



Summer, 1999



FROM THE DIRECTOR'S DESK-

We at the Real Estate Commission are taking a deep breath and expressing a sigh of relief. A new, more convenient telephone system has been installed for the entire Department of Banking and Insurance, in which the Real Estate Commission is constituted as a division. The system is now working most efficiently. Listed below are the main access numbers for the various sections within the Commission and the extension numbers of the senior staff. By using these numbers, callers with specific inquiries should be able to directly contact the appropriate department. As always, questions will be answered and information given in the most professional manner

Administration - 609-292-8280

- Gloria Decker, Executive Director
- Gail Iammatteo, Deputy Director
- Thomas Caruso, Assistant Director

Investigations - 609-292-8300

- Nicholas Roon, Chief - Ext. 50135

Hearings and Regulatory Affairs - 609-292-8295

- Robert J. Melillo, Special Assistant to the Director - Ext. 50119
- Marianne Gallina, Regulatory Officer - Ext. 50125

Education and Licensing - 609-292-8300

- Gail Iammatteo, Director of Education - Ext. 50113
- Carmen Collazo, Supervisor, Licensing - Ext. 50118

Subdivided Land Sales Control - 609-292-8385

- Robert Carter, Chief - Ext. 50123

If they know the spelling of the last name of a particular staff member to whom they wish to speak, callers can reach that individual by calling 609-292-8300 and entering the name on their touch- tone phone.

In addition, with the exception of a few remaining supplementals the license renewal process has been successfully completed. In order to comply with New Jersey's Child Support Enforcement Law this year the Commission required all licensees to supply their social security numbers and dates of birth. This information had to be individually entered into our data base. As of June 30, 1999 we had processed the renewal applications for 58,000 licensees. In 1997 some 27,200 applications had been processed as of June 30th of that year. In total, approximately 82,000 licenses were renewed for the 1999-2001 license term.

Kudos to the entire Real Estate Commission Licensing section and other support staff who successfully completed the monumental job. Also, sincere appreciation to all of those who submitted their applications in a timely manner, which

allowed us to achieve our renewal goals. Thanks to you, the two year license renewal process was a resounding success!



COMMISSION FORMALLY PROPOSES IMPORTANT RULE AMENDMENTS

The Commission has begun the rule promulgation process on three significant topics by formally proposing amendments to its rules N.J.A.C. 11:5-5.1 and 5.4, 11:5-6.1, and 11:5-6.4.



FORMS OF PAYMENT OF FUNDS TO BE ESCROWED

On April 30, 1999 Governor Whitman signed into law P.L. 1999 c.78, amending section 12.8 of the Real Estate Licensing Law, N.J.S.A. 45:15-12.8. That statute now provides that when their broker is acting as a trustee, an escrow agent, or as the temporary custodian of the funds of others in a real estate transaction licensees may accept the monies of others paid in the form of cash or a negotiable instrument payable to the brokerage firm, or such other form as the Commission may prescribe by rule.

In accordance with that authorization, the Commission is proposing amendments to its rules on escrow and trust accounts, N.J.A.C. 11:5-5.1, and business records, N.J.A.C. 11:5-5.4.

Proposed new subsection i. of N.J.A.C. 11:5-5.1 provides that brokers may accept payments as a trustee, escrow agent or temporary custodian of funds on all types of transactions in the form of cash, negotiable instruments, charges against check debit cards and wire transfers. It also provides that, subject to their compliance with the procedures set forth in new subsections (i) and (j), brokers may accept deposit and rent payments on short-term rentals in the form of charges made upon the credit cards of tenants.

The proposal explicitly requires that all payments, including those made on credit cards, shall be recorded in the broker's trust or escrow account ledger and as otherwise required by N.J.A.C. 11:5-5.4.

The proposal defines a "short-term rental" as a residential rental of not more than 125 consecutive days with a specific termination date. (This is the same definition of this phrase that appears in N.J.A.C. 11:5-6.9, the Commission's rule on Consumer Information Statements.)

The proposal requires licensees who accept credit card payments to establish a special trust or escrow account, distinct from all of the broker's other trust or escrow accounts, to which monies paid to the broker via charges on credit cards must be credited. It also explicitly requires brokers to maintain a business account, references to which currently appear in N.J.A.C. 11:5-5.4(c) 4 and 11:5-3.2.

