

CHAPTER 5

REAL ESTATE COMMISSION

Authority

N.J.S.A. 45:15-6.

Source and Effective Date

R.1993 d.552, effective October 15, 1993.
See: 25 N.J.R. 3597(b), 25 N.J.R. 5229(a).

Executive Order No. 66(1978) Expiration Date

Chapter 5, Real Estate Commission, expires on October 15, 1998.

Chapter Historical Note

Chapter 5, Real Estate Commission; Subchapter 1, Rules and Regulations, was filed and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Chapter 5 expired on August 2, 1983, and subsequently was adopted as new rules by R.1983 d.471, effective November 7, 1983. See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c). Pursuant to Executive Order No. 66(1978), Chapter 5 was readopted as R.1988 d.555, effective October 28, 1988. See: 20 N.J.R. 2184(a), 20 N.J.R. 3019(a).

Subchapter 2, Organizational Rules, was adopted as R.1989 d.258, effective April 19, 1989. See: 21 N.J.R. 1364(a). Subchapter 3, Petitions for Rulemaking; Subchapter 4, Proceedings before the Commission, and Subchapter 5, Appeals of Initial Denials of Licensing Applications, were adopted as R.1989 d.429, effective August 21, 1989. See: 21 N.J.R. 1315(a), 21 N.J.R. 2524(a). Subchapter 6, Rules Interpreting and Implementing the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq., was adopted as R.1990 d.455, effective September 17, 1990. See: 22 N.J.R. 1421(a), 22 N.J.R. 2969(d).

Pursuant to Executive Order No. 66(1978), Chapter 5 was readopted as R.1993 d.552. See: Source and Effective Date. See, also, section annotations for specific rulemaking activity.

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SUBCHAPTER 1. RULES AND REGULATIONS

11:5-1.1 Disciplinary action; restitution

(a) Violation of any of these rules and regulations, or of any real estate statute, shall be sufficient cause for any disciplinary action permitted by statute.

(b) In accordance with the provisions of N.J.S.A. 45:15-9 and N.J.S.A. 45:15-17, the Commission, in appropriate circumstances, will exercise its authority to impose restitution of moneys owed others as a condition to the issuance of a license or to the reinstatement of a license after revocation or suspension.

(c) The Commission may, where the nature of the offense so warrants, impose as a condition to any future license restoration, the successful accomplishment of a written examination of the same type normally given to applicants for initial licenses.

As amended, R.1977 d.392, effective October 19, 1977.

See: 9 N.J.R. 438(a), 9 N.J.R. 536(b).

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

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

Added (c).

Case Notes

Broker's disclosure to Real Estate Commission of appellate court's decision that competing broker had tortiously interfered with exclusive contract and with prospective economic advantage implicated the public interest so as to be protected by Conscientious Employee Protection Act. *Barratt v. Cushman & Wakefield of New Jersey, Inc.*, 144 N.J. 120, 675 A.2d 1094 (1966).

Broker's license was revoked for failure to disclose pending criminal charges. *New Jersey Real Estate Commission v. Diaz*, 96 N.J.A.R.2d (REC) 35.

Broker's license was properly revoked for misconduct as insurance producer. *New Jersey Real Estate Commission v. Lopez*, 96 N.J.A.R.2d (REC) 31.

Formerly licensed agent engaging in real estate transactions was fined and penalized for sales activities. *New Jersey Real Estate Commission v. Abad*, 96 N.J.A.R.2d (REC) 26.

Real estate salesperson's failure to respond honestly to application question concerning prior professional license revocation justified revocation of salesperson's license. *New Jersey Real Estate Commission v. Rolston*, 96 N.J.A.R.2d (REC) 24.

Theft conviction supported revocation of real estate salesperson's license, even where conviction was unrelated to license. *New Jersey Real Estate Commission v. Kanoff*, 96 N.J.A.R.2d (REC) 23.

Real estate salesperson's license on probation for failure to disclose prior felony conviction. *New Jersey Real Estate Commission v. Irizarry*, 96 N.J.A.R.2d (REC) 17.

Licensed real estate salesperson's failure to disclose prior convictions justifies license suspension. *New Jersey Real Estate Commission*, 96 N.J.A.R.2d (REC) 16.

