

CHAPTER 5

REAL ESTATE COMMISSION

Authority

N.J.S.A. 45:15-6, 45:15-10.4, 45:15-16.2g, 45:15-16.49, 45:15-16.82, 45:15-17.t, 45:15-17.4, and 45:15-42.

Source and Effective Date

Effective: February 24, 2016.
See: 48 N.J.R. 493(b).

Chapter Expiration Date

Chapter 5, Real Estate Commission, expires on February 24, 2023.

Chapter Historical Note

Chapter 5, Real Estate Commission, was filed and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Chapter 5 expired on August 2, 1983.

Chapter 5, Real Estate Commission, was adopted as new rules by R.1983 d.471, effective November 7, 1983. See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).

Pursuant to Executive Order No. 66(1978), Chapter 5, Real Estate Commission, was readopted as R.1988 d.555, effective October 28, 1988. See: 20 N.J.R. 2184(a), 20 N.J.R. 3019(a).

Subchapter 2, Organizational Rules, was adopted as R.1989 d.258, effective April 19, 1989. See: 21 N.J.R. 1364(a).

Subchapter 3, Petitions for Rulemaking, Subchapter 4, Proceedings before the Commission, and Subchapter 5, Appeals of Initial Denials of Licensing Applications, were adopted as R.1989 d.429, effective August 21, 1989. See: 21 N.J.R. 1315(a), 21 N.J.R. 2524(a).

Subchapter 6, Rules Interpreting and Implementing the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq., was adopted as R.1990 d.455, effective September 17, 1990. See: 22 N.J.R. 1421(a), 22 N.J.R. 2969(d).

Pursuant to Executive Order No. 66(1978), Chapter 5, Real Estate Commission, was readopted as R.1993 d.552, effective October 15, 1993. See: 25 N.J.R. 3597(b), 25 N.J.R. 5229(a).

Pursuant to Executive Order No. 66(1978), Chapter 5, Real Estate Commission, was readopted as R.1998 d.497, effective September 14, 1998. As a part of R.1998 d.497, effective October 5, 1998, sections 1.1 through 1.44 of Subchapter 1, Rules and Regulations, were recodified as Subchapter 2, Education; Subchapter 3, Licensing; Subchapter 4, Employment Practices/Office and Licensee Supervision; Subchapter 5, Trust Accounts/Records of Brokerage Activity; Subchapter 6, Conduct of Business; Subchapter 7, Prohibited Activities; and Subchapter 8, Disciplinary Actions/Conditions for Restoration of License/Real Estate Guaranty Fund Claims. Also as a part of R.1998 d.497, effective October 5, 1998, Subchapter 2, Organizational Rules, was recodified as Subchapter 1; Subchapter 6, Rules Interpreting and Implementing the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq., was recodified as Subchapter 9; Subchapter 3, Petitions for Rulemaking, was recodified as Subchapter 10; Subchapter 4, Proceedings before the Commission, was recodified as Subchapter 11, Procedures on Disciplinary Actions, Contested Applications, Declaratory Ruling Requests; and Subchapter 5, Appeals of Initial Denials of Licensing Applications, was recodified as section 11.10. See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

Chapter 5, Real Estate Commission, was readopted as R.2004 d.130, effective March 5, 2004. See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).

Subchapter 9A, Rules Interpreting and Implementing the New Jersey Real Estate Timeshare Act, N.J.S.A. 45:15-16.50 et seq., was adopted as

new rules by R.2009 d.222, effective July 6, 2009. See: 40 N.J.R. 3944(a), 41 N.J.R. 2663(a).

Chapter 5, Real Estate Commission, was readopted as R.2009 d.287, effective August 27, 2009. See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).

Subchapter 12, Continuing Education, was adopted as new rules by R.2011 d.184, effective July 18, 2011. See: 43 N.J.R. 369(a), 43 N.J.R. 1592(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 5, Real Estate Commission, was scheduled to expire on August 27, 2016. See: 43 N.J.R. 1203(a).

Chapter 5, Real Estate Commission, was readopted, effective February 24, 2016. See: Source and Effective Date.

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The fees applicable to transactions processed by the Department of Banking and Insurance Licensing Services Bureau, Real Estate Section are listed in the table below. Renewal fees are assessed biennially for the renewal of licenses for a two-year term pursuant to N.J.S.A. 45:15-15. All other fees are payable in full regardless of when during a license term the application to which the fee pertains is submitted.

