



STATE OF NEW JERSEY

**Real Estate
License Act
and
Primer**

**Issued
January, 1951**

**DIVISION OF
THE NEW JERSEY REAL ESTATE
COMMISSION
IN THE
DEPARTMENT OF BANKING AND INSURANCE**

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**THE NEW JERSEY
REAL ESTATE LICENSE ACT**

Chapter 141, Laws 1921

AMENDMENTS AND SUPPLEMENTS

Title of Act

"An Act to define, regulate and license real estate brokers and salesmen, creating a State Real Estate Commission, defining its powers and duties, and providing penalties for the violation of the provisions hereof."

Who Must Have Licenses

License required to engage in business of real estate broker or salesman. No person shall engage either directly or indirectly in the business of a real estate broker or salesman, temporarily or otherwise, except as otherwise provided in this article, without being licensed so to do as hereinafter provided. 45:15-1.

"Engaging in business" defined. Any single act, transaction or sale shall constitute engaging in business within the meaning of this article. 45:15-2.

"Real estate broker" and "real estate salesman" defined. A real estate broker, for the purposes of this article, is defined to be a person, firm or corporation who, for a fee, commission or other valuable consideration, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate or negotiates, or offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate for others.

A real estate salesman, for the purposes of this article, is defined to be any person who, for compensation, valuable consideration or commission, or other thing of value, is employed by a licensed real estate broker to sell or offer to sell, buy or offer to buy or negotiate the purchase, sale or exchange of real estate, or offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate, or to lease or rent, or offer to lease or rent any real estate for others, or who is an employee, agent or associate of any person, firm, corporation or association owning or leasing lands, and offering such lands at either public or private sale as a developer where such development consists of more than twenty lots. 45:15-3.

Application of provisions of article limited. The provisions of this article shall not apply to any person, firm, partnership, association or corporation who, as a bona fide owner or lessor, shall perform any of the aforesaid acts with reference to property owned by him, nor shall they apply to or be construed to include attorneys at law, re-

THE License Law is designed to safeguard the interests of the real estate owner, the prospective real estate purchaser, and the legitimate real estate broker and salesman.

The Act creates a Real Estate License Commission, having power to investigate and improve realty operations and to make careful inquiry into the character, ability and general reputation of applicants.

The Administration of the Act should tend to exclude undesirable, irresponsible and scheming persons from embracing opportunities to deceive the trusting and inexperienced public in real estate transactions.

Thirty-five states of the United States (with D. C. and Hawaii), and four provinces in Canada, now have real estate License Laws, which have proven highly satisfactory and beneficial in protecting the general public from unfair realty practices, through the institution of practical supervision and honest business methods.

PREFACE

The idea of the Primer combining copy of the License Law and brief summary of the New Jersey Statutes concerning real property came from a pamphlet issued by the New York Association of Real Estate Boards, for which we are duly grateful. Sincere thanks is extended to members of the New Jersey Association of Real Estate Boards, Prentice-Hall, Inc., publishers of "Real Estate Principles and Practices" by Benson & North, Macmillan Co., publishers of "Principles of Real Estate Practice" by Ernest McKinley Fisher, The American Real Estate Institute, Home Study Course in Real Estate Practice, and the National Association of Real Estate Boards for their assistance and guidance in preparation.

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ceivers, trustees in bankruptcy, executors, administrators or persons selling real estate under the order of any court or the terms of a deed of trust, state banks, federal banks, savings banks and trust companies located within the state, or to insurance companies incorporated under the insurance laws of this state. 45:15-4.

New Jersey real estate commission; membership; appointment; terms of office; vacancies; removals. The New Jersey Real Estate Commission, hereinafter in this article designated as the "commission", created and established by an act entitled "An act to define, regulate and license real estate brokers and salesmen, to create a state real estate commission and to provide penalties for the violation of the provisions hereof," approved April fifth, one thousand nine hundred and twenty-one (L. 1921, c. 141, p. 370), as amended by an act approved April twenty-third, one thousand nine hundred and twenty-nine (L. 1929, c. 168, p. 310), is continued. The commission shall constitute the division of the New Jersey Real Estate Commission in the Department of Banking and Insurance. The commission shall consist of five members, each of whom shall have been a resident of this state for a period of at least ten years, and his vocation for a period of at least ten years prior to the date of his appointment shall have been that of a real estate broker. Upon the expiration of the term of office of any member, his successor shall be appointed by the governor for a term of three years. Each member shall hold his office until his successor has qualified. Members to fill vacancies shall be appointed by the governor for the unexpired term. The governor may remove any commissioner for cause, upon notice and opportunity to be heard. 45:15-5.

President; rules and regulations; compensation and expense allowances of members. This commission shall select from its members a president, and may do all things necessary and convenient for carrying into effect the provisions of this article, and may from time to time promulgate necessary rules and regulations. Each member of the commission shall receive as full compensation for his services, the sum of twenty-five dollars per day for each full day actually spent on the work of the commission, and his actual and necessary expenses incurred in the performances of duties pertaining to his office. No commissioner shall receive any other compensation, either directly or indirectly, for his services. 45:15-6.

Secretary; clerks and assistants; office space. The Commissioner of Banking and Insurance shall provide the commission with such personnel as he shall deem necessary, after consultation with the commission, for the proper discharge of the duties imposed by the provisions of this article. The Commissioner of Banking and Insurance shall prescribe the duties of persons thus assigned to the commission, and shall fix their compensation, within the limits of available appropriations therefor. The Commissioner of Banking and Insurance shall provide the commission with such office space, furniture and stationery as he shall determine after consultation with the commission to be reasonably necessary for carrying out the provisions of this article. 45:15-7.

Seal; certified copies of records as evidence; public inspection of records. The commission shall adopt a common seal by which it shall authenticate its proceedings. Copies of all records and papers in the office of the commission, duly certified and authenticated by its seal, shall be received in evidence in all courts with like effect as the original. All records kept in the office of the commission under the authority of this article shall be open to public inspection under regulations prescribed by the commission. 45:15-8.

Applications for licenses; qualifications of applicants. All persons desiring to become real estate brokers or real estate salesmen shall apply to the commission for a license under the provisions of this article. Every applicant for a license as a broker shall be of the age of twenty-one years or over and a citizen of the United States, and in the case of an association or a corporation the directors thereof shall be of the age of twenty-one years or over and citizens of the United States. Application for a license, whether as a real estate broker or a real estate salesman, shall be made to the commission upon forms prescribed by it, and the applicant shall furnish evidence of good moral character, and in the case of an association or corporation, the directors thereof shall furnish evidence of good moral character. Every such application shall be on file with the commission at least ten days prior to the granting of a license. Every applicant for a license as a broker shall have first served an apprenticeship of one full year as a duly licensed real estate salesman in this State immediately preceding the date of application. No license as 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 a license as a broker at all times; and no person shall transact business in the name and behalf of a corporation duly licensed as a broker unless he shall hold a license as a broker or salesman which permits him to act for such corporation. 45:15-9.

Examinations; granting and annual renewal of licenses. Before any such license shall be granted the applicant, and in case of an association or corporation the directors or officers thereof actually engaged in the real estate business as broker and salesman, shall submit to an examination to be conducted by the commission which examination may be written or oral, or partly written and partly oral, and shall include reading, writing, spelling, elementary arithmetic, a general knowledge of the statutes of New Jersey concerning real property, conveyancing, mortgages, agreements of sale and leases and of the provisions of this article. The commission may make rules and regulations for the conduct of such examinations. Upon satisfactorily passing such examination a license shall be granted by the commission to the successful applicant therefor as a real estate broker or a real estate salesman, and the applicant upon receiving the license is authorized to conduct in this state the business of a real estate broker or a real estate salesman, as the case may be. Such license shall be renewed, without examination, on the first day of July, sub-

sequent to its issue and annually thereafter, upon the payment of the fee fixed by section 45:15-15 of this title. 45:15-10.

Granting of licenses to certain disabled war veterans. A citizen of New Jersey who has served in the military or naval forces of the United States in any war, has been honorably discharged, and who, having been wounded or disabled in line of duty, has completed any of the vocational courses in any college or school prescribed by the federal government qualifying him to operate as a real estate broker or a real estate salesman, may, upon presentation of a certificate certifying that he has completed such a vocational course qualifying him as aforesaid, obtain without cost from the commission a license to operate as a real estate broker or a real estate salesman, as the case may be, which licenses shall be the same as other licenses issued under this article. 45:15-11.