Real estate salesperson fined and permanently barred from licensure for unlicensed transactions and falsifying license. *New Jersey Real Estate Commission v. Fernandes*, 96 N.J.A.R.2d (REC) 11.

Real estate license revoked where salesperson impersonates broker during agency inspection. *New Jersey Real Estate Commission v. Cron*, 96 N.J.A.R.2d (REC) 8.

Pending criminal theft charges involving insurance license justify denial of real estate license. *New Jersey Real Estate Commission v. Nelson*, 96 N.J.A.R.2d (REC) 7.

Working as real estate broker after license expired and while conducting fraudulent activities compels permanent ban from licensure. *New Jersey Real Estate Commission v. Pinilis*, 96 N.J.A.R.2d (REC) 1.

Real estate brokers suspended and fined; failure to maintain accounts. *New Jersey Real Estate Commission v. Bailey*, 94 N.J.A.R.2d (REC) 33.

Criminal conviction did not warrant revocation of broker-salesperson license. *Real Estate Commission of New Jersey v. McLeod*, 94 N.J.A.R.2d (REC) 29.

Revocation of real estate license and assessment of penalties were appropriate. *New Jersey Real Estate Commission v. Sabia*, 94 N.J.A.R.2d (REC) 23.

Real estate broker license placed on probation and fine imposed. *Real Estate Commission v. Zappia*, 94 N.J.A.R.2d (REC) 11.

Six-month suspension and imposition of penalty was justified. *New Jersey Real Estate Commission v. Donnon*, 94 N.J.A.R.2d (REC) 1.

Making false representation as being owner of real estate brokerage, collecting commission from person other than employing broker, and commingling of funds; revocation of salespersons' licenses and imposition of fines. *New Jersey Real Estate Commission v. Ballman*, 93 N.J.A.R.2d (REC) 17.

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

Failure to file income tax return; broker/salesperson license revoked. *New Jersey Real Estate Commission v. McLeod*, 93 N.J.A.R.2d (REC) 9.

Developer's failure to submit annual reports; registration revoked, fine imposed, order to cease and desist marketing of project issued. *New Jersey Real Estate Commission v. Cepco, Inc.* 92 N.J.A.R.2d (REC) 49.

Failure to account for deposit monies, commingling of funds, and engaging in business without license; salesperson's license revoked and fine imposed. *New Jersey Real Estate Commission v. Groff*. 92 N.J.A.R.2d (REC) 31.

Salesperson's failure to file answer to order to show cause or to make appearance before New Jersey Real Estate Commission warranted license suspension. New Jersey Real Estate Commission v. Grennor. 92 N.J.A.R.2d (REC) 29.

Salesperson procured real estate license by fraud, misrepresentation and deceit by failing to reveal having pled guilty to charge one week before executing application and licensing form; suspension and fine. New Jersey Real Estate Commission v. Cordaro. 92 N.J.A.R.2d (REC) 17.

Failure to disclose convictions; salesperson's license suspended. New Jersey Real Estate Commission v. Fields. 92 N.J.A.R.2d (REC) 15.

Criminal convictions warranted revocation of real estate salesperson's license. New Jersey Real Estate Commission v. Szatkowski. 92 N.J.A.R.2d (REC) 13.

Federal conspiracy to falsify claims and statements and of fraud warranted salesperson's license revocation. New Jersey Real Estate Commission v. Lanza. 92 N.J.A.R.2d (REC) 5.

Theft conviction warranted two-year revocation of salesperson's license. New Jersey Real Estate Commission v. Rosko. 92 N.J.A.R.2d (REC) 2.

False voter registration and tampering with public records convictions warranted suspension of real estate salesperson's license. New Jersey Real Estate Commission v. Federico. 92 N.J.A.R.2d (REC) 1.

11:5-1.2 Salesperson's license; age requirement

(a) No salesperson's license shall be issued to any person who has not attained the age of 18 years.

(b) Every applicant for licensure as a salesperson shall present with his/her application for licensure a certificate of satisfactory completion of a course of education in real estate subjects at a school licensed by the Commission pursuant to N.J.S.A. 45:15-10.1(a) and 10.4 and N.J.A.C. 11:5-1.28, unless waived by the Commission in accordance with the provisions of N.J.S.A. 45:25-10.2.

