



State of New Jersey

DIVISION OF

THE NEW JERSEY REAL ESTATE COMMISSION

IN THE DEPARTMENT OF BANKING AND INSURANCE
1100 RAYMOND BOULEVARD, NEWARK 2

February 16, 1961

Honorable Robert B. Meyner,
State House,
Trenton, N. J.

Dear Governor Meyner:

The members of the Commission have directed that this office furnish you with a copy of the Rules and Regulations it is desirous of adopting, as attached.

A public hearing will be held on the above proposed Rules and Regulations at this office on Wednesday, March 1, 1961, at 10:00 A. M. The Regulations are being circulated among the trade and the various daily newspapers of this State for release. Any and all interested persons have been invited to attend and present written or oral statements with respect thereto, at the said public hearing.

This office will gladly furnish any further information you may desire.

Respectfully,
Real Estate Commission

Philip L. Mangano
Acting Chief Examiner-Investigator

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RULES and REGULATIONS

The Commission, pursuant to authorization vested under the provisions of N.J.S.A. 45:15-6 and N.J.S.A. 45:15-17, does hereby promulgate, adopt and declare effective the following rules and regulations for the administration of the New Jersey Real Estate License Act. The titles given to the several rules are intended for the convenience of reference only and shall not be utilized to interpret the substance of any given rule.

1. SALESMAN'S LICENSE - AGE LIMIT

No salesman's license shall be issued to any person who has not attained the age of nineteen years.

2. QUALIFICATIONS FOR LICENSING - BROKER

The New Jersey Real Estate License Act, (subject to certain exceptions as set forth in N.J.S.A. 45:15-11, 11.1 and 11.2), among other required qualifications, provides that "Every applicant for a license as a broker shall have first served an apprenticeship of two full years as a duly licensed real estate salesman in this State immediately preceding the date of application".

The Commission defines the word "apprenticeship", as used in the aforesaid statute, to require a broker-salesman relationship wherein an adequate knowledge of the methods, techniques and terminology of the business, as well as the pitfalls for the public and licensees alike, has been engendered by intimate, intensive and successful contact with diverse aspects of the real estate business under the guidance and direction of a licensed broker. In order to satisfy the above requirement, an applicant must have been so employed substantially full time during his apprenticeship as a salesman. In addition, an applicant and the broker under whom he serves his apprenticeship shall insure that the apprenticeship includes practice and experience in all aspects of the real estate business as set forth in N.J.S.A. 45:15-3.

Approval of an applicant is not based rigidly upon the number of hours worked, number of sales, number of rentals or number of mortgage transactions, nor on the dollar value, but rather is based upon the combined weight and variety of these elements. In addition, applicants may be required to appear and answer interrogatories relating to their general background and experience.

The Commission shall give due consideration to the following as affecting the qualifications of an applicant:

- (a) Evidence of having applied oneself fully with time equivalent to forty hours a week over a period of two years devoted to the business.
- (b) Evidence of sales, rentals and mortgage experience with an average approximating one transaction in each of the three categories per month over the two year period.

3. QUALIFICATIONS FOR CORPORATE LICENSING

(A) N.J.S.A. 45:15-9 states in part: "No license as a broker shall be granted to a corporation unless at least one of the officers of said corporation qualifies as a broker to transact business in the name and on behalf of said corporation; the license of said corporation shall cease if at least one officer does not hold license as a broker at all times, and no person shall transact business in the name and on behalf of a corporation duly licensed as a broker unless he shall hold a license as a broker or salesman".

(B) In interpretation of the above quoted statute, the following regulations shall control:

1. The Commission will hold responsible the individual licensed broker or brokers qualified in accordance with the provisions of N.J.S.A. 45:15-9 for any actions of the corporate licensee or its agents in the pursuit of its real estate brokerage business, which violate any of the provisions of the Real Estate Statutes or the Regulations promulgated thereunder.
2. Every real estate transaction in which a corporate licensee participates as a broker shall be under supervision of the broker or brokers qualified to transact business in the name of and on behalf of said corporation.
3. Each corporate licensee shall indicate upon its letterheads, invoices and all other forms or documents used by it in connection with its real estate brokerage business, the name of each broker who has qualified to transact business in the name of and on behalf of said corporation and the words Licensed New Jersey Real Estate Broker adjacent to the name of such broker.
4. The broker qualified to transact business in the name and on behalf of the corporate licensee, in addition to ascertaining that a separate account is maintained for the funds of others coming into the possession of the licensee, shall make certain that no such funds of others are disbursed or utilized without his express authorization and knowledge, and the signature of such qualified broker shall be required on any check disbursing funds from the account maintained for the funds of others.