Broker's license in certain cases. The Real Estate Commission may issue a real estate broker's license upon payment of the regular fee, which license shall be the same as other licenses issued under article one of chapter fifteen of Title 45 of the Revised Statutes, to any citizen of New Jersey who has been for at least ten years last past an officer in a corporation which has been engaged in the real estate business in the same municipality in this State, and who has for the same period given his full time to his duties as such officer of such corporation, provided, that an officer of said real estate corporation holding a real estate broker's license issued by the commission has died, leaving no other officer or employee of such corporation holding either a real estate broker's license or a real estate salesman's license. 45:15-11.1.

The Real Estate Commission may issue a real estate broker's license upon payment of the regular fee, which license shall be the same as other licenses issued under article one of chapter fifteen of Title 45 of the Revised Statutes, to any citizen of New Jersey who has held a real estate salesman's license and who has had in the aggregate, during the twenty years last past, ten years' experience in the office of a licensed real estate broker in the capacity of a real estate salesman, which experience need not have been acquired in a consecutive period, and without having first served an apprenticeship for one full year as a duly licensed real estate salesman in this State immediately preceding the date of application for a real estate broker's license; provided, that the real estate broker by whom such an applicant was last employed as a real estate salesman shall have died during the two years preceding the date of such application; and provided further, that such applicant shall satisfactorily pass an examination conducted by the commission. 45:15-11.2.

Places of business; duplicate licenses. Every real estate broker shall maintain a place of business in this state. In case a real estate broker maintains more than one place of business within this state, a duplicate license shall be issued to such broker for each branch office so maintained. The duplicate license shall be issued without additional charge. 45:15-12.

Form, contents and display of licenses; notice of change of places of business; identification cards. All licenses shall be issued by the commission in such form as it shall prescribe. Each license shall show the name and address of the licensee and shall have imprinted thereon the seal of the commission. Each real estate broker shall conspicuously display his license in his place of business. Notice in writing shall be given to the commission by each licensed broker of any change of business location, whereupon the commission shall issue a new license for the unexpired period, without charge. A change of business location without notification to the commission, and without the issuance of a new broker's license, shall automatically cancel the license theretofore issued. In addition to the license, the commission shall deliver to each licensee a pocket card of such size as shall be designated by the commission, which card shall contain the name and address of the licensee, and, in the case of salesman's license, the name and address of the employer of the licensed salesman, and shall also contain an imprint of the seal of the commission, and shall certify that the person whose name appears thereon has been duly licensed as a real estate broker or a real estate salesman, as the case may be. 45:15-13.

Custody of salesmen's licenses; return of license upon termination of employment; new license upon re-employment. All licenses issued to real estate salesmen shall be kept by the broker by whom such real estate salesman is employed, and the pocket card accompanying the same shall be delivered to the licensee. When any real estate salesman is discharged, or terminates his employment with the real estate broker by whom he was employed at the time of the issuing of such license to him, such employer shall immediately deliver, or send by registered mail, to the commission, such real estate salesman's license. Such employer shall, at the same time address a communication to such real estate salesman at his last known residence, advising him that his license has been delivered or mailed to the commission, and a copy of such communication to the real estate salesman shall accompany the license when mailed or delivered to the commission. No real estate salesman shall perform any of the acts contemplated by this article, either directly or indirectly, under the authority of such salesman's license, from and after the date of receipt of said license by the commission. A new license may be issued to such salesman, without additional charge, upon satisfactory proof that he has obtained employment with another licensed broker. No new license shall be issued, however, until the real estate salesman shall return to the commission the pocket card issued with the original license, or shall satisfactorily account therefor to the commission. Not more than one license shall be issued to any real estate salesman for the same period of time. 45:15-14.

License fees; authority of licensees; renewals; refusal or revocation of licenses. The annual fee for each real estate broker's license shall be ten dollars, and the annual fee for each real estate salesman's license shall be five dollars. Each license granted under this article shall

entitle the licensee to perform all of the acts contemplated herein during the period for which the license is issued, without payment of any fee other than the annual fee for such license. New licenses may be granted for each ensuing year upon request of licensees and the payment of the annual fee therefor as herein required, but the commission may, in its discretion, refuse to grant any new license upon sufficient cause being shown. The revocation of a broker's license shall automatically suspend every real estate salesman's license granted to employees of the broker whose license has been revoked, pending a change of employer and the issuance of a new license. The new license shall be issued without additional charge, if the same is granted during the year in which the original license was granted. 45:15-15.

Salesmen's commissions to be paid only by employer. No real estate salesman shall accept a commission or valuable consideration for the performance of any of the acts herein specified, from any person except his employer, who must be a licensed real estate broker. 45:15-16.

Any broker who proposes to engage in sales of a promotional nature in this State of property located outside of this State, must submit to the commission before doing so, full particulars regarding such property and the proposed terms of sale, and said broker and his salesmen must comply with such rules, regulations, restrictions and conditions pertaining thereto as the commission in its discretion may impose. The commission shall investigate all such matters, and all expenses incurred by the commission in investigating such property and the proposed sale thereof in this State, shall be borne by the broker. No broker or salesman shall in any manner refer to the New Jersey Real Estate Commission, or to any officer or employee thereof, in selling, offering for sale, or advertising, or otherwise promoting the sale, mortgage or lease of any such property, nor make any representation whatsoever that such property has been inspected or approved or otherwise passed upon by said commission or by any State official, department or employee. 45:15-16.1.

Investigation of actions of licensees; suspension or revocation of licenses and causes therefor. The commission may, upon its own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any real estate broker or real estate salesman, or any person who assumes to act in either such capacity within this state; and the commission may suspend for a period less than the unexpired portion of the license period, or may revoke any license issued under the provisions of this article, where the licensee, in performing or attempting to perform any of the acts mentioned herein, is deemed to be guilty of:

a. Making any false promises or any substantial misrepresentation; or

b. Acting for more than one party in a transaction without the knowledge of all parties thereto; or

c. Pursuing a flagrant and continued course of misrepresentation or making of false promises through agents, salesmen, advertisements or otherwise; or

d. Failure to account for or to pay over any moneys belonging to others, coming into the possession of the licensee; or

e. Any conduct which demonstrates unworthiness, incompetency, bad faith or dishonesty; or

f. Failure to provide his client with a fully executed copy of any sole or exclusive sales listing contract at the time of execution thereof, and failure to specify therein a definite terminal date which terminal date shall not be subject to any qualifying terms or conditions; or

g. Using any plan, scheme or method for the sale or promotion of the sale of real estate which involves a lottery, a contest, a game, a prize or a drawing.

This article shall not be construed to relieve any person from civil liability or criminal prosecution under the laws of this state. 45:15-17.

Notice of proposed suspension or revocation of license; hearing; court review of questions of law. The commission shall, before suspending or revoking any license, and at least ten days prior to the date set for the hearing, notify in writing the licensee of any charges made, and afford him an opportunity to be heard in person or by counsel. Such written notice may be served either personally or sent by registered mail to the last known business address of the licensee. If the licensee is a salesman, the commission shall also notify the broker employing him, specifying the charges made against such salesman, by sending a notice thereof by registered mail to the broker's last known business address. The commission shall have power to subpoena and bring before it any person in this State, or take testimony by deposition, in the same manner as prescribed by law in judicial proceedings in the courts of this State. The findings of fact made by the commission acting within its own powers shall, in the absence of fraud, be conclusive, but the supreme court shall have power to review all questions of law involved in any final decision or determination of the commission, if application is made to the supreme court by the aggrieved party within thirty days after such determination, which application shall be made by petition to any justice of said court, and he shall have power to dispose of the matter in a summary manner. 45:15-18.

Revocation of salesman's license not to affect employer's license; exception. Any unlawful act or violation of any of the provisions of this article, by any real estate salesman, shall not be cause for the revocation of any real estate broker's license, unless it shall appear to the satisfaction of the commission that the real estate broker employing such salesman had guilty knowledge thereof. 45:15-19.

Licensing nonresidents; reciprocal provisions in certain cases; form of license. A nonresident may become a real estate broker or real estate salesman by conforming to all of the provisions of this article. Any nonresident real estate broker regularly engaged in the real estate business as a vocation maintaining a definite place of business in another state, and who has been licensed as a real estate salesman or broker for a period of two years or more in

such state, which offers the same privileges to licensed brokers of this State, shall, by reason of such foreign license and upon payment of the license fee fixed by this article, be authorized to transact the business of a real estate broker in this State during the period for which his original license shall be in force.

Any nonresident real estate salesman licensed as such in another State may, from year to year, upon payment of the license fee fixed by this article, be licensed to transact the business of a real estate salesman in this State, when such other State offers the same privileges to licensed real estate salesmen of this State. Such license may be issued and shall remain in effect only under the following conditions:

a. During the period such salesman is regularly engaged in the real estate business as a vocation in the employ of a licensed real estate broker of another State;

b. During the period said employing real estate broker maintains a definite place of business in such other State;

c. During the period such real estate broker is licensed as a nonresident real estate broker in this State;

d. During the period such salesman continues to be licensed as a salesman in the office of such real estate broker in such other State or of another licensed real estate broker in another State who is licensed as a nonresident real estate broker in this State.