The proposal requires brokers who accept credit card charges to first inform the owner in writing of the potential for such payments to be "charged back" to the account of the payor. It also requires the broker to obtain the signature of the owner on a writing authorizing the broker to accept payments in that form and, where such an authorization is acquired by a listing broker, that it be made a part of or an addendum to the listing agreement. All brokers would be required to maintain the owner's written authorization as a business record. The proposed rule also includes a definition of the term "charge back".

Brokers who accept charged payments on short-term rentals would also have to formulate written cancellation policy on such payments. That policy would have to include the time period during which the payor may cancel the charged payment and a statement that if an untimely attempt at cancellation is made, it will not be honored and the disposition of the charged funds will be governed by the terms of the lease on the short-term rental. The proposed amendments direct that in no event shall the cancellation period terminate prior to delivery of a fully executed final written lease to the cardholder or the full acceptance of the final terms of a verbal agreement. Copies of the cancellation policy would

have to be delivered to owners upon the earlier of obtaining a listing or presenting an offer to rent and to tenants at the time of first accepting a charged payment. Subsequently accepted charged payments would not trigger a requirement to deliver additional copies of the cancellation policy the cardholder.

The proposal further indicates that, with exception of the special procedures set forth in subsection (j), brokers who accept credit card payments shall comply with the restrictions and requirements imposed by N.J.S.A. 45:15-17(o) and the other provisions in N.J.A.C. 11:5-5.1 with regard to the deposit and maintenance of such funds.

The final subparagraph in new subsection (i) states that if a dispute arises between a broker and a consumer over a charged-back payment, a broker cannot apply or set-off against the disputed amount any monies paid to the broker on another transaction to which the same consumer is a party.

Proposed new subsection (j) of the rule would require that where brokers accept credit card charges the amount credited to their special trust or escrow account must be the full amount of the payment made by the tenant to the broker. The amount credited to the brokers account cannot be net of the credit card transaction fee. Rather such fees must be paid by the broker after the full amount of the payment has been credited to the broker.

Brokers who accept credit card charges must also either designate a business account as the only source from which transaction fees and charge-backs may be extracted by the credit card company, or maintain a reserve in their special escrow or trust account to which the charged payments are credited. The reserve must be in an amount sufficient to cover all transaction fees and estimated charge-backs. The proposed rule provides that, under these limited circumstances, the maintenance of such a reserve in the broker's special trust or escrow account will not be construed as commingling.

Brokers who utilize the reserve procedure must replenish deductions made from it to pay transaction fees on at least a monthly basis. If a broker is notified that a charge-back has occurred after some or all of the monies received through the charged-back payment were disbursed the broker must, within one business day of receipt of the notice, replenish the reserve funds in an amount equal to the amount debited from the reserve through the charge-back.

Finally, brokers may replenish or increase the amount of the reserve at anytime, but may only reduce that amount on an annual basis. All credits and debits to the reserve amount shall be duly noted in the business records of the broker and maintained as required by N.J.A.C. 11:5-5.4.

The Commission has also proposed corresponding amendments to its rule on the records brokers are required to maintain of their business activity.

Proposed new subparagraph 2. in N.J.A.C. 11:5-5.4(b) sets forth the requirement that brokers who maintain a reserve in their special escrow or trust account as referenced in N.J.A.C. 11:5-5.1(j) must keep a record of all of the activity on that reserve fund in their trust account ledger book for that account. It also provides that while all credits to the reserve fund must be noted in the ledger record, only charge-backs debited from the reserve and broker withdrawals must be individually recorded in the ledger. Brokers would not be required to make an individual entry in their ledger record for each transaction fee debited from the reserve fund. However, an entry will be required whenever funds are added to the reserve to replace monies disbursed to pay transaction fees. Proposed new rule N.J.A.C. 11:5-5.1(j) requires brokers to replenish the transaction fees debited from the reserve amount on at least a monthly basis. The amount of the deposits made to do so and recorded in the ledger record on the reserve should correspond to the total of the transaction fees paid since the account was last replenished for that reason.