(c) An applicant must apply for and request the issuance of a salesperson's license not later than one year after the date of successful completion of the course prescribed at N.J.A.C. 11:5-1.27. Any person who fails to apply for the issuance of salesperson's license within the one year period shall be required to retake and successfully complete the prescribed course in real estate and the examination.

(d) All applications for salesperson shall be submitted with satisfactory evidence of a high school education or equivalency. Satisfactory evidence shall include, but not be limited to, a photocopy of a high school diploma or transcript.

(e) Every applicant shall present with his/her application for examination evidence of satisfactory completion of a course of education in real estate subjects prescribed under N.J.S.A. 45:15-10.1(a) and Sections 27 and 28 of this subchapter, unless waived by the Commission in accordance with the provisions of N.J.S.A. 45:15-10.2. Holders of a current school certificate which bears an issue date within one year as defined by (c) above, will be permitted to take the salesperson's examination and secure a license, provided said certificate is in compliance with (c) above.

(f) Subsection (e) of this regulation shall not apply to any applicant who has obtained a waiver of educational requirements pursuant to N.J.S.A. 45:15-10.2.

As amended, R.1973 d.214, effective August 2, 1973.

See: 5 N.J.R. 228(f), 5 N.J.R. 316(a).

As amended, R.1974 d.307, effective November 13, 1974.

See: 6 N.J.R. 246(c), 6 N.J.R. 478(e).

As amended, R.1981 d.261, effective July 9, 1981.

See: 13 N.J.R. 306(a), 13 N.J.R. 440(c).

(b) "On or after September 1, 1967" deleted; "for licensure as a salesman" added.

(d) added.

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

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

"Salesman" changed to "salesperson".

As amended, R.1984 d.218, effective June 4, 1984.

See: 16 N.J.R. 489(a), 16 N.J.R. 1352(a).

New subsections (d) through (f) added.

Amended by R.1995 d.23, effective January 17, 1995.

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

11:5-1.3 Qualifications for licensing; broker and broker-salesperson

(a) All references in this section to "brokers" shall include broker-salespersons. The experience requirement for licensure as a broker imposed by N.J.S.A. 45:15-9 is construed to require a demonstration by the applicant of their commitment to real estate brokerage as their primary vocation, as evidenced by their involvement in the real estate brokerage business on a full-time basis.

1. With the exception of persons licensed as brokers in other states, all applicants for licensure as a broker must have been continuously licensed and employed on a full-time basis as a real estate salesperson during the three years immediately preceding their application.

Such full-time employment shall be demonstrated by a showing that:

i. The applicant has worked as a salesperson under the authority of the broker(s) with whom they were licensed for at least 40 hours per week and during the hours of approximately 10:00 A.M. to 8:00 P.M.;

ii. Such work in (a)1i above was performed during any five days in each week of the three year period; and

iii. If the applicant was employed in any other occupation during the three year period, such other employment was on a part-time basis and did not exceed 25 hours per calendar week.

2. No applications for approval of an applicant's experience to qualify for licensure as a broker shall be made until an applicant:

i. Has been continuously licensed as a salesperson for at least the three years immediately preceding such application;

ii. Has completed the 90-hour general broker's pre-licensure course and the two 30-hour courses referred to in N.J.A.C. 11:5-1.27(g).

(b) The Commission shall give due consideration to the following in reviewing the experience of an applicant:

1. Evidence of having been actively involved in the real estate brokerage business as a real estate salesperson on a full-time basis during each year of the three year period. Written statements by the brokers with whom the applicant was licensed during the three year period which certify the applicant's activity as a salesperson while licensed through those brokers must be submitted.

2. Applicants and/or brokers may also be required to submit supporting documentation relating to the closed transactions on which the applicant received compensation as a salesperson from the broker, or to supply other evidence of full-time activity, such as extensive involvement in a specialized field of real estate brokerage.

3. In no event will an applicant whose brokerage activity was limited to solely making referrals to other licensees be deemed to have fulfilled the full-time, active involvement in the brokerage business requirement for licensure.

(c) Broker-salespersons shall meet the same qualifications as brokers, including the qualifications as set forth in (a) and (b) above. A person licensed as a broker-salesperson must be employed by and act under the supervision of a duly licensed real estate broker and shall not independently maintain an office or escrow account. A broker-salesperson may be authorized to serve as an office supervisor or a branch office in accordance with the provisions of N.J.S.A. 45:15-12.