All nonresident licenses issued by the commission shall be on a special form distinguishable from licenses issued to resident brokers and salesmen, and shall show the name and address of the licensee and shall have imprinted thereon the seal of the commission and shall contain such other matter as shall be prescribed by the commission. With each nonresident license the commission shall prepare and deliver a pocket card in all respects as herein provided for licenses issued to resident brokers and salesmen, except that the pocket card accompanying nonresident licenses shall be of a different color so as to distinguish the same from the cards issued to resident licensees. 45:15-20.

Nonresident licensees; filing of consent as to service of process and pleadings. Every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in any of the courts of record of this State, by the service of any process or pleading authorized by the laws of this State, in any county in which the plaintiff may reside, by serving the same on the secretary of the commission, said consent stipulating and agreeing that such service of such process or pleadings on said secretary shall be taken and held in all courts to be valid and binding as if due service had been made personally upon the applicant in this State. This consent shall be duly acknowledged, and, if made by a corporation, shall be authenticated by its seal. An application from a corporation shall be accompanied by a duly certified copy of the resolution of the board of directors, authorizing the proper officers to execute it. In all cases where process or pleadings shall be served, under the provisions of this article, upon the secretary of the commission, such process or pleadings shall be served in

duplicate, one of which shall be filed in the office of the commission and the other shall be forwarded immediately by the secretary of the commission, by registered mail, to the last known business address of the nonresident licensee against which such process or pleadings are directed. 45:15-21.

Publication of lists of licensees. The commission shall publish, at least once in each year, a list of the names and addresses of all licensees under the provisions of this article, and also a list of all licenses which have been suspended or revoked within one year from the date of publication. The list shall also contain such other information relative to the enforcement of the provisions of this article as the commission may deem of interest to the public. One of such lists shall be forwarded to the county clerk of each county within ten days after its publication, and shall be held by him as a public record for a period of one year. Such lists shall also be mailed by the commission to any person in this State upon request. 45:15-22.

Penalty for violations; court proceedings for recovery. Whoever violates any of the provisions of this article shall be liable for the first violation to a penalty of not more than two hundred dollars; for a second violation to a penalty of not more than five hundred dollars, and for any subsequent violation to a penalty of five hundred dollars. The penalty shall be sued for and recovered by and in the name of the commission. Every district court and every court of common pleas is hereby empowered, upon the filing of a complaint in writing, duly verified, which verification, when made by any member of the commission, may be made upon information and belief, that a person has violated any of the provisions of this article, to issue process at the suit of the commission as plaintiff. Such process shall be either in the nature of a summons or a warrant, which warrant may issue without an order, which process, when in the nature of a warrant, shall be returnable forthwith, and when in the nature of a summons, shall be returnable in not less than five nor more than fifteen days. Such process shall state the provisions of law alleged to have been violated by the defendant. The officers to serve and execute all process under this article shall be the officers authorized to serve and execute process in said courts. 45:15-23.

Judgment; commitment of defendant for nonpayment; defendant to be detained, unless bond filed, upon adjournment of trial. Upon the return of such process, or at any time to which the trial shall be adjourned, the court shall proceed with the trial of said cause, and if a jury be demanded the court shall cause a jury to be summoned, and shall thereupon proceed to hear testimony and to determine and give judgment without the filing of any pleadings for the plaintiff for the recovery of such penalty, with costs, or for the defendant, and said court shall, if judgment be rendered for the plaintiff, cause any such defendant, who refuses or neglects to forthwith pay the amount of the judgment rendered against him and all costs and charges incident thereto, to be committed to the county jail for a period not exceeding thirty days. The court shall have power to adjourn the hearing or trial in

any case from time to time, but in such case, except in cases in which the first process was a summons, it shall be the duty of the judge thereof to detain the defendant in safe custody, unless he shall enter into bond to the commission, with at least one sufficient surety in double the amount of the penalty claimed, conditioned for his appearance on the day to which the hearing shall be adjourned, and thence from day to day until the case is disposed of, and to abide by the judgment of the court. The bond, if forfeited, may be prosecuted by the commission. 45:15-24.

Form of conviction. The conviction in prosecutions under this article shall be in the following or similar form:

"STATE OF NEW JERSEY, }
COUNTY OF } ss.

Be It Remembered, that on this day of at in said county, C. D., defendant, was by (the district court of the city of or the court of common pleas of the county of or as the case may be) convicted of violating section of the title Professions and Occupations of the Revised Statutes, in a summary proceeding at the suit of the New Jersey real estate commission upon a complaint made by; and further, that the witnesses in said proceeding who testified for the plaintiff were (name them), and the witnesses who testified for the defendant were (name them).

Wherefore, the said court doth hereby give judgment that the plaintiff recover of the defendant dollars, penalty, and dollars, costs of this proceeding." 45:15-25.

Signing of conviction; form of commitment. The conviction shall be signed by the judge of the district court or court of common pleas before whom the conviction is had. In case the defendant is committed to jail in default of payment of the penalty, a commitment in the following form shall be added, beneath the judge's signature, to the conviction:

"And the said C. D., neglecting and refusing to pay the amount of the penalty above mentioned, with costs, it is hereby ordered that the said C. D. be, and he hereby is, committed to the common jail of the county of for the period of days, unless the said penalty and costs are sooner paid."

This commitment shall also be signed by the judge, and in case of commitment of any defendant to jail, the conviction and commitment shall be signed in duplicate, and one of the duplicate copies shall serve the purpose of a warrant of commitment. 45:15-26.

Disposition of all penalties; proceedings if brought in court of common pleas. Any penalty recovered for any violation of this article shall be applied by the commission to the same purpose as other funds of the commission collected in accordance with the provisions of this article. In case any such proceeding is brought in any court of common pleas, the trial thereof shall proceed as above set forth, immediately upon the arrest under warrant of the defendant, or on the return day of the summons, or on any day to which the court shall continue said trial, either during a term of the court or in vacation. 45:15-27.

Signing and sealing of process; docketing of district court judgments; issuance of execution. The clerk of any district court or of any court of common pleas may sign and seal any process required to be issued under this article, except a warrant of commitment. The costs re-

coverable in any such proceeding shall be the same as costs taxed in actions in said courts, and shall be recovered by the commission in the event of conviction of the defendant. Any judgment recovered for the penalty under the provisions of this article in any district court may be docketed in the same manner as judgments in said court are docketed under the provisions of article 14 of chapter 32 of the title Administration of Civil and Criminal Justice (2:32-186 et seq.). Execution may issue for the collection of any judgment obtained under this article against the personal property and body of the defendant without any order first obtained for such purpose. 45:15-28.

Payment of moneys into state treasury; payment of expenses of commission. All fees, fines and penalties received by the commission pursuant to the provisions of this article shall be paid by it into the state treasury monthly. The payments shall be made on or before the tenth day of each month following their receipt, and at the time of payment a statement thereof shall be filed with the state comptroller. All expenses incurred by the commission shall be paid from the general fund of the state, upon warrants of the state comptroller, upon vouchers or warrants therefor duly approved by the commission, but in no case shall the expenditures of the commission for any fiscal year exceed the revenues derived by it under this article. The state treasurer shall advance to the commission funds sufficient in amount to cover expenses incurred by the commission during the month of July in each year from the appropriation made to the commission, which funds shall be paid on warrant of the comptroller after certification by the commission that its receipts for said period are equal to or in excess of the amount to be advanced. 45:15-29.

Such employees of the New Jersey Real Estate Commission, as the Commissioner of Banking and Insurance may determine are needed for the proper performance of the work of the division of the New Jersey Real Estate Commission in the Department of Banking and Insurance. Persons so transferred shall be assigned to such duties as the Commissioner of Banking and Insurance shall determine. 45:15-29.1.

Nothing in this act shall be construed to deprive any person of any right or protection provided him by Title 11 of the Revised Statutes, Civil Service, or under any pension law or retirement system. 45:15-29.2.

All appropriations available and to become available to the New Jersey Real Estate Commission are hereby transferred to the Department of Banking and Insurance. 45:15-29.2 note.

The orders, rules and regulations heretofore made or promulgated by the New Jersey Real Estate Commission shall continue with full force and effect until amended or repealed by the New Jersey Real Estate Commission constituted hereunder as the Division of the New Jersey Real Estate Commission in the Department of Banking and Insurance. 45:15-29.3.