LICENSE FEES

Initial License Fees (amounts include \$50.00 application fee and, where applicable, Real Estate Guaranty Fund fees of \$10.00 for salespersons and referral agents and \$20.00 for brokers and broker-salespersons. See N.J.S.A. 45:15-35. Amounts do not include the processing fee for fingerprint scanning payable directly to the State-contracted vendor):

<u>License</u>	<u>Fee</u>
Corporations, partnerships and other business entities	\$270.00
Broker of record	\$270.00
Sole proprietor broker	\$270.00
Broker-salesperson	\$270.00
Salesperson	\$160.00
Referral agents	\$160.00
Branch office	\$150.00
Temporary broker license	\$300.00

Renewal Fees:

<u>License</u>	<u>Fee</u>
Corporations, partnerships and other business entities	\$200.00
Broker of record	\$200.00
Sole proprietor broker	\$200.00
Broker-salesperson	\$200.00
Salesperson	\$100.00
Referral agents	\$100.00
Branch office	\$100.00

Late Renewal Fees:

<u>License</u>	<u>Fee</u>
Corporations, partnerships and other business entities	\$ 40.00
Broker	\$ 40.00
Broker-salesperson	\$ 20.00
Salesperson	\$ 20.00
Referral agents	\$ 20.00

Transfers:

<u>License</u>	<u>Fee</u>
Broker-salesperson	\$ 25.00
Salesperson	\$ 25.00
Referral agents	\$ 25.00

Reinstatements of unexpired licenses
(amounts include \$50.00 application fee):

<u>License</u>	<u>Fee</u>
Corporations, partnerships and other business entities	\$250.00
Broker of record	\$250.00
Sole proprietor broker	\$250.00
Broker-salesperson	\$250.00
Salesperson	\$150.00
Referral agent	\$150.00
Branch office	\$150.00

Changes:

<u>Type</u>	<u>Fee</u>
Name change	\$ 50.00
Change of business address: sole proprietor brokers and corporations, partnerships or other business entities (plus \$10.00 for each individual licensee)	\$ 50.00
Change of status—sole proprietor, broker, broker of record, broker-salesperson, salesperson or referral agent	\$ 50.00
Change of branch office supervisor	\$ 50.00

New Rule, R.2003 d.440, effective November 3, 2003.

See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).

Administrative correction.

See: 36 N.J.R. 656(b).

Amended by R.2009 d.287, effective September 21, 2009.

See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).

In the introductory paragraph, substituted "Department of Banking and Insurance Licensing Services Bureau, Real Estate Section" for "Licensing Section of the Real Estate Commission"; in the paragraph below "LICENSE FEES", deleted ", \$18.00 criminal history record check fee for each individual required by N.J.A.C. 11:5-3.3 to undergo such a check" following "application fee", and inserted "Amounts do not include the processing fee for fingerprint scanning payable directly to the State-contracted vendor"; and in the "Initial License Fees" portion of the table, updated the Fee amounts for entries "Broker of record", "Sole proprietor broker", "Broker-salesperson", "Salesperson", "Branch office" and "Temporary broker license" and deleted the entry for "Multiple broker license"; and in the "Late Renewal Fees" portion of the table, deleted the entry for "Branch office".

Amended by R.2012 d.006, effective January 3, 2012.

See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).

In the paragraph following "LICENSE FEES", inserted "and referral agents"; in the table, inserted entries for "Referral agent" throughout; and in the next to last table entry, substituted a comma for "or" following "record" and inserted ", salesperson or referral agent".

11:5-3.15 Change of status from referral agent to salesperson or broker-salesperson

(a) A licensed referral agent who was not previously licensed as a broker, broker-salesperson or salesperson and who has been licensed as a referral agent for less than one year shall be eligible for licensure as a salesperson without being required to complete any continuing education.

(b) A licensed referral agent who was not previously licensed as a broker, broker-salesperson or salesperson and who has been licensed as a referral agent for between one and six years immediately preceding making application for a change of status to that of a licensed salesperson shall, in order to qualify for licensure as a salesperson, complete 24 hours of continuing education, all of which shall be in core

topics as set forth in N.J.A.C. 11:5-12.4. The 24 hours of continuing education shall be completed within the two years immediately preceding application for licensure as a salesperson.

(c) A licensed referral agent who was not previously licensed as a broker, broker-salesperson or salesperson and who has been licensed as a referral agent for more than the six immediately preceding years shall, in order to qualify for licensure as a salesperson, be required to complete the pre-licensure education requirement applicable to salespersons and to pass the State license examination for salespersons.

