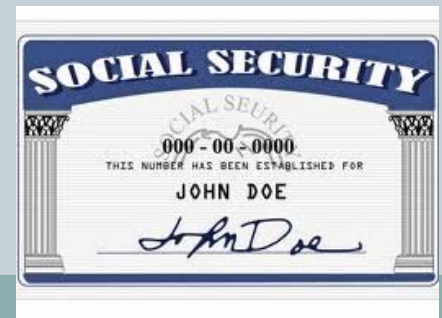
Universal identifiers - "Identity Theft Prevention Act" (NJSA 56:8-164, et seq.)

NJAC 13:45F-4.1 Restrictions on the communication of Social Security numbers

...

(g) Where a person or a private entity requests a Social Security number from an individual, the person or private entity, when asked by the individual, shall state the reason for requesting the individual's Social Security number. Where a public entity requests a Social Security number from an individual, the public entity shall affirmatively state the use to which the Social Security number will be put.

(h) Where a person or a public or private entity requests a Social Security number from an individual, the person or public or private entity shall do so in conditions under which the Social Security number will remain confidential. Nothing contained in this subsection shall prohibit a person or public or private entity from using or releasing the Social Security number if otherwise permitted to do so under the Act or any other applicable law.



# Financial and Legal Qualification



Credit Searches - federal Fair Credit Reporting Act (FCRA) (15 U.S.C. §1681)

§ 1681b. Permissible purposes of consumer reports

(a) In general

Subject to subsection (c) of this section, any consumer reporting agency may furnish a consumer report under the following circumstances and no other:...

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe—

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or ...

(F) otherwise has a legitimate business need for the information—

(i) in connection with a business transaction that is initiated by the consumer; or

...

# Financial and Legal Qualification



- Tenants
  - Financial ability and stability
- Sellers
  - Seller's Affidavit of Title
  - Seller's Residency Certification/Exemption
  - Affidavit of Consideration for Use By Seller (N.J.S.A. 46:15-5 et seq.)
  - Etc.
- Buyers
  - Affidavit of Consideration for Use by Buyers (RTF-1EE used by grantees for real property transfers zoned for residential use, whether improved or not, for consideration in excess of \$1,000,000 recited in the deed for an amount equal to 1 percent of the entire consideration amount (N.J.S.A. 46:15-5 et seq.)  
Exemptions from the Realty Transfer Fee are found in **N.J.S.A. 46:15-10.**

# Financial and Legal Qualification



- Legal Competence and Ethical Disclosure
  - Foreigners
    - ✦ Foreign Investment in Real Property Tax Act of 1980 (FIRPTA )
    - ✦ USA PATRIOT Act and anti-money laundering
  - Straw Purchasers
  - Straw Borrowers

# Financial and Legal Qualification



- HUD RESPA disclosures

- Good Faith Estimate of Settlement Costs (“HUD-GFE”)

- ✦ Provided when borrower applies for loan, or the lender or mortgage broker must mail or deliver it to borrower within the next three business days, when approved for loan

- Servicing Disclosure Statement

- ✦ RESPA requires the lender or mortgage broker to tell you in writing, when you apply for a loan or within the next three business days, whether it expects that someone else will be servicing your loan (collecting your payments).

- Affiliated Business Arrangement Disclosure

- ✦ Sometimes, several businesses that offer settlement services are owned or controlled by a common corporate parent. These businesses are known as "affiliates." When a lender, real estate broker, or other participant in settlement refers borrower to an affiliate for a settlement service (such as when a real estate broker refers borrower to a mortgage broker affiliate), RESPA requires the referring party to give the borrower an Affiliated Business Arrangement Disclosure.

# Financial and Legal Qualification



- HUD RESPA disclosures

- HUD-1 Settlement Statement

- ✦ One business day before the settlement, parties have the right to inspect the HUD-1 Settlement Statement., which itemizes the services provided and the fees charged. This form is filled out by the settlement agent who will conduct the settlement. The fully completed HUD-1 Settlement Statement generally must be delivered or mailed to parties at or before the settlement. In cases where there is no settlement meeting, the escrow agent will mail the HUD-1 after settlement, and parties have no right to inspect it one day before settlement.

- Initial escrow account statement

- ✦ At the settlement or within the next 45 days, the person servicing your loan must give you an initial escrow account statement. That form will show all of the payments which are expected to be deposited into the escrow account and all of the disbursements which are expected to be made from the escrow account during the year ahead. Your lender or servicer will review the escrow account annually and send you a disclosure each year which shows the prior year's activity and any adjustments necessary in the escrow payments that you will make in the forthcoming year.

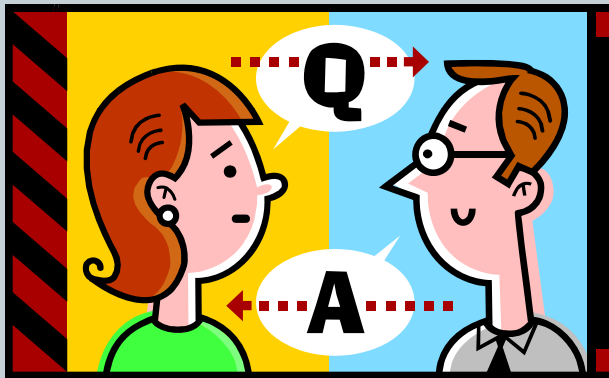
# Conclusion



- Common Sense Guidelines for the Pressured Professional
  - It shall be the duty of a licensee to recommend that legal counsel be obtained whenever the interests of any party to a transaction seem to require it. (NJAC 11:5-6.4 (i))



# Open Q&A



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# NJ Real Estate Disclosure



BY

ROBERT J. INCOLLINGO, ESQ.



***Fall 2013***