Whenever the term "New Jersey Real Estate Commission" occurs or any reference is made thereto, in any law, contract or document, the same shall be deemed to mean

or refer to the New Jersey Real Estate Commission constituted hereunder as the Division of the New Jersey Real Estate Commission in the Department of Banking and Insurance. 45:15-29.4.

This act shall not affect actions or proceedings, civil or criminal, brought by or against the New Jersey Real Estate Commission and pending on the effective date of this act, and such actions or proceedings may be prosecuted or defended in the same manner and to the same effect by the New Jersey Real Estate Commission constituted hereunder as the Division of the New Jersey Real Estate Commission in the Department of Banking and Insurance as if the foregoing provisions had not taken effect; nor shall any of the foregoing provisions affect any order or recommendation made by, or other matters or proceedings before, the New Jersey Real Estate Commission; and all such matters or proceedings pending before the New Jersey Real Estate Commission on the effective date of this act shall be continued by the New Jersey Real Estate Commission constituted hereunder as the Division of the New Jersey Real Estate Commission in the Department of Banking and Insurance. 45:15-29.5.

Real estate auctioneers; licensing. A person who, for pecuniary gain conducts a public or private competitive sale of lands or any interest in lands, shall be licensed as an auctioneer by the New Jersey Real Estate Commission; provided, however, that this act shall not be construed to affect the powers granted to municipalities to regulate and license auctioneers and real estate brokers who sell at auction and to regulate auction sales of real estate, and notwithstanding the provisions of this act or any other act, said powers are hereby expressly given to the municipalities in the manner provided in section 40:52-1 of the Revised Statutes. 45:15-30.

Annual license; fee; commission to make rules governing licenses. The commission may issue, without examination, an auctioneer's license to any applicant, for a fee of one dollar. The license shall be renewed, without examination, on July first next following its issuance, and annually thereafter upon the payment of a like fee. The commission shall prescribe rules and regulations governing the issuance of such licenses. 45:15-31.

Penalty for violation; procedure; disposition of proceeds. A person who shall conduct the business of an auctioneer, without obtaining a license as provided in this article, shall be subject to a penalty of not more than two hundred dollars, to be recovered in an action at law in the name of the New Jersey Real Estate Commission for the use of the state. All such actions shall be conducted subject to the practice and procedure prevailing in the court in which the action is instituted. 45:15-32.

Certain persons unaffected. This article shall not apply to any trustee, receiver, executor, administrator, attorney-at-law, or any person authorized to sell lands under any will. 45:15-33.

Unconstitutionality

"If any provision of this act is declared or held to be unconstitutional, no other portions of the act shall be affected thereby, but the unconstitutional provisions shall be rescinded and the remaining provisions of this act shall continue in force."

(Original Act Approved April 5, 1921.	Ch. 141.)
(Amendment Approved March 13, 1922.	Ch. 224.)
(Supplement Approved March 5, 1923.	Ch. 32.)
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STATUTES CONCERNING REAL PROPERTY

Conveyancing, Mortgages, Leases, Agreements of Sale

PREFATORY

The following compilation of information concerning Conveyancing, Mortgages, Leases and Agreements of Sale is not intended to be exhaustive; but dealing with subjects which are so large and many sided must of necessity be fragmentary and incomplete. The information with reference to these four subjects of the Statutes of New Jersey concerning real property is more or less in the nature of suggestion and in the framing of definitions no attempt has been made to attain technical accuracy.

CONVEYANCING

Is a Branch of Law Having to do with Titles and Their Transference and the Preparation and Completion of All Kinds of Legal Instruments in Their Relation Thereto.

The earliest transfers of title were probably accomplished by the stronger taking possession from the weaker. This was unjust and as society developed protection was given the owner in preserving his title.

The early method by which a transfer of realty was accomplished was by mere delivery of possession. One in possession of land whose claim to it was unquestioned was presumed to be its owner. If such owner desired to sell, he simply delivered to the purchaser, in the presence of witnesses, a clod of earth from the land, using appropriate words such as "I put you in possession of the land." This was considered an actual delivery. Because there was no written record of such a transaction fraud and disputes often arose.

The statute of frauds was finally adopted. This declared no transfer of title should be enforceable unless in writing. From this statute we derive our present system of transferring title by means of written instruments such as deeds, mortgages, leases, etc.

The term "title" must be considered as embracing not only the fee simple, but any interest in real property.

Under strict legal rules title can be transferred in only two ways, namely: by operation of law or by purchase. The first of these two takes place when the title passes to the heirs of an owner who dies without leaving a will. Every other transfer is considered a purchase.

For practical purposes, however, title to realty may be transferred (1) by descent, (2) by will, (3) by voluntary and (4) by involuntary alienation.

Voluntary alienation may be generally defined as the transfer of the owner's interest and title to real property, by the owner to another by gift or sale. Deeds, mortgages, leases and wills come under this head.

Involuntary alienation is a transfer of title without the owner's volition. Tax sales, public sales in actions to enforce liens such as foreclosure of mortgages are in this class.

Property of a person who dies intestate, leaving no heirs, passes to the State by escheat. This is another example of involuntary alienation. Another example is the loss of land by erosion, which is a washing away, and of the same nature is accretion, the increases of an owner's land through action of currents depositing soil adjacent to his land.

One who dies leaving no will is said to have died intestate. Real property passes to heirs and personalty to next of kin. A widow takes an interest in both but is neither an heir nor next of kin. In real property the widow has a dower right.

Real property may be disposed of by the owner by deed, mortgage, lease, etc. These instruments take effect during the lifetime of the owner. Disposition of real estate to take effect after the death of the owner thereof, is by last will and testament. If the owner leaves a properly executed will at the time of his death, he is said to have died testate and is known as the testator.

The word "Will", in the popular meaning of the term, is a disposition, made by a competent testator in the form prescribed by law, of property over which the testator has legal power of disposition, which disposition is of such nature as to take effect at or after the death of the testator.

Under the New Jersey Statute there must be at least two witnesses to a will who must hear the maker of the will, publish and declare it as and for his or her last will and testament. They must sign the will as witnesses at the request and in the presence of the maker thereof and also in the presence of each other. The maker of the will and both witnesses being present at the same time.

A gift of real property in a will is a devise and the recipient is styled a devisee. By bequest or legacy of personal property, the recipient is a legatee.

A testator by will may make a provision for his wife stating that it is "in lieu of dower", such provision being binding on her only in case she falls within a certain legal time to elect to take her dower rights instead.

A right of dower is possessed by the wife in the husband's real estate. A husband has a curtesy right in his wife's real estate.

Real property is described as pertaining to or consisting of things fixed, permanent or immovable as lands and tenements.

Personal property is described as pertaining to or consisting of things movable, temporary, chattels, property easily removable by personal action.

Possession of property is notice to the world that the possessor claims or has some title thereto. Some method of constructive notice of the ownership of real estate by one not in possession had to be devised and therefore recording acts were enacted to prevent fraud.

All instruments affecting real property may, when properly proven, be recorded in a stated public office in the County where the property is located, the record thus made constituting a notice to the world. One dealing with real estate is bound by all recorded instruments affecting same.

No instrument may be recorded unless proven either by acknowledgment of the one who signed it, or by affidavit of a subscribing witness.

Acknowledgment is a proceeding provided by statute whereby a person who has executed an instrument may, by going before a competent officer and declaring it to be his act and deed, entitle it to be recorded or to be received in evidence without further proof of execution, or both. The term is also used to designate the certificate of the officer showing the performance of such act.

In New Jersey the following officers, among others, are authorized by law to take acknowledgments and proofs: (1) a Master in Chancery, (2) an Attorney-at-Law, (3) a Commissioner of Deeds and (4) a Notary Public. The certificate of acknowledgment must disclose that the person executing the instrument appeared personally before such officer and that he is satisfied with the identity of the person so appearing, also that such officer made known the contents of the instrument and that the one executing it signed, sealed and delivered the instrument as a voluntary act and deed.

Insofar as the State of New Jersey is concerned, it is no longer necessary that a married woman in making an acknowledgment should be examined separate and apart from her husband. An instrument may be good as between the parties thereto but it does not protect the holder thereof against an innocent third party without notice, unless it is recorded.

It is readily seen that, not only must one who engages in a real estate transaction inspect the realty involved and make inquiry thereof to ascertain the rights of those in possession, but must also procure a thorough examination of the public records to ascertain who is the owner, the liens against the premises, if any, the condition of the title and all instruments affecting it concerning which the law presumes everyone to have notice.

The examination should reveal the entire history of the title from the earliest record to the present time, showing the chain of deeds, wills and actions by which the property passes from owner to owner, as well as mortgages, leases, restrictions and other agreements and instruments encumbering or affecting the title or use of the property.

