



**State of New Jersey**  
DEPARTMENT OF BANKING AND INSURANCE  
PO Box 325  
TRENTON, NJ 08625-0325  
TEL (609) 292-7272

JON S. CORZINE  
*Governor*

NEIL N. JASEY  
*Commissioner*

**BULLETIN NO. 09-35**

**TO: ALL LICENSED NEW JERSEY REAL ESTATE BROKERS**

**FROM: NEIL N. JASEY, COMMISSIONER**

**RE: APPLICABILITY OF N.J.S.A. 17:16G-1, ET SEQ. TO REAL ESTATE LICENSEES BROKERING "SHORT SALES"**

The Department of Banking and Insurance ("Department") has become aware that uncertainty exists amongst real estate licensees regarding whether they are required to be licensed as a debt adjuster pursuant to N.J.S.A. 17:16G-1, et seq. ("the Act") when they engage in certain activity in the process of attempting to secure a "short sale." For the purposes of this bulletin, a "short sale" refers to a transaction in which the selling price is less than the total sum of the liens of record against the listed property and in which a mortgagee or other lienholder agrees to release their lien in return for a payment of less than the full amount owed by the seller upon the closing of the sale.

The issue is raised when a real estate licensee, in the course of providing brokerage services to a seller pursuant to a listing agreement, communicates with the holders of mortgages or other liens against the listed property, the sum of which exceed its market value. In some transactions the mortgagee's or lienholder's agreement to release the lien in return for partial payment of the total amount owed is obtained as the result of the communications with them by the real estate licensee.

Pursuant to N.J.S.A. 17:16G-2, only a non-profit social services agency or a non-profit consumer credit counseling agency shall act as a debt adjuster and it is unlawful for any such agency to do so without being licensed as a debt adjuster pursuant to the Act.

N.J.S.A. 17:16G-1c(1) defines the term "Debt adjuster" as "a person who either (a) acts or offers to act for a consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or otherwise altering the terms of payment of any debts of the debtor, or (b) who, to that end, receives money or other property from the debtor, or on behalf of the debtor, for payment to, or distribution among, the creditors of the debtor."

The Department does not construe this definition as applicable to the communications between real estate licensees operating in short sale transactions and the holders of liens of record against the listed property where the following factors are present:

1. The real estate licensee is acting in the course of providing brokerage services to a seller in accordance with the terms of a previously executed listing agreement between the seller and the licensee's brokerage firm; and

2. The real estate licensee receives no consideration other than payment from their broker for the brokerage services specified in such a listing agreement.

Real estate licensees who otherwise engage in activity within the statutory definition of "debt adjuster" without being licensed as such pursuant to the Act are subject to penalties as provided for in N.J.S.A. 17:16G-8.

All real estate brokers are urged to disseminate this bulletin to all salespersons and broker-salespersons licensed with their firms.

October 28, 2009  
Date

/s/ Neil N. Jasey  
Neil N. Jasey, Commissioner

INOORD\bulletinShortSales.doc