Finally, an amendment to subparagraph 4 of N.J.A.C. 11:5-5.4 (b) is being proposed to indicate that brokers must retain as business records all confirmation slips or other written material reflecting the broker's acceptance of charged payments on short-term rental transactions.



BROKER COOPERATION AND COMMISSION SPLITS

The proposed amendments to Rule 11:5-6.4(f) more clearly define the general obligation of real estate licensees to cooperate with each other in a manner which serves to protect and promote the interests of their clients.

Proposed new subparagraph 1 of the rule establishes certain minimum actions which listing firms must take in order to fulfill their obligation to cooperate. These include notifying any multiple listing system (MLS) to which a listing will be submitted within 48 hours of having acquiring the listing and transmitting all written offers received from cooperating licensees to the owner within 24 hours of the delivery of the offer to the listing firm. In addition, current text in the rule which prohibits the placing of "unreasonable restrictions" upon showings by cooperating licensees is clarified by new text stating that a requirement that all appointments for showings shall be made through the listing broker's office is not deemed an unreasonable restriction.

The rule currently provides that the obligation to fully cooperate with other licensees continues to apply unless the client or principal, with full knowledge of all relevant facts, "expressly relieves" the listing broker from that responsibility. The proposed amendments would explicitly require that the communication from the owner purporting to do so be in writing.

An additional amendment imposes a new disclosure requirement upon certain listing brokers. Where the listing firm offers to share its compensation with potential cooperating firms in an amount which is less than 50% of the gross commission minus the actual amount of the MLS insertion fee(s) incurred to list the property, the listing firm would be required to include a "Commission Split Addendum" in their listing agreements on such listings. The addendum provides owners with an explanation of how cooperating firms are generally compensated and of the effect which a listing firm's commission split policy can have upon the marketability of the owner's property. As amended, the rule would require that whenever such addendums are used they be made an attachment to the listing agreement and maintained by the broker as a business record in accordance with N.J.A.C. 11:5-5.4.

Finally, the text in the current rule which addresses total waivers of broker cooperation is being slightly amended. The reference to a direction of this nature from an owner to the "licensee" is being replaced by a reference to a direction to the "listing broker". This revision is appropriate because it is not the individual licensee who procured the listing, but the brokerage firm with whom they are licensed that is being retained by the owner to provide brokerage services. Also, a grammatical correction is made in the final sentence in the "Waiver of Broker Cooperation" form prescribed by the current rule so as to have it refer to "copies" of the two documents previously mentioned in that sentence.



LISTINGS ON THE WEB

The Commission is proposing amendments to its advertising rule, N.J.A.C. 11:5-6.1, to address issues raised by the inclusion of information on listed properties on the websites of brokers, multiple listing systems, and general real estate information providers such as Realtor.com and MS Advisor. Subsection (n) of the rule currently prohibits licensees from advertising the availability of a property exclusively listed for sale by another broker unless the prior written consent of the listing broker is obtained. The rule further provides that such consent may not be given or withheld without the knowledge of the owner.

It has become common for links to be established between websites containing information on listed properties. These links enable consumers visiting the website of an individual licensee or firm to view listings of other firms through that website.

The proposed amendments attempt to remain faithful to the intent of the current rule while accommodating the use of the web by licensees and fostering the legitimate interests of buyers in gaining access to information. The revised rule would provide that with respect to information on listings disseminated through the Internet, listing brokers will be presumed to have given their consent for licensees with other firms to disseminate information on their listings on the web with the knowledge of the owner if two requirements are met. First, a written listing agreement must contain the owner's authorization for information on the listing to be placed on a website. In addition, the website on which the listing will initially appear must have instituted no measures to prevent other parties who maintain websites from

linking to that site so as to display the information on the listing.

The complete text of the proposed rule amendments may be viewed on the Commission's website at <http://www.njdoebi.org/remnu.shtml>

Copies of the proposed amendments may be obtained by sending a stamped, self addressed envelope to:

New Jersey Real Estate Commission
P.O. Box 328
Trenton, New Jersey 08625-0328
Attn: Ms. Dawn Cowell

Please add the words "Summer, 1999 Rule Proposals" on your envelope.

