

Ready, Set, Sell: How New Jersey's New Real Estate Law is Shaking Up the Market

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As New Jersey residents prepare for the long winter ahead, many eager homeowners have already begun the planning process to put their homes on the market in anticipation of a traditionally busy spring season. The New Jersey real estate market is the subject of a recently enacted statute that will alter how Buyers and Sellers work with the real estate brokers and agents, and create new obligations particularly for the Sellers.

The New Jersey Real Estate Consumer Protection Enhancement Act ("the Act") took effect on August 1, 2024 and is intended to provide additional protections to consumers who are looking to sell or purchase residential real estate. Some of the most important provisions of the Act are summarized below.

Seller Disclosure Statements Are Now Mandatory

Seller Disclosure Statements ("SDS") are a familiar document to any New Jersey resident who has bought or sold a home. In the SDS, the Seller will list any known defects or issues with the property (i.e. water damage, termite infestation, structural issues, etc.) which puts the Buyer on notice of any material facts that could impact their decision to purchase the property. While SDS are fairly commonplace and a best practice, their use was always optional. Now, the Act requires a Seller of a residential property to complete and sign an SDS and provide it to the Buyer prior to closing.

Mandatory Buyer Representation Agreements

Pursuant to the Act, real estate agents and brokers are now required to reach a written agreement with any potential Buyer that outlines the responsibilities and fiduciary duties of the agent or broker prior to showing any Buyer a property or representing them in negotiations for a property. This is designed to ensure that Buyers are fully familiar with the financial and legal relationship with their agent or broker before they start working with each other.

Disclosures at Open Houses

The Act now requires Seller's agent to post a disclosure of their representation of the Seller at any open house so that it makes any potential Buyers understand that the agent represents the Seller's interests and not that of the potential Buyer. This is again designed to ensure that the public have greater visibility into their legal and fiduciary relationship with the real estate professional(s) they are interacting with during the home buying process. Potential Buyers are

still permitted to make the decision to retain the Seller's agent to act as a dual or designated agent, but the Act is designed to make that decision an informed one.

Creation of the Role of a Designated Agent

The Act has created the concept of "designated agency" which allows a single brokerage to appoint different agents within the brokerage to separately represent the Seller and Buyer in the same transaction with each designated agent owing full fiduciary duties to their respective client. This is intended to allow both parties to have a dedicated agent who is representing their interests in the negotiation process and helps to reduce any of the concerns that may have been presented when a single agent was representing both the Seller and Buyer in a dual agency arrangement.

The above serves as a brief summary of some of the more critical components of the Act and its impact on the New Jersey real estate market for both agents/brokers and the public. Please contact [Michael Shortt](#) at Saiber LLC if you have any questions about the impact of the Act as the busy buying season approaches this spring.