The examiner should first abstract all the instruments conveying the title, that is, make a separate digest of each. This gives him what is known as a chain of title. A complete separate search should be made against each owner for the period of each ownership, to ascertain what encumbrances may have been placed on the property and what other instruments may have been made affecting the title thereto. The examiner's completed work is called an Abstract of Title.

The law of real property is complicated and technical. The average person dealing in real estate has no knowledge of the rules of law and is without the experience and qualifications to make an examination of the title, and so a conveyancer, a lawyer or a Title Insurance Company is usually employed to do this work. The responsibility of the examiner to such employer should be considered and care taken to employ a responsible examiner.

At best the validity of title to real estate is largely dependent on presumption. The production of a will theretofore unknown, forged instruments, false or mistaken representations as to family history and as to the condition of life of grantor or mortgagor, namely, whether married or single, may make a title defective. In conveying or mortgaging real estate it sometimes happens that a married man or woman will falsely represent himself or herself to be unmarried, the deed or mortgage thus given is seriously defective and the title thereby derived is rendered unmarketable.

No examination of the records will disclose this condition, as the marriage may have taken place in any State of the United States, or in some foreign country.

A survey is necessary to ascertain the exact physical condition of the property, as to whether the lot or plot lines are correct as outlined and as to whether the buildings, fences, or other structures erected on the premises are within the property lines or are mislocated so as to encroach upon adjoining property, and also as to whether buildings, fences or structures on adjoining property encroach on the premises being dealt with. Important questions of marketability of title may depend upon the conditions shown by the survey.

A deed is a sealed instrument of conveyance in writing duly executed, signed, acknowledged and delivered, containing description of some transfer, bargain or contract conveying a fee or right in real property.

The legal title to real estate passes when the deed of conveyance is delivered. There are many kinds of deeds, such as Quit Claim, Bargain and Sale, Warranty, Executors' and Trustees' deeds.

In a Quit Claim deed the following words are used: "remise, release and quit claim," and should only be given to one already in possession of the premises therein described. It is used to release to the one in possession some interest or claim, real or fancied. By reason of a decision of the Court of Chancery of New Jersey, it is deemed not advisable to use a Quit Claim deed in this State.

A Bargain and Sale deed transfers full title. The granting clause is "do grant, bargain, sell, alien, remise, release, convey and confirm". The legal effect is that the grantor is represented as having some lien or claim upon, or some right or interest in, the premises described therein, but assumes no responsibility as to the title. Such a deed may be made either with or without covenants against grantor's acts.

An Executor's or Trustee's deed should recite the power or authority under which the same is made. It should contain a covenant against grantor's acts, that is, that the grantor has done nothing to harm the title. Covenants contained in such a deed are not binding upon the estate represented by the executor or trustee unless the will or deed of trust creating the power authorizes the executor or trustee to make such covenants.

A Full Covenant and Warranty deed contains: (1) a covenant of seizin, that is, that the grantor is seized of

the title; (2) covenant of right to convey, that is, that the grantor has full power and lawful authority to make the grant; (3) covenant of peaceful possession, that is, that the grantee may hold, use and possess the premises without disturbance; (4) covenant against encumbrances, that is, that the premises are free and unencumbered; (5) covenant of further assurance, that is, that the grantor will make such other conveyances as may be reasonably advised for the better vesting of the title in the grantee, and (6) covenant of warranty, that is, that the grantor will warrant and forever defend the title to the premises thus conveyed.

The covenants of seizin, right to convey and against encumbrances relate to the past and any breach thereof occurs at the time the deed is delivered. Those which relate to the past do not run with the land. The covenants of peaceful possession, further assurance and warranty relate to the future. Those which relate to the future run with the land and are available to successive owners.

It is preferable to use a full covenant and warranty deed for the purpose of conveying title.

A statutory short form Warranty deed may be used which has all the legal effect of the long form warranty deed which was in general use before the passage of the statute.

To make the delivery of a deed legal the grantor must have been competent not only at the time of signing and acknowledgment but also at the time of delivery. That is, must have been of legal age and of sufficient mental capacity to make a contract. The delivery must be voluntary and intentional and not the result of force, fear or duress.

When a married man conveys land his wife should join with him in the deed in order to release her inchoate right of dower.

A married woman cannot make a deed for the conveyance of land owned by her unless her husband joins with her in the execution of the deed. The husband and wife must be named in and must execute the same deed for the conveyance of the wife's land. A deed by a married man for the conveyance of the land owned by him is good but does not cut off the wife's right of dower.

Where the husband has parted with his title, either by voluntary conveyance or involuntary alienation, the wife can make a release of dower to the owner of the premises and her husband does not have to join in the execution of such release.

At the time of closing title the seller should bring the contract of sale, the latest receipts for taxes, water rents and interest on mortgages, if any, also insurance policies and receipts showing payments on account of the principal of mortgages, if any such payments have been made.

The right of tenants in possession are of great importance, length of terms of tenancies, etc., should be disclosed for the protection of the purchaser.

The purchaser should also ascertain the sewer and other facilities for the beneficial enjoyment of the property, if such facilities exist; and in dealing with tene-

ment house, factory or other specialized property it should be ascertained that the buildings comply with municipal ordinances and regulations and the regulations of the New Jersey State Board of Tenement House Supervision or other supervising body.

The seller must deliver a marketable title, free and clear of all encumbrances, except such as are by the contract of sale specifically excepted and provided for.

Upon the title being closed, the deed delivered and the consideration paid, the seller's rights cease and the purchaser at once becomes entitled to every interest in the property.

MORTGAGES

"A concise definition of a Mortgage which should embrace both its equitable and its legal character is virtually impossible. (a) At common law a Mortgage on real estate may be defined as a conveyance of real property, upon condition as security for the payment of a debt or the performance of a duty, to become void upon payment or performance according to the stipulated terms. (b) Another definition is 'a conditional conveyance of land designed as security for the payment of money, the fulfillment of some contract, or the performance of some act, and to be void upon such payment, fulfillment or performance'."

A mortgage is usually accompanied by a bond. The bond is evidence of indebtedness and the promise to repay; the mortgage is a pledge of specific realty as security.

In accordance with an old English custom the penal sum of the bond is usually double the amount of the sum actually loaned. It is conditioned, however, for the payment of the true sum and interest and no greater amount can be collected.

The borrower is designated in the bond as the Obligor and acknowledges the indebtedness to the lender known as the Obligee; the bond states the terms of the promise to pay, date on which the principal shall be payable, the rate of interest and when payable, namely, monthly, quarterly, semi-annually or annually; the principal may be paid in installments if the bond so provides.

A bond consists of three divisions, (1) an acknowledgment of indebtedness, (2) a promise to pay, (3) provision for default. The borrower's name and the lender's name must be inserted and it is always well to add their respective places of residence.

Often there are several borrowers or obligors, and bearing in mind that the lender or obligee wants the fullest security, it is customary in such cases to insert the words "jointly and severally" following the names of the borrowers in the acknowledgment of indebtedness and promise to pay.

By such an obligation the lender may collect from any one or all of the borrowers, each of them makes himself or herself liable to pay the entire indebtedness.

The date of the bond is the date from which interest is usually computed. Interest is not paid in advance; no interest is paid when the loan is made. Interest may be payable at agreed intervals.

The Mortgagor is the person who gives the mortgage, the person borrowing the money.

The Mortgagee is the person to whom a property is mortgaged, the person loaning the money.

Taxes and assessments come ahead of the mortgage. It is advisable to insert a default clause in the bond and mortgage to protect the lender, who can thereby check within a short period any wastage of his security by unpaid municipal liens.

A bond and mortgage usually contain a default clause that if the interest or installments of principal, where such are provided for, be not paid within thirty days after the day whereon same is made payable, or if any tax, assessment, water rent or other municipal lien be not paid within ninety days after the same becomes due and payable, that then, in either event, the principal sum of the bond and mortgage shall at the option of the holder thereof become immediately due.

The property pledged as security might be sufficient at the time the loan is made, yet if a large amount of unpaid interest accumulates, the security might not be great enough to cover both principal and interest and other charges, therefore a default clause is inserted in the bond and mortgage, together with other provisions for the protection of the lender.

An insurance clause should be inserted to compel the borrower to keep the property insured against loss by fire for the benefit of the lender. This clause should be so framed as to make it a covenant running with the land and be binding on subsequent owners of the mortgaged premises.

When a real property is transferred absolutely the transaction is effected by delivery of a deed, but since very early times it has been customary for owners of realty to borrow money, pledging their property for its repayment.

A loan upon a promissory note may be good when made, yet the borrower may become insolvent and the note when due be without value. Even a loan secured by a pledge of personal property is uncertain for it, unlike realty, has no permanent place; it may disappear or be moved away.

Loans on security of land being so much better secured have always been in favor and a large part of the realty, particularly in cities, is covered by mortgages as security for loans.