Interested parties may submit written comments on the proposed amendments to the Commission by on or before October 20, 1999. Comments may be:

- mailed to the attention of Gloria A. Decker, Executive Director, at the above address;
- or faxed to: 609-292-0944
- or E mailed to the Executive Director at: gdecker@doebi.state.nj.us.



ALERT ON DECLARATION OF BUSINESS RELATIONSHIP

The Commission staff recently investigated a matter wherein a licensee had declared in a lease that he was operating in the transaction as a "Landlord's agent and disclosed dual agent if the opportunity arises". Clearly this licensee and his broker, who had authorized the use of a lease with that text, did not have a good grasp of agency concepts and of the Commission's rule on disclosing business relationships. By the time a transaction has reached the point where a written lease is being prepared and executed the "opportunity " for a disclosed dual agency on that transaction has already arisen. This licensee and his firm had to "fish or cut bait" on the question of whether they were going to act as a single (i.e. the landlord's) agent or as a disclosed dual agent before the point in time when the lease was prepared. In fact they conceded that they were operating as disclosed dual agents at the time the lease was prepared.

This is why Commission rule NJAC 11:5-6.9(j) 3 requires that in all offers, contracts or leases they prepare licensees shall include a declaration of business relationship indicating in what capacity they and their firm are operating as real estate licensees in that real estate transaction. The declaration must contain language indicating that the firm and the licensee are working in the transaction as either seller's agents, buyer's agents, disclosed dual agents or transaction brokers.

Pursuant to NJAC 11:5-6.9(h) and (i) it is at the start of a licensees' dealings with a consumer, when they supply a Consumer Information Statement wherein their broker has opted to include a business-relationship declaration or when a brokerage agreement is executed, that licensees can use the more general phrases "seller's agent and disclosed dual agent if the opportunity arises" or "buyer's agent and disclosed dual agent if the opportunity arises." This is permitted because at this stage in the process no one knows whether the consumer will ultimately be a party to an in-house or a co-operative transaction.

All brokers and licensees who engage in dual agency should be aware of the distinctions in these rules and, more importantly, understand why using one of the more general phrases is appropriate at the commencement of their dealings with consumers and why the use of the clear, definite declaration is necessary when a contract or lease is prepared.



NEED HELP ON A LICENSING MATTER? PHONE AHEAD!

The Commission's six person licensing staff does a remarkable job of processing thousands of applications and inquiries each year. It is not efficient for these dedicated individuals to stop whatever they're doing to assist someone who walks into the Commission's office without an appointment seeking immediate help on a licensing matter. It is also unfair to the many other individuals who had previously submitted applications through the mail which are awaiting processing. For these reasons the Commission has adopted the following policy:

- Walk-ins will only be able to deliver materials. Those materials will be processed, along with all other applications received on that date, on a "first-in, first-out" basis.
- Guidance on the application procedures for new brokerage firms may be obtained by calling (609) 292-8300, Ext. 50118 and 50130.

Information on all other licensing matters can be obtained by calling (609) 292-8300 or 292-7053.



APPRAISER LICENSING REQUIREMENTS AND BROKER VALUATION LETTERS

The following statements are excerpted from a June 6, 1999 letter from Dr. James S. Hsu, Executive Director of the NJ State Board of Real Estate Appraisers.

There is an exception to New Jersey's mandatory [Real Estate Appraiser] licensure laws for a licensed real estate broker or salesperson who gives or offers to give, for a fee or otherwise, counsel and advice on pricing, listing, selling and use of real property, directly to a property owner or prospective purchaser if the intended use of the counsel or advice is solely for the individual knowledge of or use by the property owner or prospective purchaser, and not by any third party. See N.J.S.A. 45:14F-21(c). However, asking a realtor to convey to you an estimated sales price for a piece of property, if you are not the property owner or prospective purchaser of the property, goes well beyond the provisions of this exception.

Real Estate licensees should be familiar with the limits on the exception in the Appraiser Licensing/Certification Law which applies to them. It seems clear that the exception does not apply to estimates of value given for a consideration to parties other than owners or prospective purchasers for their own knowledge or use.



IS SOMEONE ELSE ADVERTISING ON YOUR WEBSITE?