(d) A licensed referral agent who was previously licensed as a broker, broker-salesperson or salesperson who has been licensed as a referral agent for the six immediately preceding years or any lesser period shall, in order to qualify for reissuance of a broker, broker-salesperson or salesperson license, complete the hours of continuing education as set forth below:

1. To qualify for relicensure as a salesperson, a person who has been licensed as a referral agent for less than three years shall complete 12 hours of continuing education, all of which shall be in core topics as set forth in N.J.A.C. 11:5-12.4 within the two years immediately preceding application.

2. To qualify for relicensure as a salesperson, a person who has been licensed as a referral agent three years or more, but less than six years, shall complete 18 hours of continuing education, all of which shall be in core topics as set forth in N.J.A.C. 11:5-12.4 within the two years immediately preceding application.

3. To qualify for relicensure as a broker or broker-salesperson, a person who has been licensed as a referral agent for less than three years shall complete 18 hours of continuing education within two years immediately preceding application, all of which shall be in core topics as set forth in N.J.A.C. 11:5-12.4.

4. To qualify for relicensure as a broker or broker-salesperson, a person who has been licensed as a referral agent for three years or more, but less than six years, shall complete 24 hours of continuing education within the two years immediately preceding application, all of which shall be in core topics as set forth in N.J.A.C. 11:5-12.4.

(e) A licensed referral agent who was previously licensed as a broker, broker-salesperson or salesperson who has been licensed as a referral agent for more than the six immediately preceding years shall, in order to qualify for re-licensure as a broker, broker-salesperson or salesperson, complete 30 hours of continuing education, 24 hours of which shall be in core topics as set forth in N.J.A.C. 11:5-12.4, and shall pass the broker's license examination or the salesperson's license examination, as applicable.

New Rule, R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).

SUBCHAPTER 4. EMPLOYMENT PRACTICES/OFFICE AND LICENSEE SUPERVISION

11:5-4.1 Employment agreements; commissions; accounting to salespersons and referral agents; actions for collection of compensation

(a) No salesperson or referral agent may commence operations as such for a broker and no broker may authorize a salesperson or referral agent to act as such on his or her behalf until a written agreement as provided in this subsection has been signed by the broker and salesperson or referral agent. Prior to an individual's commencement of activity as a salesperson or referral agent under the authority of a broker, the broker and salesperson or referral agent shall both sign a written agreement which recites the terms under which the services of the salesperson or referral agent have been retained by the broker. Such terms shall include, but need not be limited to, the following:

1. The rate of compensation to be paid to the salesperson or referral agent during his or her affiliation with the broker;

2. A promise by the broker to pay to the salesperson or referral agent his or her portion of commissions earned within 10 business days of their receipt by the broker or as soon thereafter as such funds have cleared the broker's bank, or in accordance with another payment schedule explicitly set forth in the employment agreement;

3. The rate of compensation payable to the salesperson or referral agent on transactions which close and, if applicable, on renewals which occur subsequent to the termination of the salesperson's or referral agent's affiliation with the broker; and

4. A provision that any future changes to the agreement will not be binding unless the changes are contained in a writing signed by both parties.

(b) A copy of the fully executed agreement shall be provided to the salesperson or referral agent upon the commencement of his or her affiliation with the broker, and the original thereof shall be maintained by the broker as a business record in accordance with N.J.A.C. 11:5-5.5.

(c) All compensation paid to brokers shall, unless debited from funds held in escrow in accordance with N.J.A.C. 11:5-5.1(d), be deposited into the general business account of the broker within five business days of their receipt by the broker.

(d) In the event that any monies due a salesperson or referral agent under the terms of the written agreement with their broker are not paid within 10 business days of the broker's receipt of such funds or promptly thereafter upon their having cleared the broker's account, the broker shall provide to the salesperson or referral agent a complete and comprehensive written explanation of the failure to pay such monies.

(e) Upon the termination of the affiliation of a salesperson or referral agent with a broker, the broker shall make a complete accounting in writing of all monies due the salesperson or referral agent as of the date of termination and/or which may become due in the future. In the event any sums so accounted for are not in accord with the terms of the post-termination compensation clause in the written agreement between the broker and the salesperson or referral agent, the broker shall give a complete and comprehensive written explanation of any difference to the salesperson or referral agent with the accounting. Such accounting shall be delivered to the salesperson or referral agent not later than 30 days after termination.

(f) Copies of all written agreements as described in (a) above, of all written explanations of the failure to pay compensation due a salesperson or referral agent on a timely basis as described in (e) above, and of all accountings and written explanations regarding compensation due a salesperson or referral agent subsequent to the termination of their affiliation with a broker as described in (f) above shall be maintained by the broker, with adequate proof of the delivery of the same to the salesperson or referral agent, for a period of six years.

