

4.40 REAL ESTATE BROKERS COMMISSION — STATUTE OF FRAUDS (N.J.S.A. 25:1-9) (Approved 6/79)

The law of this State requires that if an agreement between a broker and the owner of real property is to be enforceable, it must be in writing. There are, however, certain exceptions allowed by this law. Even though an agreement between the parties is originally only verbal, a broker may recover his/her commission provided he/she or his/her agent has, within five (5) days of the verbal agreement, given written notice to the owner, setting forth the terms of the agreement including the rate or amount of compensation agreed on and further provided he/she actually effects a sale or exchange of real property prior to termination of the agreement.

An owner may act to terminate such a verbal agreement even after he/she has received a written notice provided a sale or exchange has not yet been affected and further provided he/she gives written notice of the termination to the broker or agent. However, when notification from the owner occurs while the broker is conducting good faith negotiations with a prospective buyer, and then the owner subsequently sells to or exchanges property with that buyer, the notice of termination by the owner is ineffective and the broker may recover his/her commission notwithstanding the termination notice by the owner.

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An agreement must not only satisfy the requirements of the statute in order to entitle a broker to a commission, it must also either expressly or impliedly signify an engagement of the broker to sell the property on behalf of the owner. In determining whether such an implication is warranted, it is permissible and sometimes essential to scrutinize all of the surrounding circumstances. What this means is that the agreement must do more than merely advise that if the owner should decide to sell at some future time, the terms contained therein will apply. The agreement must actually authorize the broker to secure a purchaser on the terms specified.