In recent years many individual licensees and firms have, with the assistance of technology professionals, created sites on the World-Wide Web. There are now a number of businesses whose sole or main service is creating websites for others.

Among the features which can be placed on a website are "button ads". These can allow consumers looking at a broker's site to "hot-link" to the sites of other businesses offering services buyers or sellers might need. The Commission has learned that it is possible for a website construction company to insert button ads on a site it created without the knowledge and consent of the owner. For example, a company which constructed websites for three brokers in a particular area might, in an effort to get a new account from a home inspection company, offer to place that company's button ads on the websites of the brokers. Such an offer of free, targeted advertising might be very appealing to the inspection company.

Aside from the obvious issues concerning unauthorized use of the broker's website, a perhaps bigger concern is that consumers viewing the broker's site may construe the presence of the button ad as an endorsement of the inspection

company by the brokerage firm. If a company which was retained as a result of the appearance of its button ad on a broker's website failed to perform an adequate inspection, which in turn caused the consumer to incur a financial loss, it is possible (and perhaps even probable in this era of rampant litigation) that the consumer would attempt to recover by suing the broker.

The point is, brokers and licensees should either take preventative measures or continuously check their websites to ensure that no one is riding their coattails without authorization. From this perspective, a website is similar to the display window of a broker's office. The only items viewable through such windows should be things which the broker or office manager have authorized to be there.



BULLETIN ON RENTAL FEES PAID TO BROKERS BY TITLE INSURANCE AGENCIES

The following is an excerpt from a Bulletin that was recently issued by the New Jersey Department of Banking and Insurance. The Bulletin addresses certain business dealings between title insurance companies and real estate brokers. All brokers should take note of the legal restrictions on those dealings described in the Bulletin.

BULLETIN NO. 99-08

TO: ALL TITLE INSURANCE PRODUCERS AND COMPANIES, ALL REAL ESTATE BROKERS AND AGENTS

FROM: JAYNEE LAVECCHIA, COMMISSIONER

RE: REBATES, UNEARNED COMMISSIONS, REDUCED FEES AND OTHER INDUCEMENTS

The Department is once again reminding all producers and title insurance companies of the provisions of N.J.S.A. 17:46B-34 and 17:46B-35.

These issues were addressed in Bulletin No. 97-14, attached hereto. Recently, the Department has learned of certain practices that may depart from required standards. Apparently, some title insurance producers have initiated a practice of paying a room rental fee to real estate brokers. The Department believes that this practice deviates from the requirements of N.J.S.A. 17:46B-34 in that the title insurance agent is paying, directly or indirectly, in whole or in part, money as an inducement or compensation to the broker for the placement of title insurance by the broker.

The Department is also reminding Real Estate Brokers and Agents that the receipt of remuneration, compensation or consideration in any form, for instance room rent from a title company or its employees may be considered a violation of N.J.S.A. 17:46B-36c. That provision prohibits any agent (and others) from receiving and/or accepting, directly or indirectly, "any commission, rebate, discount, abatement, credit or reduction of premium, or any special favor or advantage or valuable consideration or inducement" paid by a title company or its employees as an inducement for the placement of coverage. In addition to other administrative fines and penalties, N.J.S.A. 17:46B-37 permits penalties of up to five times the amount of the payment on any person who receives and/or pays an improper inducement.

All parties are advised that the Department may impose penalties as provided by law for any violations discovered.

5/6/99 /s/ Karen L. Suter, Acting Commissioner

Published: May 7, 1999

BULLETIN NO. 97-14

TO: ALL TITLE INSURANCE PRODUCERS AND COMPANIES

FROM: ELIZABETH RANDALL, COMMISSIONER OF BANKING AND INSURANCE

RE: OFFERING OF INDUCEMENTS TO PURCHASE INSURANCE

As a result of recent market conduct examinations, the Department of Banking and Insurance ("Department") has found that some title insurance producers are expending funds to entertain clients and other individuals, such as realtors [licensees], mortgage lenders, lawyers and other professionals who channel business to the agency. This type of activity, if it is an "inducement...for the placing or processing of any order to title insurance", violates N.J.S.A. 17:46B-34 and N.J.S.A. 17:46B-35. The purpose of this bulletin is to remind all title insurance producers and their companies that such expenditures are inducements and are prohibited by N.J.S.A. 17:46B-34 and N.J.S.A. 17:46B-35.