(g) In situations where the Commission confirms that a broker has complied with all of the requirements imposed by this section, the Commission will not further investigate a complaint alleging the non-payment of a commission by a broker to a salesperson or referral agent unless such complaint is accompanied by a copy of an arbitration decision or the equivalent, or a copy of a judgment of a court of competent jurisdiction secured by the salesperson or referral agent against the broker. Unless appealed, the failure by a broker to pay monies awarded to a salesperson or referral agent under the terms of any such decision or judgment within 30 days of its effective date shall subject the broker to sanctions pursuant to N.J.S.A. 45:15-17.

(h) Broker, salesperson and referral agent licensees may only bring or maintain actions in the courts of New Jersey for the payment of compensation due them for brokerage services performed as provided in N.J.S.A. 45:15-3.

1. The Commission interprets the language “at the time the alleged cause of action arose” as used in N.J.S.A. 45:15-3 to mean at the time that the brokerage services which form the basis for the alleged claim to compensation were rendered. For example, at the time when a property was listed for sale or rental by a licensee.

2. The Commission does not interpret the language “at the time the alleged cause of action arose” as requiring that the licensee must have been actively licensed at the time that the compensation allegedly due was to have been paid. For example, the Commission does not construe this language as requiring licensure at the time of the renewal of a lease to enable a claimant to sue for compensation based upon a promise, made or in effect when the lease

was originally executed, to pay additional consideration to the claimant in the event that the lease was renewed.

(i) All references to “salesperson” in this section shall be construed to also include individuals licensed as broker-salespersons. All references to “non-payment of a commission” in this section shall be construed to include the non-payment of other forms of compensation.

As amended, R.1976 d.254, eff. August 16, 1976.

See: 8 N.J.R. 336(b), 8 N.J.R. 422(a).

As amended, R.1983 d.471, eff. November 7, 1983.

See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).

“Salesman” replaced by “salesperson”.

Amended by R.1989 d.424, effective August 21, 1989 (operative November 19, 1989).

See: 21 N.J.R. 1308(b), 21 N.J.R. 2519(a).

Language entirely deleted and replaced with more detailed requirements including essential provisions which must be included in all contracts between brokers and salespersons.

Amended by R.1994 d.57, effective February 7, 1994.

See: 25 N.J.R. 4851(a), 26 N.J.R. 799(a).

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (a), rewrote 2; deleted former (c); recodified former (d) through (j) as (c) through (i); and changed N.J.A.C. references throughout.

Amended by R.2012 d.006, effective January 3, 2012.

See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).

Section was “Employment agreements; commissions; accounting to salespersons, actions for collection of compensation”. Inserted “or referral agent” throughout; in (a)3, inserted “or referral agent’s”; and in the introductory paragraph of (h), substituted a comma for “and” following “Broker”.

Case Notes

Real Estate Commission regulation is reasonable interpretation of statute governing actions for recovery of real estate commissions, which requires that claimant be duly authorized real estate broker at time commission was earned. *Prestia Realty Inc. V. Hartz Mountain Industries, Inc.*, 303 N.J.Super. 140, 696 A.2d 95 (N.J.Super.A.D. 1997).

Regulation stating that real estate broker suing for commissions must have been duly licensed when broker performed all necessary brokerage services does not require broker to be licensed at time of closing. *Atlantic Commercial Group, Inc. v. Dunham*, 303 N.J.Super. 122, 696 A.2d 85 (N.J.Super.A.D. 1997).

Issues of fact precluded summary judgment on issue whether claimed agent was an employee of real estate agency for purposes of wrongful discharge claim. *MacDougall v. Weichert*, 144 N.J. 380, 677 A.2d 162 (1996).

Commingling of funds, accounting failures, as well as other violations, warranted permanent revocation of broker/salesperson license and imposition of fine. *New Jersey Real Estate Commission v. Duffy*, 93 N.J.A.R.2d (REC) 13.

Commingling trust monies and failing to maintain separate account for escrow funds, as well as other violations, warranted revocation of broker’s license, suspension of salesperson’s license, and assessment of fine. *New Jersey Real Estate Commission v. Woods*. 92 N.J.A.R.2d (REC) 25.

Failing to maintain as separate funds monies held as escrow agent, and other violations, warranted revocation of broker’s license and assessment of fine. *New Jersey Real Estate Commission v. Brown*. 92 N.J.A.R.2d (REC) 21.