(d) Every applicant for licensure as a broker or broker-salesperson shall present with his or her application for licensure examination a certificate of satisfactory completion of courses in real estate and related subjects at a school licensed by the Commission or offered by another approved provider pursuant to N.J.S.A. 45:15-10.1(b) and N.J.A.C. 11:5-1.27 and N.J.A.C. 11:5-1.28, unless waived by the Commission in accordance with the provisions of N.J.S.A. 45:15-10.2 and N.J.A.C. 11:5-1.27.

(e) An applicant must pass the State broker license examination and apply for and request the issuance of a license as a broker or broker-salesperson not later than one year after successful completion of the 150-hour broker prelicensure education requirements. Any person who fails to apply for the issuance of a license as a broker or broker-salesperson within the said one year time period shall be required to retake and successfully complete all prescribed courses and the examination and must submit evidence of having again fulfilled the experience requirement during the three years immediately preceding the new application.

As amended, R.1972 d.150, effective July 27, 1972.

See: 4 N.J.R. 160(d), 4 N.J.R. 190(a).

As amended, R.1974 d.307, effective November 13, 1974.

See: 6 N.J.R. 246(c), 6 N.J.R. 478(e).

As amended, R.1981 d.261, effective July 9, 1981.

See: 13 N.J.R. 306(a), 13 N.J.R. 440(c).

Substantially amended.

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

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

Former subsections (a) and (f) deleted, recodified, "salesman" changed to "salesperson".

Amended by R.1987 d.68, effective January 20, 1987.

See: 18 N.J.R. 1782(a), 19 N.J.R. 232(a).

Deleted text in (a) "full-time during his apprenticeship as a salesperson" and added text "on a full . . . per calendar week."

Amended by R.1994 d.56, effective February 7, 1994 (operative July 1, 1994).

See: 25 N.J.R. 4849(b), 26 N.J.R. 798(a).

Case Notes

Real estate salesman was not authorized to sue to collect commission to which employer may have been entitled. *Harper-Lawrence, Inc. v. United Merchants and Mfrs., Inc.*, 261 N.J.Super. 554, 619 A.2d 623 (A.D.1993), certification denied 134 N.J. 478, 634 A.2d 525.

Real estate licensing law exemption for attorneys held only to authorize attorneys to sell or rent real estate incidental to their normal practice of law; denial of broker's license to attorney who did not meet statutory apprenticeship and testing requirements upheld. *Spirito v. State, New Jersey Real Estate Commission*, 180 N.J.Super. 180, 434 A.2d 623 (App.Div.1981).

11:5-1.4 Qualifications for corporate, limited partnership and general partnership licensing

(a) In interpreting N.J.S.A. 45:15-9, the following shall apply:

1. The Commission will hold responsible the individual broker or brokers licensed to transact business in the name and on behalf of a corporate or partnership broker licensee in accordance with the provisions of N.J.S.A. 45:15-9 for any actions of the corporate or partnership licensee or its agents in the pursuit of its real estate brokerage business, which violate any of the provisions of the real estate statutes or the regulations promulgated thereunder.

2. Every real estate transaction in which a corporate or partnership licensee participates as a broker shall be under the supervision of a broker or brokers licensed to transact business in the name and on behalf of the corporation or partnership.

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

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

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

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

Subsections (a) and (c) deleted; subsection (b) recodified as (a).

Amended by R.1995 d.23, effective January 17, 1995.

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

11:5-1.4A Terms of real estate licenses

Commencing July 1, 1997, broker, broker-salesperson, salesperson and branch office licenses shall be issued on the basis of two year license terms. All licenses issued during each biennial term shall run from the date of issuance to the end of the biennial term. All licenses shall expire on June 30 of the second year following the year in which the license term commenced.

New Rule, R.1997 d.159, effective April 7, 1997.

See: 29 N.J.R. 299(a), 29 N.J.R. 1324(b).

