Whereas, the Legislature finds that consumers are best served when buying and selling their homes if they enter into clear, understandable written agreements with a licensed real estate broker;
Whereas, the Legislature finds that consumers, the housing market, and the laws of the State in favor of fair housing for all are benefitted when there is impartial access to truthful, accurate information about the residential properties available for sale and rent;
Whereas, the Legislature wishes to ensure that no anticompetitive or unfair rules with respect to these polices are adopted in the State;
Therefore, [reference to state law] is amended by the addition of the following:

Section 1. Definitions. As used in this Act, the following terms are defined as set forth below.

(1) "Broker" means any real estate broker or sales agent licensed in the State.
(2) "Buyer" means a prospective purchaser of a residential property or a prospective lessee in the case of a residential rental property.
(3) "Buyer's broker" means a broker with a written services agreement with a buyer to advise the buyer on the identification and purchase of a residential property.
(4) "MLS" means a Multiple Listing Service that enables MLS participants to aggregate information about properties for which they have been engaged to market for sale or lease, and to share that information on an impartial basis among MLS participants and, when permitted by the seller, with the public on websites and applications operated by MLS participants.
(5) "MLS participant" means a broker who subscribes to an MLS.
(6) "Seller" means the owner of a residential property for sale and the lessor in the case of a residential rental property.
(7) "Seller's broker" means a broker with a written services agreement to market a residential property located in the State for sale or lease on behalf of a seller who is not the seller's broker or the seller's broker's employer.

Section 2. Protecting Transparency in the Consumer Relationship

(1) Each broker shall enter into a written services agreement with a buyer or seller.
    (a) In the case of a seller's broker, a written services agreement shall be executed with a seller before providing real estate brokerage services (as defined otherwise in State law) to a seller.
    (b) In the case of a buyer's broker, a written services agreement shall be executed with a buyer prior to providing a buyer with any services for which the broker may be compensated from any source.
(2) A broker may be compensated from any source in a real estate transaction only if there is a pre-existing written services agreement with the buyer or seller stating the objectively ascertainable amount the broker may earn from any source. A broker may receive compensation without a services agreement for the provision of a broker's price opinion, a referral by one broker to another broker, or for the provision of services that are not real estate brokerage services. A broker may not represent to a buyer or seller that their services are free or available at no cost unless the broker will not receive compensation from any source for the services provided.
(3) A written services agreement required by this Act must include at least the following, explained in clear, readily understandable terms:
    (a) The identity of the firm, the designated broker, and the broker who will have primary responsibility to market the property;
    (b) The term of the agreement;

(c) Whether the relationship is exclusive or non-exclusive;
(d) A description of the services to be provided;
(e) The date that the broker is authorized to begin permitting buyers and buyer's brokers to learn about the property availability for sale or rent;
(f) A conspicuous statement that compensation is negotiable and not set by law;
(g) The objectively ascertainable terms of compensation the broker may receive for the services covered by the agreement, including any combination of the following if applicable:
  (i) Payment by the seller, the buyer, a third party, or from more than one entity;
  (ii) Sharing with another firm the compensation paid by the seller or the buyer;
  (iii) Compensation based on the purchase price, a fixed amount, a combination of the two, or another amount;
  (iv) The amount, if any, to be rebated to the seller/buyer and under what conditions; and
  (v) The existence and source of any other remuneration that may be delivered to the firm and the designated broker arising from the provision of real estate brokerage services.
(h) Any amount of compensation that the seller wishes to authorize the broker to communicate may be paid by the seller to a buyer's broker;
(i) Any disclosures or consents otherwise required by the State; and
(j) Any other agreements between the parties.

Section 3. Protecting Transparency in the Residential Real Estate Marketplace

(1) Each seller's broker shall cooperate on an impartial basis with all buyer's brokers to promote the interests of their client by, at a minimum, taking the following actions:
(a) Disseminate information about a property on an impartial basis to all buyer's brokers.
  (i) This Section's requirement is presumptively satisfied by providing the property's information to at least one MLS for distribution to all MLS participants no later than the same day the seller authorizes the broker to allow prospective buyers and buyer's brokers to learn about a property.
  (ii) For purposes of this Section, an MLS must without additional charges permit the seller's broker to continue to maintain ownership of any copyrights to the images and creative descriptions about the property; limit the photos and information submitted to the MLS; not permit the MLS to transmit the property's information to the general public; permit the MLS to transmit the property's information for advertisement by MLS participants on their publicly accessible websites and applications; and not permit the MLS to disseminate the property's information to other MLS participants if the seller certifies in the written services agreement that they have a sincere privacy concern such that neither the seller's broker nor an MLS may publicly advertise that the property is for sale or rent.
(b) Make showings available on an impartial basis for all buyer's brokers. For purposes of this Section, the seller's broker, if instructed by the seller in writing, may require that (i) showing appointments be made through the seller's broker's office; (ii) a financial institution's documented prequalification for the buyer be presented; and (iii) access to a property include the presence of a buyer's broker.
(c) Promptly communicate to their client substantive communications from all interested buyers and the terms of all offers received.

(2) Each buyer's broker shall at a minimum:

(a) Promptly communicate to a seller or seller's broker the terms of their buyer client's offer, including if a buyer requests that the seller compensate the buyer's broker as part of the transaction, which may be negotiated between the parties.

(b) Not withhold a client's purchase offer based upon the compensation offered by the seller.

(c) Maintain the privacy of a property's information in accordance with a request communicated by the seller's broker, such as a request not to disclose the information other than to a buyer.

(d) Maintain the physical security of a property by confidentially maintaining property access information and not knowingly permitting entry other than for a buyer to evaluate the property.

(e) Not restrict the information provided to a buyer based upon a seller's actual or perceived willingness to compensate or to otherwise pay the fees of the buyer's broker.

Section 4. State Oversight of Consumer Protections

(1) The Attorney General shall enforce this Act's requirements and shall issue civil penalties for violations, as may be determined by the office of the Attorney General.

(2) A referral to the State Real Estate License Board by the office of the Attorney General of a material violation of this Act shall result in the suspension or termination of the licensee's real estate license, subject to review and appeal procedures promulgated by the office of the Attorney General.

(3) To ensure that this Act's requirements are carried out across the State, the office of the Attorney General shall actively oversee compliance with this Act as follows:

(a) Each broker shall submit to the office of Attorney General their forms of written services agreements for review prior to adoption, and such documents shall not be adopted and shall be modified if the Attorney General finds that they are contrary to this Act. If a broker uses an unmodified form of written services agreement supplied by a third party that separately submits its form to the Attorney General under this paragraph, then the broker must certify to the Attorney General that they use the unmodified third party's form and the broker is not otherwise required to submit the form to the office of the Attorney General.

(b) Any policies related to the requirements of this Act that are implemented by an MLS serving brokers in this State must be submitted for review by the office of Attorney General prior to adoption and shall be modified if the Attorney General finds that they are contrary to this Act.

(4) The office of Attorney General shall at least every two calendar years issue a publicly accessible written report reviewing compliance with this Act across the State. The office of Attorney General may, if it deems appropriate as a result of this review, promulgate additional terms that brokers must include in the written services agreements required by this Act.

(5) This Act creates no private right of action.

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