11:5-4.2 Broker supervision and oversight of individual licensees, office operations and escrowed monies

(a) The following apply to individual broker licensees operating as sole proprietors (employing brokers) or as the authorized broker (broker of record) of a corporation or other entity licensed as a New Jersey real estate broker. As used in this section, the term "individual broker" shall refer to employing brokers and brokers of record and the term "broker licensee" shall refer to sole proprietors and corporations or other entities licensed as brokers.

1. The Commission will hold responsible individual brokers for any actions of the broker licensee or any person employed by or licensed through the broker licensee taken in the pursuit of its real estate brokerage business which violate any of the provisions of the real estate license law, N.J.S.A. 45:15-1 et seq., or the regulations promulgated thereunder.

i. This responsibility shall apply regardless of where the persons licensed through the broker licensee engage in actions in pursuit of the broker licensee's real estate brokerage business.

2. Every real estate transaction in which a broker licensee participates as a broker shall be under the ultimate supervision of the individual broker.

3. The individual broker shall, in addition to ascertaining that a separate account is maintained for the funds of others coming into the possession of the broker licensee, make certain that no such funds of others are disbursed or utilized without his or her express authorization and knowledge.

4. The provisions of this subsection do not apply to brokers licensed as broker-salespersons.

As amended, R.1983 d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).

Subsections (a) and (c) deleted; subsection (b) recodified as (a).
Amended by R.1995 d.23, effective January 17, 1995.

See: 26 N.J.R. 3111(a), 27 N.J.R. 370(a).

Amended by R.1998 d.246, effective May 18, 1998.

See: 30 N.J.R. 278(a), 30 N.J.R. 1827(a).

Rewrote (a).

11:5-4.3 Use of license for the benefit of others

(a) No arrangement, direct or indirect, shall be entered into by any licensee whereby an individual licensee lends his name or license for the benefit of another person, firm or corporation, or whereby the provisions of the real estate statute and rules relating to licensing are circumvented.

(b) Lending a broker's license for the benefit of another person, firm or corporation shall be construed as including any arrangement whereby a broker fails to personally oversee and direct the operations of the business of which he or she is licensed as broker of record or employing broker. For the purposes of this section, personal oversight and direction of

the business shall be construed as requiring the broker to be physically present in the main office or branch office locations of the business at least one day each week (excluding vacations and emergencies). Communication via telephone and/or mail alone for an extended period of time may be considered by the Commission as evidence of prohibited license lending.

(c) Nothing in this section shall be construed to limit a broker's responsibility to insure the adequate supervision of all offices in accordance with the requirements of N.J.A.C. 11:5-4.4 and 4.5.

As amended, R.1982 d.101, effective April 5, 1982.

See: 13 N.J.R. 302(b), 14 N.J.R. 345(b).

Deleted existing text of (b) and added new (b) through (b)2.

As amended, R.1983 d.471, effective November 7, 1983.

See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).

Amended by R.1989 d.426, effective August 21, 1989 (operative November 19, 1989).

See: 20 N.J.R. 2184(a), 20 N.J.R. 3019(a), 21 N.J.R. 1311(a), 21 N.J.R. 2522(a).

Established the minimum amount of personal contact which brokers must maintain with their offices and salespeople, deleted (b) and added new (b) and (c).

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (c), changed N.J.A.C. references.

11:5-4.4 Maintained offices

(a) Every resident real estate broker not licensed as a broker-salesperson shall maintain a main office for the transaction of business in the State of New Jersey, which shall be open to the public during usual business hours. This main office and the activities of the licensees working from it shall be under the direct supervision of either the broker himself or herself, or of a person licensed as a broker-salesperson. Such supervision shall be maintained on a full time basis. Maintaining full-time supervision shall not be construed as requiring the person performing the supervisory functions to be present at the office location continuously during usual business hours. However, the person performing the supervisory functions shall provide sufficient information so as to allow the personnel at the main office to make communication with that person at all times. Further, the licensee supervising the main office shall be so employed on a full-time basis and, when not required to be away from the office for reasons related to the business of the office, shall be physically present at that office during usual business hours at least five days per calendar week (excluding vacations and emergencies) and shall not be otherwise employed during such time.

1. In the event the main office of a broker is under the direct supervision of a broker-salesperson, the broker who maintains such a main office shall be ultimately responsible for all activities conducted by licensees and employees. Such a broker shall also provide sufficient information to the personnel at such offices so as to allow them to make communication with such broker at all times. Nothing in this section shall be construed to limit a