

BOROUGH OF AVALON

ORDINANCE NO. 1305

AN ORDINANCE OF THE BOROUGH OF AVALON REQUIRING THAT ALL REAL ESTATE BROKERS AND/OR CLOSING AGENTS PROVIDE ADVANCE NOTICE OF AT LEAST 48 HOURS OF A REAL PROPERTY TRANSFER, SALE, AND/OR CONVEYANCE OCCURRING WITHIN THE BOROUGH'S BOUNDARIES AND SETTING FORTH FINES AND PENALTIES FOR VIOLATIONS THEREOF.

WHEREAS, the Borough Council of the Borough of Avalon desires that no property transfer, sale, and/or conveyance, whether the property is residential or commercial, will occur within the Borough's boundaries unless advance notice of at least 48 hours is provided to the Borough Manager or a Borough Secretary;

WHEREAS, the Borough currently requires the certification of sanitary sewer status prior to the sale of real estate within the Borough of Avalon as a condition for the issuance of municipal lien letters and property tax verification letters;

WHEREAS, the Borough currently requires that all residences which tap into Avalon's sanitary sewer system undergo smoke and dye testing;

WHEREAS, the Borough requires that all structures are safe, sanitary, and fit for occupation and use; and

WHEREAS, the Borough wants to ensure that it is collecting its fair share of realty transfer taxes.

NOW, THEREFORE, the Council of the Borough of Avalon hereby ordains and enacts as follows:

SECTION 1. That the following words, when used in this Ordinance, shall have the following meanings ascribed to them:

- a. "Agency relationship." A relationship whereby the broker or licensee in the employ of the broker act as fiduciaries for a consumer of real estate services by the express or implied authority of the consumer of real estate services.**
- b. "Associate broker." A broker employed by another broker.**

- c. **"Broker."** Any person who, for another, does at least one of the following:
- (1) Negotiates with or aids any person in locating or obtaining for purchase, lease, or acquisition an interest in any real estate;
 - (2) Negotiates the listing, sale, purchase, exchange, lease, time share, or any other similarly designated interest in any real estate;
 - (3) Manages any real estate;
 - (4) Represents him or herself to be a real estate consultant, counselor, agent, or finder;
 - (5) Undertakes to promote the sale, exchange, purchase, or rental of real estate: Provided, however, that this provision shall not include any person whose main business is that of advertising, promotion, or public relations;
 - (6) Attempts to perform any of the above-referenced acts.
- d. **"Buyer Agent."** Any licensee who has entered into an agency relationship with a consumer/buyer of real estate.
- e. **"Consumer."** A person who is the recipient of any real estate services.
- f. **"Designated Agent."** One or more licensees designated by the employing broker, with the consent of the principal, to act exclusively as an agent or as agents on behalf of the principal to the exclusion of all other licensees within the broker's employ.
- g. **"Dual Agent."** A licensee who acts as an agent for the buyer and seller, or lessee and landlord, in the same transaction.
- h. **"Employ, employed, employee, employment."** The use of these words apply to the relationship of independent contractor, in addition to the traditional employment relationship.
- i. **"Licensee."** A person who holds a license.
- j. **"Listing Broker."** A broker engaged as a seller's agent, dual agent, or transaction licensee to market the property of a seller/landlord for sale or lease pursuant to a written agreement with the seller/landlord.