11:5-1.5 Examination rules

(a) In the administration of examinations for licensure as a real estate broker, broker-salesperson or salesperson, the following examination rules shall apply:

1. Examinees shall not be permitted to refer to any notes, books, or memoranda.

2. The copying of questions or making of notes for personal use is strictly prohibited.

3. No examinee shall leave the examining room except at the discretion of the examiner.

4. The real estate broker license and salesperson license examinations, required by N.J.S.A. 45:15-10 to be taken and successfully passed by all applicants for a real estate broker, broker-salesperson or salesperson license before said license may be issued, shall be in the form of a multiple choice examination prepared by a testing service as designated by the Commission. Fees charged applicants to take the real estate examinations shall be considered service fees to be paid directly to the testing service separate and apart from any fee required by N.J.S.A. 45:15-9 to be paid to the Commission at the time of the license application.

(b) A request for an oral examination may be made if the applicant is blind, physically handicapped making it difficult to respond to the examination questions or if there is an extreme language barrier. The request may be granted at the discretion of the Real Estate Commission.

As amended, R.1972 d.168, effective August 26, 1972.

See: 4 N.J.R. 160(d), 4 N.J.R. 190(a).

As amended, R.1973 d.43, effective February 5, 1973.

See: 5 N.J.R. 13(b), 5 N.J.R. 86(b).

As amended, R.1973 d.306, effective October 25, 1973.

See: 5 N.J.R. 350(a), 5 N.J.R. 338(a).

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

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

"Salesman" replaced by "salesperson".

Amended by R.1995 d.23, effective January 17, 1995.

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

11:5-1.6 (Reserved)

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

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

Rule concerning examination and failure deleted.

11:5-1.7 (Reserved)

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

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

Rule on examination as a condition to restoration of license deleted; reserved.

11:5-1.8 Special accounts for funds of others; commingling

(a) Every resident real estate broker shall establish and maintain, in an authorized financial institution in New Jersey, and every reciprocally licensed Real Estate broker shall establish and maintain in an authorized financial institution in New Jersey or the State wherein he has a resident real estate broker's license, a special account or special accounts, separate and apart from other business or personal accounts, for the deposit of all moneys or others received by the broker acting in said capacity, or as escrow agent, or as temporary custodian, in a real estate transaction.

(b) Every real estate broker shall file with the broker's application for licensure or license renewal an affidavit or certificate setting forth the name or names of the financial institution or institutions where said special account or accounts have been established and shall identify any and all account numbers. Any change in an existing account or the establishment of any new account shall be immediately reported to the Real Estate Commission in the form of an affidavit or certification.

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

1. Mingling the money or other property of his principals with his own;
2. Failure to maintain and deposit promptly in a special account in an authorized financial institution, separate and apart from personal or other business accounts, all moneys received by a real estate broker acting in said

capacity, or as escrow agent, or as the temporary custodian of the funds of others in a real estate transaction; or

3. Failure to promptly segregate any properties received which are to be held for the benefit of others.

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

(e) Within the meaning of this section, the word "promptly" means not more than five business days next following the receipt of the money or property of another. However, where monies are received by a licensee as provided in (c)2 above as a good faith or earnest money deposit accompanying an offer to buy or lease property, if during the five business day period next following the date of the licensee's receipt of those funds the offer is withdrawn prior to acceptance by the offeree or is rejected with no counter-offer made by the offeree, the licensee need not deposit those funds into an escrow or trust account but may, upon the request of the offerer, return them in the same form in which they were received to the offerer. In all other cases, the licensee must deposit such monies within five business days of receipt. Examples of such cases include transactions where negotiations are ongoing, or if a contract or lease is being reviewed by an attorney, or if subsequently to the rejection of an offer the offerer has requested the licensee to retain the monies in the event that the offerer determines to submit another offer on the same or a different property.

(f) The maintenance of clearly nominal amounts of the licensee's funds in trust accounts solely to provide continuity in such account or to meet bank service charges shall not be construed to be commingling.

(g) Where any law or governmental regulation compels maintenance of a fixed amount of the funds of a licensee in a trust account for the purpose of providing a safety factor, the maintenance of such fixed amount shall not be construed to be commingling.

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

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

New (a) and (b) added, (c) marked "Reserved"; old (a)-(e) numbered as (d)-(h).

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

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

Subsections (d) through (h) recodified as (c) through (g).

Amended by R.1993 d.8, effective January 4, 1993.

See: 24 N.J.R. 3483(a), 25 N.J.R. 118(a).

Exception allowed to deposit of funds entrusted to real estate broker as escrow agent.