N.J.S.A. 17:46B-34 states that, "No title insurance company and no title insurance agent shall pay, allow or give, or offer to pay, allow or give, directly or indirectly, any...consideration as an inducement or compensation for the placing or procuring of any order for title insurance...". N.J.S.A. 17:46B-35c prohibits any person acting as agent, representative, attorney, broker or employee of an applicant for insurance from knowingly receiving or accepting, directly or indirectly, any inducement prohibited by this act. An inducement is defined at N.J.A.C. 11:17A-2.2 as money or any favor, advantage, object, valuable consideration or anything other than money which has an intrinsic value or a redeemable value greater than \$10.00. In addition, N.J.A.C. 11:17A-2.4(b) provides that the value of any favor, advantage, valuable consideration or any other item or service shall be determined by the Commissioner or his or her designee. Inducements can include, but are not limited to, entertainment in the form of paid or subsidized meals, dinner dances, sporting events, theater, sponsorship at trade meetings and trade associations, or any other activities in which the agency directly or indirectly sponsors an individual or real estate professional in any activity or event in an amount that exceeds \$10.00.

N.J.S.A. 17:46B-37 provides that the penalty for violating N.J.S.A. 17:46B-34 or N.J.S.A. 17:46B-35 is a fine not exceeding five times the amount of the commission, or unlawful rebate, discount, abatement, credit or reduction in premium or any special favor or advantage or valuable consideration or inducement whatever in addition to any other penalty imposed by law.

All title insurance producers and their companies are advised that the Department will impose penalties, as permitted by law for any inducement violations discovered.

(Dated 10/29/97 and signed by Elizabeth Randall, Commissioner)



TICK, TICK, TICK -

More than half of 1999 is history. The Y2K problem will be a reality within a few short months. Brokers are (again) reminded that they are responsible to ensure that their computer systems are Y2K compliant in order to avoid a failure which would adversely effect the interests of their clients or customers. In the alternative, a sufficient back-up system should be available so as to enable the broker to fulfill their obligations as a licensee in the event of a Y2K - induced computer system failure.



REMINDER: LICENSEES MAY ONLY ACCEPT COMPENSATION FOR BROKERAGE ACTIVITY FROM THEIR BROKERS

The Commission staff recently learned that at least one, and possibly several South Jersey brokers had established a unique system for paying commissions to their salespeople.

The broker gave advance written authorization to the title company which was to act as the settlement agent to pay the

listing or selling salesperson their commission directly at the closing. The balance of the commission would then be paid to the brokerage firm.

This procedure is inconsistent with several provisions in the license law and the Commission's rules. N.J.S.A. 45:15-16 and 17(m) prohibit licensees from accepting commission payments from anyone other than the broker with whom they are licensed. N.J.A.C. 11:5-4.1(c) requires all compensation paid to brokers to be deposited into their general account within five business days of receipt by the broker. N.J.A.C. 11:5-5.4(c) 3 and 4 govern a broker's obligation to maintain financial records. It was the position of the Commission staff that by their acceptance of commission checks issued by title companies the salespersons committed violations of the statutory provisions referenced above, and that by authorizing them to do so the broker had acted in a manner which was inconsistent with Rule 4.1(c) and which would result in his non-compliance with the record keeping requirements imposed by Rule 5.4(c). The broker's authorization of this procedure was also considered conduct demonstrating incompetency which would subject him to sanctions pursuant to N.J.S.A. 45:15-17(e). In analyzing this procedure the staff was also concerned that it could lend itself to unwarranted payments to salespeople. A copy of the broker's authorization in the wrong hands might lead to claims of fraud or misappropriated funds.

All brokers should be sensitive to the laws and rules concerning the payment of compensation to their salespersons. As occurred in the matter described above, when the staff learns of questionable payment policies appropriate action will be taken to bring the licensees involved into compliance.