4. EXAMINATION - RULES

In the conduct of examinations for real estate broker or salesman licenses, the following examination rules shall prevail:

(A) Examination papers shall be delivered to the examining room under seal and shall be opened by the Examiner in the presence of the examinees.

(B) Examinees will not be permitted to refer to any notes, books or memoranda.

(C) The copying of questions or making of notes for personal use is prohibited.

(D) No examinee shall leave the examining room without first having turned over to the Examiner all examination papers, in which event the examination shall be considered concluded insofar as that examinee is concerned.

5. EXAMINATIONS - FAILURE

Any applicant who fails to pass the examination upon the second attempt shall not be eligible for a similar examination until the expiration of six months from time of last examination, unless the Commission, upon showing of good cause by the applicant, shall waive this requirement.

6. EXAMINATION AS A CONDITION TO RESTORATION OF LICENSE

In determination rendered upon any disciplinary action, the Commission may, where the nature of the offense so warrants, impose as a condition to any future license restoration the successful accomplishment of a written examination of the same type normally given to applicants for initial licenses.

7. FUNDS OF OTHERS - COMMINGLING

(A) In construing N.J.S.A. 45:15-17 (c), the following shall be considered to constitute commingling by a licensee:

1. Mingling the money or other property of his principals with his own.

2. Failure to maintain and deposit promptly in a special account in an authorized financial institution, separate and apart from personal or other business accounts, all moneys received by a real estate broker acting in said capacity, or as escrow agent, or as the temporary custodian of the funds of others, in a real estate transaction.
3. Failure to promptly segregate any properties received which are to be held for the benefit of others.

(B) Where the nature of a given real estate transaction is such that the commissions due to a broker in connection with services rendered in said transaction are included among the funds deposited to the broker's trust account, the portion of such funds which constitute the broker's commission shall be promptly paid from the trust account, with appropriate annotations to the broker's business records to define the amount and source of such commissions, provided, however, that such broker shall have been previously authorized to make such disbursement.

(C) Within the meaning of this Regulation, the word "promptly" shall be interpreted to mean not more than five business days next following receipt of the money or property of another.

8. FUNDS OF OTHERS - SAFEGUARDS

No licensee shall accept funds or deposits from a prospective purchaser without ascertaining that there has been established by escrow, or otherwise, adequate precautions to safeguard such funds or deposits where the licensee knows or has reason to know any facts which would tend reasonably to create a doubt:

- A. as to ability of the seller to perform his contractual obligations; or
- B. as to the ability of a seller to return such funds or deposits in the event of the failure of a contingency contained in a real estate contract.

The provisions of paragraph (A) shall not apply to a licensee who, before accepting such funds or deposits, has adequately informed the prospective purchaser of any risk entailed and has secured from him a separate signed writing in which the purchaser has acknowledged:

1. his awareness of any risk or contingency.
2. the disposition of his funds or deposits.
3. the absence of any representations by the licensee as to the solvency of the seller and his ability to return such funds.

Funds or deposits placed in escrow pursuant to this Regulation may be held by any person or entity legally authorized to hold funds in that capacity, such as, but not limited to, the real estate broker himself, lawyers or banks.

9. COMMISSIONS - ACCOUNTING TO SALESMAN

Unless otherwise expressly provided by written agreement between a broker and salesman, all commissions due to a salesman from such employing broker shall be subject to accounting to and payment to the salesman not later than ten days from the accrual right of such commissions.

10. ADVANCE FEES - ACCOUNTING

Any broker who charges or collects an advance fee for services to be rendered, such as, but not limited to, advertising costs, under an advance fee agreement, shall, within ninety days after such charge or collection, furnish his principal with an accounting as to use of such moneys, certified to be a true copy under oath before a Notary Public or any other authorized official. Such accounting shall set forth actual amount of each individual expenditure, including date of insertion and name of newspaper or periodical, and shall

similarly detail any other type of promotional expenditure if the funds are spent for other than newspaper or periodical advertising.

11. PERMANENT TYPE RECORDS TO BE MAINTAINED BY BROKER

Every broker shall keep permanent type records of all funds and property of others received by him. These records shall clearly indicate the date, amount and from whom received, specifying property and reasons for holding moneys, date of deposit of such funds and name of depository bank; also date of disbursement, amounts forwarded together with the name of the recipient in addition to any other pertinent information concerning the transaction.