Money for mortgage loans is purely a commercial commodity. Its value depends on whether or not it is plentiful; as it is purely economic, it is difficult to regulate interest rates by law.

For the personal lender to collect more interest than the legal rate fixed by law is usury. In most States a corporation is not permitted by law to plead the defense of usury, therefore a lender may exact any rate of interest the corporation borrower agrees to pay, but as a matter of precaution, interest charge must be within reason.

In New Jersey the legal rate of interest is six per cent per annum and a corporation cannot plead the usury act

Lenders feel more secure in loaning to corporations, especially if a fee or commission be charged for making a loan. It has been contended that the borrower is more injured than benefited by laws against usury.

Special clauses are in order to be placed in a mortgage for protection of either or both of the contracting parties.

Purchase Money Mortgage. In many sales of realty the purchaser does not wish to pay the full price in cash. Under such circumstances it is stipulated in the contract between the parties that the purchaser shall make to the seller a bond and a mortgage on the property to secure part of the purchase price.

A purchase money mortgage becomes a lien contemporaneous with the passing of title and is prior to any lien against the purchaser. If the purchaser is a married man it is a lien ahead of his wife's right of dower, consequently the wife need not join in a purchase money mortgage. It is advisable, however, to have her do so. In order that there may be no doubt of its status, it is customary to insert in the mortgage, what is known as a "purchase money clause".

A mortgage should contain the following: (1) date; (2) name and residence of borrower or mortgagor; (3) name and residence of lender or mortgagee; (4) a recital of bond given with mortgage; (5) default clauses; (6) granting clause; (7) a full and complete description of the mortgaged premises; (8) habendum, that is, that the mortgagee, heirs, successors and assigns, shall have and hold the mortgaged premises, etc.; (9) a covenant of seizin and warranty, that is, that the mortgagor is seized and owns an indefeasible estate in fee simple in said premises and will warrant and forever defend the title thereof unto the mortgagee, etc.; (10) a provision that upon the payment of the principal sum mentioned in the condition of the bond the estate granted by the mortgage shall cease and determine; (11) a covenant of payment, that is, that the mortgagor will pay the principal sum as expressed in the condition of the bond; (12) a covenant as to fire insurance and the payment of premiums therefor; (13) a covenant that the mortgagor shall not be entitled to any credit on the interest payable under the mortgage for taxes paid on the real estate embraced there, so that the mortgagee shall receive the rate of interest agreed on without reduction; (14) a testimonial clause; (15) signatures and seals of mortgagors.

If a mortgage be given by a married man, his wife should join therein in order to surrender her right of dower, unless it be a purchase money mortgage.

If a mortgage be given by a married woman on real estate owned by her, the husband must join in the execution of the mortgage as in New Jersey the wife labors under a common law disability and cannot mortgage her real estate without the concurrence of her husband. This disability has been removed in New York and some other States.

The mortgage should be executed and acknowledged in the same manner that deeds are executed and acknowledged.

For the protection of the mortgagee a mortgage should be promptly recorded, either in the County Clerk's office or the Register's Office, as the case may be, in the County where the mortgaged land is situated.

Anciently the borrower deeded his property outright as security to the lender who thereafter was its legal owner. In case of default he took possession.

All the borrower retained was an equitable right to be given back his property if he fully satisfied the loan and interest. He had merely an "equity of redemption".

In most States now, however, a mortgage is not an actual transfer of title, but only creates a lien under which in case of default the lender may proceed to collect from the property.

The Mortgagee may by legal proceeding foreclose his mortgage when due if principal is not paid or may elect to foreclose his mortgage upon any breach of the default clauses. If a final decree is entered in such proceeding an execution may issue under which the Sheriff or other legal officer for that purpose, sells the mortgaged premises at public sale and upon delivery of deed to the purchaser the equity of redemption of the mortgagor and other defendants is cut off.

In New Jersey there is a statutory enactment which requires the mortgagee to foreclose the mortgage before proceeding against the Obligors in the bond given therewith.

If at the foreclosure sale a sufficient sum is not realized to satisfy the amount of the decree, including principal, interest and costs, the mortgagee may sue the Obligors in the bond and recover a personal judgment against them for the amount of such deficiency, but such suit must be brought within six months from the date of the foreclosure sale.

If after default a mortgagee takes possession of the mortgaged premises, such mortgagee has no greater legal rights than he had under the mortgage, it merely entitles him to collect the benefits of the property, but if he remain in peaceable possession for a period of twenty years the equity of redemption of the mortgagor is cut off as fully as by a final decree and sale in foreclosure. This is in accordance with the provisions of a New Jersey Statute.

When a mortgage is paid in full a satisfaction piece or discharge should be executed, acknowledged and recorded so as to remove the mortgage of record. In New Jersey the Mortgagee may endorse on the mortgage and sign a receipt to the effect that the mortgage has been paid in full and that the County Clerk or Register, as the case may be, is authorized to cancel the same of record. In which event the record of the mortgage will be cancelled upon the production of the original instrument.

If nothing is paid on account of a bond and mortgage, either principal or interest, in a period of twenty years, the principal sum or debt is conclusively presumed to have been paid.

The mortgage not being a transfer of title is personal property. There may be first, second, third or as many

mortgages on a property as its owner can procure, each being subject or subordinate to such mortgages as are prior thereto, or two or more mortgages may by express terms be made concurrent liens.

As a rule the priority of mortgage liens is determined by the date of record of the respective mortgages. This is so unless the order of priority is expressed in the mortgages or the mortgagees have actual knowledge of unrecorded prior mortgages.

A building or construction loan mortgage is distinct in that the amount of the loan is not fully paid to the borrower when the bond and mortgage are delivered, but is advanced from time to time as the construction of the building proceeds. Its purpose is to aid a builder in financing the erection of a building. It is usually made for a short time and a permanent loan is afterwards obtained when the building is completed.

A trust mortgage is made to a Trustee or Trustees. Instead of a single bond, as a rule many bonds are issued, the trustee acts as such for the benefit of the bondholders. This class of mortgage is used by railroads and large borrowers.

Mortgages are made by some as a matter of necessity, but much borrowing is done on bond and mortgage because of the fact that it is an advantage to the owner; in many instances it pays the owner to have a mortgage on his property.

A classification of some of the principal borrowers are farmers, builders, operators, investors, developers of vacant tracts, home builders, buyers and corporation enterprises.

The principal features to be considered in mortgage loans are safety, income yield and marketability.

A first mortgage from the point of safety is superior to many other investments; care should be exercised that the loan is legal and enforceable and that there is sufficient value represented to make it safe. Care should also be exercised to see that all levies of taxes, assessments and the like are promptly paid and receipts exhibited at least once each year as well as prompt payment of interest made.

Mortgages should be made for short terms. The property may be re-inspected and re-appraised at each maturity. A reduction of amount required when same is desirable, or a mortgage may be made for a long period with a proviso that it be amortized, namely, sums paid on account at stated periods, this continually reduces the loan and increases the security.

No internal revenue stamps are now required to be affixed to a bond made by an individual, but a bond given with a mortgage made by a corporation must have internal revenue stamps affixed thereto as heretofore, namely, ten cents for each One Hundred Dollars, or fractional part thereof. Under the provisions of Federal Revenue Act of 1932, effective June 6, 1932, it is necessary to affix internal revenue stamps to deeds, whether made by an individual or corporation.

LEASES

"A contract for the possession and profits of lands and tenements on the one side, and a recompense of rent or other income on the other". "A conveyance to a person for life, or years, or at will, in consideration of a return of rent or other recompense". "A conveyance by way of demise, always for a less term than the party conveying has in the premises".

A lease and release formerly constituted a common law mode of conveyance of freehold estates. The lease puts the tenant in possession and a subsequent release of the reversion to the lessee in possession vested a fee title.

Persons or corporations owning real property permit others to hire it and charge them for its use, the object of the owner being usually to derive an income or profit from the property.

The one letting the property is known as the landlord or lessor and the one hiring is the tenant or lessee.

The formal parts of a lease are: (1) the date, which will fix the time for its commencement, unless some other period is specified in the instrument. If there is no date, or an impossible one, the time will be considered as having commenced from the delivery; (2) the names of the parties; (3) the consideration—some consideration must appear, although it need not be what is technically called rent or a periodical render of compensation for the use of the premises; it may be a sum in gross, or the natural affection which one party has for the other; it may also consist of produce or personal service; (4) the operative words of a lease are usually, "demise, grant, lease and to farm let"; (5) the description of the premises; (6) the term or duration of the letting; (7) covenants fixing the rights and liabilities of the parties with relation to repairs, taxes, insurance, renewals, modes of cultivation, fixtures and the like.