COMMISSION STAFF CAN PROVIDE INFORMATION, BUT NOT ADVICE

The Commission staff considers the providing of information and assistance to licensees and to the public a major component of its overall mission. However, that assistance cannot extend to providing legal advice. The staff cannot provide interpretations of the License Law or the Commission's rules or advise callers on how they can protect their interests in a transaction or a dispute. It is also important to note that the staff cannot waive or modify any provision of the License Law or any administrative rule, assist in or provide guidance on resolving a commission dispute, or recommend a particular broker, salesperson or prelicensure school.

The staff can and constantly does provide substantial assistance to licensees and the public in the following ways:

- identifying the provisions of the License Law and rules which are or may be applicable to the subject of the inquiry (it is always best for requests of this nature to be submitted in writing);
- confirming whether a particular individual or firm is licensed and whether they have been the subject of any formal disciplinary action;
- forwarding instructions and license application forms and answering questions about them;
- providing a list of licensed schools with their locations and telephone numbers.

Detailed information on many general topics, including a complete list of licensed schools presently appears on the Commission's website at <http://www.njdobi.org/remnu.shtml> Additional information on teaching site locations, license application instructions, and other topics will be added to the website in the near future.



DIVISION OF BANKING ADOPTS RULE AMENDMENTS ON REIMBURSEMENT OF COSTS INCURRED BY BROKERS IN PROVIDING MORTGAGE RELATED SERVICES

On July 21, 1999 amendments to N.J.A.C. 3:15-2.1 become operative. This rule reflects the Division of Banking's interpretation of N.J.S.A.17:11C-4d. That statutory provision exempts licensed real estate brokers and salespersons

from the requirement that they be licensed as a mortgage banker or broker for taking actions which would require licensure as such, so long as they are not deemed to be engaged in the business of a mortgage banker or broker.

As a result of comments submitted by the Real Estate Commission after they were proposed, certain revisions were made to clarify the amendments as adopted. In addition, further amendments may be proposed in the coming months to address one issue raised in the Commission's comments. Interested licensees should watch for an advisory about such a proposal in future editions of this publication and/or on the Commission's website at www.njdobi.org/remnu.shtml

The amended rule provides that a real estate licensee will not be deemed to be engaged in the business of a mortgage broker or banker if all of the following criteria are met:

1. the licensee receives \$250.00 or less for reimbursement of expenses incurred in providing mortgage related services in connection with a particular real estate sale or real estate brokerage service;
2. the real estate broker itemizes in writing the specific services they or one of their salespersons provided and submits the itemization to the mortgage lender prior to the closing; and
3. the broker receives a real estate commission on the transaction.

As stated in the official Notice of Adoption of the amendments, "The basic change brought about by the (amendments) is that real estate brokers seeking to be reimbursed for mortgage related services will have to itemize the services prior to closing".

The full text of the Banking rule which is now in effect follows:

3:15-2.1 Requirements to be licensed

(a) After June 30, 1997, no person shall act as a mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender, consumer lender, or sales finance company without holding, in good standing, a license under the Act, unless that person is exempt from licensure pursuant to N.J.S.A 17:11C-4, 5 or 6.

(b) With regard to the exemption set forth at N.J.S.A. 17:11C-4d, a real estate broker or salesperson shall not be deemed to be engaged in the business of a mortgage banker, correspondent mortgage banker or mortgage broker if:

- 1. The real estate broker receives \$250.00 or less at the closing of the mortgage loan for reimbursement of expenses incurred in providing specific mortgage related services in connection with a particular real estate sale or real estate brokerage service;*
- 2. The real estate broker itemizes in writing the specific services provided by the real estate broker or by the sales person licensed with the broker and submits that itemized list to the mortgage lender prior to closing; and*
- 3. The real estate broker or salesperson receives a real estate commission in connection with the transaction.*

(c) For the purposes of (b) above, expenses are deemed to be incurred in providing the specific mortgage related services only if the expenses are exclusively attributed to, and allocated to, those services and not used for general overhead expenses of the real estate broker, salesperson or office or to defer any cost attributable to the real estate business, or any non-mortgage related business conducted by the real estate broker, salesperson or other office personnel. Expenses that are general overhead, and therefore are not reimbursable, shall include, but not be limited to: mortgage or lease expenses, rent, utilities, insurance, depreciation and advertising; office equipment and supplies used for any purpose other than mortgage related services, and telephone expenses attributed to any purpose other than mortgage related services. Expenses for office equipment, supplies and telephone usage that are exclusively attributed to mortgage related services are not general overhead and are reimbursable within the \$250.00 limit.