- k. **"Person."** Any individual, corporation, corporate fiduciary, partnership, association, or other entity, whether foreign or domestic.
- l. **"Principal."** A consumer of real estate services who has entered into an agency relationship with a broker.
- m. **"Real Estate."** Any interest or estate in land, whether corporeal, incorporeal, freehold or non-freehold, providing the land is situated within the Borough of Avalon.
- n. **"Real Estate Service."** An act or acts requiring a real estate license.
- o. **"Salesperson."** Any person employed by a licensed real estate broker to list for sale, sell, or offer for sale; to buy or offer to buy; or to negotiate the purchase or sale or exchange of real estate; or to negotiate a loan on real estate; or to lease or rent or offer to lease, rent or place for rent any real estate or collect or offer or attempt to collect rent for the use of real estate for or on behalf of such real estate broker.
- p. **"Seller Agent."** Any licensee who has entered into an agency relationship with a consumer/seller of real estate.
- q. **"Subagent."** A broker, not in the employ of the listing broker, who is engaged to act for, or cooperate with, the listing broker in selling property as a agent of the seller. A subagent is deemed to have an agency relationship with the seller.
- r. **"Title to Real Estate."**

(1) Any interest in real estate which endures for a period of time, the termination of which is not fixed or ascertained by a specific number of years, including, without limitation, an estate in fee simple, life estate, or perpetual leasehold; or

(2) Any interest in real estate enduring for a fixed period of years but which, either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, consists of a group of rights approximating those of an estate in fee simple, life estate, or perpetual leasehold, including, without limitation, a leasehold interest or possessory interest under a lease or occupancy agreement for a term of thirty years or more or a leasehold interest or possessory interest in real estate in which the lessee has equity.

- s. **"Transaction."** The making, executing, delivering, accepting, or presenting for recording of a document relating to a real estate transfer.
- t. **"Transaction Licensee."** A licensed broker or salesperson or closing agent who provides communication or document preparation services or performs acts described under the definition of "broker" or "salesperson" for which a license is required, without being an actual agent or advocate of either a buyer or seller of real estate.

SECTION 2. Any associate broker, broker, buyer agent, designated agent, dual agent, licensee, listing broker, salesperson, seller agent, subagent, transaction licensee, and/or any other person, involved in the sale, transfer, and/or conveyance of any real estate, where that real estate is located within the boundaries of the Borough of Avalon, must notify the Borough Manager or a Secretary of the Borough that a sale, transfer, and/or conveyance of the real estate will occur within 48 business hours prior to the sale, transfer, and/or conveyance. This notification must be in writing, whether by regular mail, facsimile, and/or certified mail, and must be addressed to either the Borough Manager or a Borough Secretary. This written notice must be received by the Borough at least 48 business hours prior to the sale, transfer, and/or conveyance.

SECTION 3. The requirements set forth in Section 2, as detailed above, do not apply to the consumer, whether that consumer is a buyer or a seller of the real estate, unless that consumer, buyer, or seller is also the associate broker, broker, buyer agent, designated agent, dual agent, licensee, listing broker, salesperson, seller agent, subagent, transaction licensee, and/or any other person, involved in the sale, transfer, and/or conveyance of the real estate within the Borough's boundaries.

SECTION 4. Each person violating any provision of this Ordinance shall, upon conviction before any district justice or any other judicial authority, be sentenced to pay a fine of not more than \$300.00, plus costs and counsel fees, if any, associated with prosecution.

SECTION 5. Liability for violating this Ordinance will attach severally to each associate broker, broker, buyer agent, designated agent, dual agent, licensee, listing broker, salesperson, seller agent, subagent, transaction licensee, and/or any other person, involved in the sale, transfer, and/or conveyance of the real estate within the Borough's boundaries.

SECTION 6. Any other Ordinance, or part of any Ordinance of the Borough of Avalon conflicting with the provisions of this Ordinance, is hereby repealed insofar as the same affects this Ordinance.

SECTION 7. The provisions of this Ordinance are severable and, if any section, sentence, clause, and/or phrase shall be held by a court of competent jurisdiction to be illegal, invalid, and/or unconstitutional, the remaining portions of this Ordinance shall not be affected or impaired.

ORDAINED AND ENACTED this 18th day of APRIL, 2006.

ATTEST:


Borough Manager, Harry Dilmore


President of Council, Edward Klicker

EXAMINED AND APPROVED THIS 18th day of APRIL, 2006.


Mayor, David Haslett