In every well drawn lease, provision is made for a forfeiture of the term in case the tenant refuses to pay rent, permits waste, or is guilty of a breach of the covenant to repair, insure, reside upon the premises, or the like; also for the re-entry of the lessor upon the demised premises and the ejection of the lessee for conditions broken.

A lease may be a verbal letting agreement for a short term, or it may be a lengthy document containing specific provisions and covenants.

"The relation of landlord and tenant may be defined in general terms as that which arises from a contract by which one person occupies the property of another with his permission and in subordination to his rights". "It is essential to the relation that the occupancy be both permissive and subordinate and liability as between landlord and tenant rests upon privity, both of estate and of contract".

"A contract by which no estate passes cannot be considered as creating a tenancy, the passing of an estate being one of the chief distinctions between a lease and a license".

"The possession and control of the premises must pass to the tenant, but such possession need not in all cases be complete or exclusive".

A rental may be defined as a definite periodical return for a use of land and premises. A lease may be for one day or it may be for 999 years. A lease in perpetuity is contradictory of the relation of landlord and tenant and if properly drawn passes a fee simple title to the lessee.

The right of the tenant to use the leased premises is personal property and his holding is called a leasehold. The right of the owner to receive the rent and his right to resume possession at the time of the lease is real property.

The laws of States differ, first, as to the length of time for which a verbal lease may be made, and secondly, as to the term of recordable leases.

In New Jersey verbal leases may be made for terms not exceeding three years from the making thereof.

The New Jersey statute provides that every deed or other instrument in writing creating any leasehold estate in any lands, for a term of years exceeding 10 years, shall be void and of no effect against a subsequent judgment creditor or bona fide assignee or mortgagee, for a valuable consideration, not having notice thereof, unless such deed or instrument of writing shall be acknowledged or proved and recorded, within fifteen days after the time of signing and delivering the same, but such deed or instrument shall, as between the parties thereto, be valid and operative.

A monthly tenancy is one made for a month only; it is self-renewing unless notice is given of intention to terminate.

A tenancy for an indefinite period is known as a tenancy at will, or sufferance.

A tenancy for a year or other definite terms ends without notice on the last day of the term of the lease, and if the tenant continues in occupancy he is a hold-over. The landlord can dispossess or he can elect to hold the tenant. If the landlord accepts rent after the expiration of the term the tenancy becomes one from month to month in the absence of any agreement to the contrary and all the provisions of the lease are continued in operation except the period of letting therein specified.

In many long term leases the tenant agrees to pay all taxes and other charges, the rent being net to the landlord.

Surrender of lease may be verbal, but if it is recorded a properly executed surrender agreement is advisable.

An abandonment of the premises and landlord's re-entry is equivalent to surrender.

A breach of covenant may terminate a lease but should be conditioned on landlord's option.

Dispossess proceeding is a summary right to recover possession given by statute and not by common law; such a statute is in effect in New Jersey and covers non-payment of rent, holding over after expiration of term, and unlawful use of premises.

It is advisable to have a fire insurance clause in every lease for protection of tenant as well as landlord.

The tenant is required to surrender the premises in as good condition as at commencement of lease, reasonable wear and tear and damage by the elements excepted.

It is not necessary for either party to a lease to make repairs to the premises, unless there is a provision in the lease to the contrary.

All improvements become the property of the landlord unless it is specifically stated that same may be removed at or prior to expiration of lease.

As a rule alterations cannot be made without the landlord's consent.

It is quite customary for the landlord to require security from the tenant for the performance of the lease.

A sub-letting is the letting of a part of the premises or a part of the term by a tenant to an under-tenant. For the protection of the landlord there should be a provision against the sub-letting of the premises or the assignment or mortgaging of the lease without the landlord's consent.

In leases covering factories, apartment houses and specialized properties it is advisable to have a clause with regard to accident insurance.

The lease should contain a provision that the landlord may enter the premises to make such repairs as the landlord may deem necessary, also to exhibit the premises for sale or rent and to put notices thereon "To Let" or "For Sale" a reasonable length of time before the expiration of the term.

The tenant is entitled to quiet enjoyment of the premises. The lease should be carefully conditioned to cover all reasonable possibilities, in the interest of both landlord and tenant.

Where leases are made for long terms the lessee should inquire into the lessor's title for mortgages and other liens against the premises prior to tenant's lease. Leases made after such recorded instruments are subordinate to mortgages, etc.

Assignments and mortgages of leasehold estate should be recorded.

The law recognizes in leases only one Christian name and the surname. If a party assumes a false name he is nevertheless responsible. The landlord deals with the man, not with the name.

A husband cannot make a lease which will bind his wife's property after his death. A guardian cannot give a lease extending beyond a minor's majority which the minor cannot annul if he wishes, but if he does not annul it the tenant is bound by it. Under the common law a married woman cannot lease her property, but under the statutes of most States she can. A special statute supersedes the common law.

In case of a tenant at will, or one who holds over after the expiration of his lease with the consent of the landlord, a notice to quit is necessary to compel him to give up his possession. This notice must, as a general rule, be given at a date before some "rent day", and distant from it by the usual period at which rent is payable. Thus, if

it is payable monthly, there should be a month's notice ending on the day when the rent is payable.

If a tenant refuses to vacate the premises after the termination of his lease from any cause, the proper and safest way for the landlord, as well as the cheapest, is to get him out by process of law.

In taking possession of the premises the tenant is entitled to all the privileges and appurtenances to the property in all their details without being expressed in the lease.

The landlord has no right to interfere with the tenant's rights by selling the property. Such sale must be made subject to the rights of the tenant.

A tenant can sub-let the rented premises or any part of them, unless expressly prohibited from doing so by the terms of the lease. He, however, remains responsible to his landlord, unless the latter accepts such third party as his tenant in place of the former and releases him in writing.

The subtenant bears no relation to the original landlord and is not responsible to him for rent. The tenant from whom he has rented is his only landlord. In the case of an assignment of the lease the new tenant becomes the tenant of the original landlord and must pay him the rent.

A tenant cannot make repairs upon the property rented and deduct the amount paid out from the rent, for that would be in effect compelling the landlord to do it.

For improvements that become part of the premises, or such as cannot be removed without injury to the same, the tenant can claim no allowance from the landlord; but a tenant may remove property articles which he has placed for use in some trade, such as steam engines or other machines, or even buildings erected for the same purpose, or articles for domestic use, such as furnaces, shelves, gas fixtures, etc. Of course, his personal property a tenant can remove any time at pleasure. This should be covered by a provision in the lease.

Where the tenant is to pay the taxes on the property he occupies it must be distinctly stated in the lease, as a verbal promise is of no effect.

If after renting the landlord should mortgage the property, the mortgagee's rights would be subject to those of the tenant, and a sale or foreclosure could not disturb the tenant's possession.

The landlord must not render the tenant's occupation uncomfortable by erecting anything like a nuisance on or near the premises.

If not otherwise provided for in the lease, it is the landlord's duty to pay the taxes, ground rent, or interest on a mortgage that may exist.

The tenant must take such care of the premises that others may not be injured by any neglect of any part of it.

The chief duty of the tenant is to pay rent. If no time for his possession is fixed, then he is only obliged to pay for the time he has occupied; but if under any agreement for a certain term he will have to pay for that term.

The tenant is expected to repair all damages made or suffered by him. Natural wear and tear he need not make good.

AGREEMENTS OF SALE

"A contract for the sale of real estate is an agreement in writing between two or more competent parties, whereby one or more of the parties assume an obligation to transfer title in real property to the other party or parties, who assume an obligation to purchase and pay the price agreed upon."

Generally speaking, all contracts which are made between two competent parties for a proper consideration, without fraud and for a lawful purpose, are enforceable at law.

Sales, purchases and exchanges of realty are continually being made and are the proper subject matter of contracts engaging the attention of owners, purchasers and brokers.

The 5th Section of the New Jersey Statute for the prevention of frauds provides among other things that no action shall be brought upon any contract for sale of lands or any interest therein, or upon any agreement that is not to be performed within one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some other person thereunto lawfully authorized.

The contract is the most important paper in a real estate sale or exchange, because by it the respective rights and duties of the parties thereto are fixed and it will control all of the proceedings subsequent thereto including the final consummation of the transaction.

It is necessary to see that all the provisions are embodied in the contract, for after it is once signed nothing can be added to or taken from it except by consent of all parties thereto.

A thorough working knowledge of the contract, its purpose and effect is essential to the owner, the purchaser and the broker.

The principal elements necessary to a valid contract for the sale or exchange of real property are: (1) competent parties; (2) offer and acceptance; (3) consideration; (4) legality of object; (5) agreements in writing.