(d) The mortgage lender shall give a copy of the itemized list of reimbursable services, that was received from the real estate broker pursuant to (b)2 above, to the borrower prior to closing and shall retain a copy on file for a least three

years following the closing of the loan..



RECENT DISCIPLINARY ACTIONS - MARCH, 1999 - JUNE, 1999

Amir Youssef, salesperson, Essex County, March 9, 1999. At a full hearing, the Commission revoked Mr. Youssef's license for 5 years and imposed a \$1,000 fine for violations of N.J.S.A. 45:15-12.1, 45:15-17(a), (e), (h) and (n). Mr. Youssef had been convicted of a theft offense within 5 years of initially applying for licensure and when asked on the license application whether or not he had ever had a criminal conviction, he answered in the negative.

Ernestine Whitaker, salesperson, (inactive) Bergen County. On April 13, 1999, after a full hearing, the Commission suspended Ms. Whitaker's license until July 1, 1999 and imposed a \$1,500 fine. Ms. Whitaker was found guilty of violating N.J.S.A. 45:15-17(d), (e) and (l) because she had failed to turn over to her broker a commission check payable to her broker which she had received as a salesperson at a real estate closing. In this case the Commission took note of significant mitigating factors, including the involvement of the respondent's ex-spouse in her misconduct.

David Jones, salesperson, Somerset County. On April 20, 1999, the Commission determined that Mr. Jones had produced substantial evidence of rehabilitation from past criminal conduct and allowed him to retain a salesperson's license on probation.

Gerald Flynn, salesperson, (inactive), Burlington County, April 27, 1999. At a full hearing, the Commission revoked Mr. Flynn's eligibility to hold a real estate license for 5 years and imposed a fine of \$2,500 for his failure to disclose prior criminal convictions as well as a pending criminal indictment. He was found guilty of N.J.S.A. 45:15-17(a), (e), (h), and (n).

Nancy Swack, salesperson, Morris County. At a full hearing on April 20, 1999, the Commission revoked Ms. Swack's license for 5 years under 45:15-19.1 because she was convicted of a theft offense which was related to her activities as a real estate salesperson. Ms. Swack admitted to having taken a digital camera belonging to another salesperson in her office.

Robert Mulé, broker, Mercer County. On June 15, 1999, at a full hearing, the Commission determined that Mr. Mule could retain his license on a probationary basis pending disposition of the criminal indictment filed against him in Superior Court.

Norman Garrett, salesperson, Union County, May 11, 1999. Mr. Garrett's license was revoked for 6 months, pursuant to 45:15-19.1 based upon a conviction that was reversed on appeal and then subsequently reinstated after a new trial. Credit was given for the time period that his license had been voluntarily surrendered.

Peter Mazzagatti, salesperson, Camden County, May 18, 1999. At a full hearing, the Commission revoked Mr. Mazzagatti's license retroactive to November, 1997 when his license went into an inactive status. Mr. Mazzagatti was found guilty of a violation of N.J.S.A. 45:15-17(e) based upon a 1995 civil judgment which found him guilty of consumer fraud. He was deemed eligible to hold a license on probation after July 1, 1999.

Robert Sullivan, salesperson, Monmouth County. On May 25, 1999, the Commission suspended Mr. Sullivan's license pursuant to N.J.S.A. 45:15-19.2 pending the outcome of a criminal indictment filed against him in Superior Court.

Tracey Sanpetrino, salesperson, Monmouth County. On June 8, 1999, the Commission revoked Ms. Sanpetrino's license for 7 years and imposed a fine of \$2,000. Ms. Sanpetrino was found to have violated N.J.S.A. 45:15-19.1, 45:15-17(a) and (n) in that she entered pleas of guilty to the crimes of theft and forgery which arose out of her activities as a real estate salesperson. Ms. Sanpetrino pleaded guilty to having taken and used a commission check, checkbook and wallet belonging to another real estate salesperson in her office.



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