12. INSPECTION OF RECORDS

In order to reasonably effectuate all of the provisions of N.J.S.A 45:15-1, etc. and Regulations thereunder, every licensee shall make available for inspection by the Commission or its designated representatives all records of transactions, books of account, instruments, documents and forms utilized or maintained by such licensee in the conduct of the licensed business.

13. USE OF NAME OR LICENSE FOR THE BENEFIT OF OTHERS

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 Statutes and Regulations relating to licensing are circumvented.

14. ADVERTISING - RULES

A. Where a real estate broker inserts advertisements in a newspaper or any other publication to make an offer to sell, buy, exchange or rent real property, or any interest therein, such advertisements shall correctly indicate to the reader that the advertisements have been placed by a person engaged in the real estate brokerage business. Examples of permissible language shall include, but are not limited to, "Realtor", "Realtist", "Real Estate Broker", "Broker" or "Real Estate", after the licensee's regular business name. This provision shall not apply where the broker is a bona fide owner of the property being advertised.

B. Where advertisements refer to amounts of down payment, monthly payment, mortgage obtainable or other representations designed to induce inquiry, the broker shall maintain written proof of the validity of these statements in the broker's file.

C. The Commission shall, as a matter of convenience to the public and licensees, find not objectionable the practice of inserting in advertisements, in addition to the broker's name and business telephone number, the telephone number of his licensed employees, including his home telephone number, if he so desires, provided they are accompanied by a limitation such as evenings, Sundays, holidays, and not otherwise. Nothing herein contained shall be construed as permitting the mention of names of any licensee other than the broker.

15. ADVERTISING - PROHIBITED PRACTICES

A. No real estate broker or salesman shall advertise or represent that he gives "Free Appraisals". This shall not be construed to prohibit a licensee from offering his services, knowledge or advice in the normal course of business.

B. No free offering of any kind shall be made in any advertisements or promotional material. Nothing herein contained shall be construed as prohibiting the use of such words as "included" or "included in the purchase price".

16. NET LISTING

A "Net Listing" is defined as an agency agreement wherein a prospective seller lists real estate for sale with an authorization to a broker to sell at a specified net dollar return to the seller, and which provides that the broker may retain as commission the difference between the specified dollar return to the seller and the actual sales price. No broker shall hereafter enter into a "Net Listing" contract for the sale of real property, or any interest therein, in this State.

17. MAINTAINED OFFICES

Every resident real estate broker shall maintain a bona fide regularly established office for the transaction of business in the State of New Jersey, which shall be open to the public during usual business hours. This regulation does not apply to brokers working in the capacity of salesmen or holders of reciprocal licenses who by statute are not permitted to maintain offices in this State.

If such office be located in a residence, it shall be independent of living quarters and shall have a separate entrance.

18. BRANCH OFFICE, IF MAINTAINED, SHALL COMPLY WITH PROVISIONS OF RULE #17.

In the event a real estate broker maintains a branch office or offices, every such place of business shall comply with the provisions of Rule #17. No duplicate license shall be issued for a branch office situated in the home of a salesman. Any branch office shall be under the direct supervision of either a licensed broker or a salesman who has been the holder of a license for at least two years immediately preceding and who would, if he so desired, qualify for a broker's license pursuant to the provisions of Rule #2. Such individual shall devote his full time to management of said office during the usual business hours. The name of the individual responsible for the supervision of the Branch Office shall be recorded at all times with the Commission.

Nothing herein contained shall be construed to relieve the employing broker from his responsibility as the principal.

19. PAYMENT OF FEES AS PRESCRIBED BY STATUTE

Any and all fees prescribed by the Real Estate License Act shall be paid by check or money order made payable to the State Treasurer of New Jersey. No cash or currency shall be accepted.

20. EMPLOYMENT OF SALESMAN - SPONSORED BY BROKER

Recognizing the statutory requirement that any licensee shall be of good moral character, the sponsoring broker, before applying for the licensing of any salesman applicant, shall assure himself that such applicant bears a good reputation for honesty and fair dealing. To this end, a competent investigative report is recommended.

21. BROKER INSURANCE PLACEMENT PROVISION

Where a contract provided by a real estate broker contains a provision to the effect that such broker, in his capacity as a licensed insurance agent or broker, is authorized to place or procure insurance on the property being sold, the licensee benefiting by such a provision shall obtain separate written re-affirmation of such provision by the prospective insured not less than five days prior to the closing of title.