There must be at least two parties; the parties must have capacity to contract. The contracts of insane persons are not binding upon them. In New Jersey the contracts of persons under twenty-one years of age are generally not binding unless ratified after full age is attained.

The contract of a married woman for the sale or exchange of real estate should be joined in by her husband, otherwise it will not support a suit for the specific performance thereof.

The contract of a married man for the sale or exchange of real estate should be joined in by his wife, otherwise she cannot be compelled to release her inchoate right of dower.

There must be an offer and acceptance. The offer of one party must be met by an acceptance by the other, according to the terms offered. This is called a meeting of the minds.

There must be a consideration. Something of value must either be received by one party or given up by the other.

The purpose of the parties must be lawful. Agreements to defraud others, to violate statutes, or against public policy, are void or voidable.

The agreement must be in writing and signed by the parties to be charged therewith or their duly authorized agents. Power of Attorney or agency for that purpose must be in writing and should be acknowledged so that it can be recorded if advisable.

The seller is usually called "Vendor" and the purchaser "Vendee".

The seller is presumed to be familiar with the outstanding encumbrances against the premises to be sold, both those that are to remain and those that are to be removed prior to or at the time of the passing of title and also to know that the title is marketable.

Care should be taken to see that the various provisions of the agreement state explicitly what is intended and that the written contract is complete, including all of the terms that have been agreed to in the negotiations preceding its execution.

A contract of sale should contain a careful description of the property and should definitely fix the date and place of closing title.

The property should be described by lot and block number on an official map; by metes and bounds or by monuments and boundaries. The seller should use care to undertake to convey only what he owns.

If there is nothing mentioned in the contract concerning tenants the purchaser is entitled to receive vacant premises. If tenants are in possession the nature of such tenancies should be specifically stated and the contract should provide that the property is sold subject to such tenancies.

Any and every restriction, limitation or encumbrance upon the property or its use should be fully stated and the contract should provide that the property is sold subject thereto.

Provision should be made for apportionment of rents, insurance premiums, taxes, water charges and interest on mortgages, if any.

The contract should contain a provision that the risk of loss or damage to the premises by fire, or otherwise, until the delivery of deed is assumed by the seller.

If personal property is to be included in the sale it must be specifically covered by the contract.

Some contracts contain the following provision: "Gas and electric fixtures and chandeliers, carpets, linoleum, mats and matting in halls and stairways, ash cans and heating apparatus, if any, are included in this sale".

In dealing with apartment houses, factories, office buildings or other specialized properties the contract should contain a provision that the buildings comply with municipal ordinances and regulations and the regulations of the New Jersey State Board of Tenement House Supervision or other supervising body or agency.

Many contracts contain a provision substantially as follows: "It is expressly understood and agreed that the title to the land and premises to be conveyed is not derived through proceedings under any act for the sale of land for non-payment of municipal taxes or assessments. It is further understood and agreed that the buildings, if any, upon said premises comply with municipal ordinances and regulations and the regulations of the New Jersey State Board of Tenement House Supervision where such ordinances and regulations apply, this provision, however, shall not have application to items of repair".

The contract should specifically provide the nature of the estate to be conveyed, whether fee simple or otherwise, the form of the deed to be used, whether full covenant and warranty, or otherwise, and should also definitely fix the consideration and the manner of its payments.

The total gross price embodies the deposit on contract, cash on closing, existing mortgages, if same are to remain, and purchase money mortgage, if one is to be given.

The deposit is forfeited to the seller if the purchaser defaults or the seller can elect to sue the purchaser for a specific performance of the contract and secure a money decree for the balance of the purchase price.

The deposit should be large enough to reasonably compensate the seller for inconvenience and expense and for any commission which must be paid on the sale.

If the contract contains a provision that time is of the essence thereof then the terms of the contract must be carried out on the date therein specified and without deviation unless an extension of time is mutually agreed on.

Stipulation should be made in the contract to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

The execution of the contract should be acknowledged by the parties thereto or at least by the seller, so that it can be recorded. It is customary to execute it in triplicate so that the seller, the purchaser and the broker may each have a copy thereof.

The seller must bear the expense of the deed and the purchaser pay for recording same. If a purchase money mortgage is to be given back the contract should provide who is to pay for drawing and recording same.

At the passing of title the first step is to examine the deed and other papers to ascertain whether they conform strictly to the provisions of the agreement of sale. If title is to be taken subject to existing mortgages, interest receipts should be produced showing the date to which interest has been paid and if anything has been paid on account of principal; a receipt to that effect signed by the mortgagee should be required.

It is customary for the seller to have a clause inserted in the contract acknowledging the broker who negotiated the sale and agreeing to pay the commission therefor.

To entitle a broker to commission for services in negotiating a sale, the service must be rendered under an employment by the principal. Service rendered as a mere volunteer, without any employment, expressed or implied, will give no right to commissions.

The general rule is, that the right of a broker to commissions is complete when he has procured a purchaser able and willing to conclude a bargain on the terms on which the broker was authorized to sell.

In New Jersey any broker or real estate agent selling or exchanging land for or on account of the owner shall be entitled to no commission, unless the authority for selling or exchanging is in writing, and signed by the owner or his authorized agent, or the authority of the broker or real estate agent to make a sale or exchange of such land is recognized in a writing or memorandum so signed, either before or after such sale or exchange, and the rate of commission on the dollar is stated therein.

There is an additional provision of the Statute that any broker or real estate agent employed by any owner by oral agreement, to sell or exchange real estate belonging to such owner, and who shall actually effect such sale or exchange pursuant to such oral agreement, before the same shall have been terminated by such owner, may recover from such owner the amount of the commission, provided such broker or agent shall within five days after the making of such oral agreement, serve upon such owner a notice, in writing, setting forth the terms of such oral agreement, and stating the rate or amount of commission to be paid thereunder, and provided such owner shall not have repudiated or terminated such agreement prior to the actual sale or exchange of such real estate.

Such owner shall have the right at any time after receiving such notice, to repudiate or terminate such oral agreement by serving upon such broker or agent a notice, in writing to that effect, and upon the repudiation or termination of such agreement by the serving of such notice upon such agent or broker prior to the actual sale or exchange of such property by such agent, such agreement shall be null and void and no recovery of any commission shall be had thereunder.

The Statute also provides that if any broker or agent shall have entered into negotiations with a prospective customer in good faith, under such oral agreement, for the sale or exchange of said property, and such negotiation shall be pending at the time of the repudiation or termination of such agreement by such owner, and such sale or exchange shall be subsequently consummated between such owner and such customer, such agent or broker shall be entitled to recover commission, notwithstanding the repudiation or termination of such agreement.

The notice provided for by the Statute shall be served either personally or by forwarding the same to the person to be served by registered mail, to the last known post office address of such person.

EXCERPTS from the CODE OF ETHICS
of the
NATIONAL ASSOCIATION OF
REAL ESTATE BOARDS

"A Realtor should never seek information about a competitor's transaction to use for the purpose of closing the transaction himself or diverting the customer to another property.

Negotiations concerning property which is listed with one Realtor exclusively should be carried on with the listing broker, not with the owner.

The schedule of fees established by the various real estate boards are believed to represent fair compensation for the services rendered in their communities and should be observed by every Realtor.

No sign should ever be placed on any property by a Realtor without the consent of the owner.

In accepting the agency for property, the Realtor pledges himself to be fair to purchaser or tenant, as well as to the owner whom he represents and whose interests he should protect and promote as he would his own.

A Realtor should not buy for himself property listed with him, nor should he acquire any interest therein, without first making his true position clearly known to the listing owner.

The Realtor should encourage the naming of the actual or an obviously nominal consideration in a deed.

When acting as agent in the management of property, a Realtor should not accept any commission, rebate, or profit on expenditures made for the owner, without his full knowledge and consent.

Property should be offered by a Realtor solely on its merit without exaggeration, concealment, or any form of deception or misleading representation.

A Realtor should never offer a property without the authorization of the owner.

The price at which a Realtor offers a property should not be higher than that which the owner has openly agreed to take.

Before a Realtor buys for a client property in the ownership of which the Realtor has an interest, he should disclose his interest to all parties to the transaction.

A Realtor when acting as a broker should make it clear for which party he is acting, and he should not receive compensation from more than one party except with the full knowledge and consent of all parties to the transaction.

In closing transactions, the Realtor should advise the use of legal counsel when the interest of any party to the transaction appears to require it; and in all cases he should exercise care in the preparation of documents so that they shall embody the exact agreements reached.

At the time the agreement is reached as to the terms of a transaction the Realtor should fully inform each party regarding commissions and other expenses to which each is respectively liable.

Before the closing of a transaction, the Realtor should recommend the examination of title and conveyancing papers.

All contracts and agreements to which a Realtor is a party should be made in writing and should be complete and exact."