



State of New Jersey
DEPARTMENT OF BANKING AND INSURANCE
REAL ESTATE COMMISSION

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NOTICE

TO: ALL NEW JERSEY REAL ESTATE LICENSEES
FROM: ROBERT L. KINNIEBREW, EXEC. DIRECTOR, REAL ESTATE COMMISSION
RE: NOTICES TO RESIDENTIAL TENANTS IN FORECLOSED PROPERTIES

The Real Estate Commission Staff has learned that some licensees are sending letters or notices to residential tenants in properties that have been foreclosed or are pending foreclosure which either state or imply that the tenant must promptly vacate or face eviction, notwithstanding that the Anti-Eviction Act, N.J.S.A. 2A:18-61.1 et seq. ("the Act") provides, with very limited exceptions, that tenants, whether or not they have a written lease, who are current on their rent payments cannot be evicted solely on the grounds of foreclosure.

Under N.J.A.C. 11:5-6.1(a) letters and notices of this nature issued by licensees are considered a type of advertising. Such letters or notices which state or imply that a tenant is subject to eviction solely because of a foreclosure are either patently false or, at best, misleading and licensees who send such communications would be in violation of N.J.A.C. 11:5-6.1(r) which states: "No advertisement shall contain false, misleading or deceptive claims or misrepresentations. In all advertisements which make express or implied claims that are likely to be misleading in the absence of certain qualifying information such qualifying information shall be disclosed in the advertisement in a clear and conspicuous manner."

Licensees who issue letters that fail to comply with this rule are subject to sanctions pursuant to N.J.S.A. 45:15-17t, including revocation or suspension of one's license and/or fines up to \$5,000 for a first violation and up to \$10,000 for subsequent violations. Each notice sent would constitute a separate violation. The broker responsible for supervising the licensee could also be subject to sanctions. See N.J.A.C. 11:5-4.2.

In addition, N.J.A.C. 11:5-6.4(i) requires a licensee to recommend that legal counsel be obtained whenever the interests of a party seem to require it. Clearly, a notification to a tenant stating or implying that the tenant is being or may be evicted constitutes circumstances where the interests of the tenant seem to require that they obtain counsel. Consequently, such letters and notices should include text recommending that the tenant consult with an attorney. Licensees who issue these letters without including such a recommendation are subject to sanctions for failing to comply with N.J.A.C. 11:5-6.4(i). Finally, N.J.S.A. 45:15-17, which subjects licensees to sanctions for: making a substantial misrepresentation (17a.); pursuing a flagrant and continued course of misrepresentation through advertisements or otherwise (17c.); and engaging in conduct which demonstrates unworthiness, incompetency, bad faith or dishonesty (17e.) may also be applicable to licensees who issue notices or letters as described above.

The New Jersey Public Advocate has published a pamphlet entitled "The Rights of Tenants During a Foreclosure," available at <http://www.state.nj.us/publicadvocate/public/pdf/tenantsforeclosurebrochure.pdf>

All brokers are urged to provide copies of this Notice to all salespersons and broker-salespersons in their firms.

12/23/08
DATE

/s/Robert L. Kinniebrew
Robert L. Kinniebrew, Exec. Dir., NJREC