22. PROMPT DELIVERY OF INSTRUMENTS AND OTHER OBLIGATIONS BY LICENSEES TO THE GENERAL PUBLIC.

(A) A licensee shall immediately, but in no event later than five days from the date of its execution, deliver to all parties to any agreement of sale, lease, option or any other instrument affecting an interest in real property, a duplicate original of any such executed agreement or instrument. This rule shall be liberally construed so as to effectuate its purpose, which is to insure prompt communication of the executed evidence of a transaction to all interested parties.

(B) The licensee shall make diligent effort to ascertain all pertinent information and facts concerning every property for which he accepts an agency, so that in offering the property, he may fulfill his obligations to his client and customer.

(C) In accepting employment as an agent, the licensee pledges himself to protect and promote, as he would his own, the interests of the client he has undertaken to represent; this obligation of absolute fidelity to the client's interest is primary, but does not relieve the licensee from the equally binding obligation of dealing fairly with all parties to the transaction.

(D) No instructions or inducements from any client or customer shall relieve the licensee from his responsibility of dealing fairly and exercising high integrity in his business relations.

(E) In the event that more than one formal offer on a specific property is made before an owner has accepted a proposal, all offers shall be transmitted by the licensee to the owner.

(F) It shall be the duty of the licensee to recommend that legal counsel be obtained where the interests of either party to the transaction seem to require it.

(G) Licensees are cautioned that they are subject to strict compliance with the laws of agency and principles of law governing fiduciary relationships.

23. RETURN OF LICENSE WHEN LICENSEE CEASES TO BE ACTIVE

It is suggested that when a licensee ceases to be active, temporarily or otherwise, the licensee shall return his license to the Commission. The licensee may apply for reinstatement of such license during the current licensing year.

24. PROMOTIONAL SALES OF OUT OF STATE PROPERTY - REQUIREMENTS

The following Regulations are applicable to promotional sales of out of State property in this State in accordance with the provisions of N.J.S.A. 45:15-16.1.

The Commission shall require an applicant to submit certain documents prior to inspection, which shall, together with review of the tract, form the basis for the Commission's judgment whether to permit the offering of these lands or grant a hearing upon request, to determine whether or not the offering of these lands should be denied in the best interests of the general public.

(A) The following documents are to be furnished to the Commission prior to review, namely:

1. Certified Title Policy covering sub-division.
2. If there is a trust deed or mortgage on the land with conditional release clauses, a copy thereof to be furnished.
3. A statement of the method of the handling of all deposit moneys from purchasers until closing of title.
4. Papers to be used in sale, such as deed, trust deed, contract, lease, option, receipts of deposit, etc.

5. Conditions and restrictions affecting the lots, including mineral rights or reservations of any nature whatsoever.
6. Copy of approved maps or plats showing property to be offered for sale.
7. Documentation by any appropriate governmental authority with respect to the availability and potability of water, and with respect to sanitary disposal of human waste.
8. Report of flood hazards and drainage from flood control Engineer or other qualified authorities.
9. Copies or proofs of advertising and promotional material which shall cover a detailed description of lands offered, any reservation in connection therewith, the plan under which it is to be sold, and such other factors as the review herein provided for may indicate.
10. Price list covering specific plots to be sold, and terms and conditions under which purchaser is to be induced to agree to buy.
11. A financial statement covering individual, co-partnership or corporation holding title, together with bank references.
12. List and addresses of all officers or individual owners of the property being sold. This is construed to mean all parties in interest to said promotional sale, including all others having an indirect interest therein. A certified statement in respect to these individuals shall be furnished and shall set forth in detail any prior arrests or convictions in any jurisdiction, or any license revocation or suspension. If the answer is "None", this fact shall be indicated and similarly certified.
13. A certified copy of any report of review, inspection, approval or release which may be required by the State in which the lands to be promoted are situated.

(B) The Commission designee shall render a report of his findings on a uniform form provided for such purpose.

(C) Where the Commission denies the request for authorization to engage in the sale of a promotional nature in this State of property located outside of this State, the broker may request a hearing before the Commission.

Violation of any of these Rules and Regulations, or of any real estate Statute, shall be sufficient cause for the revocation or suspension of a license pursuant to the provisions of N.J.S.A. 45:15-17.