Case Notes

Real estate guaranty fund held liable for misconduct of broker in sale of his own property, where purchaser relied on broker's licensed status in depositing money in broker's escrow account; purchaser required to exhaust writ of execution remedies against broker before executing judgment against fund. *Brody v. Alfieri*, 179 N.J.Super. 485, 432 A.2d 567 (Ch.Div.1981).

Relationship between listing broker and selling broker under multiple listing arrangement held not to constitute a joint venture so as to provide a basis for holding listing broker liable for selling broker's defalcation. *Sullivan v. Jefferson, Jefferson & Vaida*, 167 N.J.Super. 282, 400 A.2d 836 (App.Div.1979).

Making false representation as being owner of real estate brokerage, collecting commission from person other than employing broker, and commingling of funds; revocation of salespersons' licenses and imposition of fines. *New Jersey Real Estate Commission v. Ballman*, 93 N.J.A.R.2d (REC) 17.

Commingling of funds, making misrepresentations to investigator, as well as other violations, warranted revocation of broker's license and imposition of fine. *New Jersey Real Estate Commission v. Eberhardt*, 92 N.J.A.R.2d (REC) 53.

Misrepresentations, misappropriation of monies, unlawful taking of monies, and other violations, warranted broker/salesperson license revocation, restitution, and fine. *New Jersey Real Estate Commission v. Allen*, 92 N.J.A.R.2d (REC) 45.

Improprieties regarding deposit monies and mortgage application; suspension of broker's license and imposition of fine. *New Jersey Real Estate Commission v. Daniel Mullen and Holly Beach Realty, Inc.* 92 N.J.A.R.2d (REC) 38.

Failure to account for deposit monies, commingling of funds, and engaging in business without license; salesperson's license revoked and fine imposed. *New Jersey Real Estate Commission v. Groff*, 92 N.J.A.R.2d (REC) 31.

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

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

11:5-1.9 Funds of others; safeguards

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

1. As to the ability of the seller to perform his contractual obligations; or
2. As to the ability of the seller to return such funds or deposits in the event of the failure of a contingency contained in a real estate contract.

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

1. His awareness of any risk or contingency;

2. The disposition of his funds or deposits; and
3. The absence of any representations by the licensee as to the solvency of the seller and his ability to return such funds.

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

Case Notes

Real estate guaranty fund held liable for misconduct of broker in sale of his own property, where purchaser relied on broker's licensed status in depositing money in broker's escrow account; purchaser required to exhaust writ of execution remedies against broker before executing judgment against fund. *Brody v. Alfieri*, 179 N.J.Super. 485, 432 A.2d 567 (Ch.Div.1981).

Relationship between listing broker and selling broker under multiple listing arrangement held not to constitute a joint venture so as to provide a basis for holding listing broker liable for selling broker's defalcation. *Sullivan v. Jefferson, Jefferson & Vaida*, 167 N.J.Super. 282, 400 A.2d 836 (App.Div.1979).

11:5-1.10 Employment agreements; commissions; accounting to salespersons; actions for collection of compensation

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

1. The rate of compensation to be paid to the salesperson during his or her affiliation with the broker;
2. A promise by the broker to pay to the salesperson his or her portion of commissions earned within 10 business days of their receipt by the broker, or as soon thereafter as such funds have cleared the broker's bank;
3. The rate of compensation payable to the salesperson on transactions which close and, if applicable, on renewals which occur subsequent to the termination of the salesperson's affiliation with the broker; and
4. A provision that any future changes to the agreement will not be binding unless the changes are contained in a writing signed by both parties.

(b) A copy of the fully executed agreement shall be provided to the salesperson upon the commencement of his or her affiliation with the broker, and the original thereof shall be maintained by the broker as a business record in accordance with N.J.A.C. 11:5-1.13.

(c) By November 19, 1989, all brokers shall have secured such agreements with all salespersons licensed through them on that date, which agreements shall comply in all respects with the provisions of this section.

(d) All compensation paid to brokers shall, unless debited from funds held in escrow in accordance with N.J.A.C. 11:5-1.8(d), be deposited into the general business account of the broker within five business days of their receipt by the broker.

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

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

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

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

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

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

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

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

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

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

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

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

"Salesman" replaced by "salesperson".

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

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

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

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

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

Case Notes

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

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

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

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

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

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

11:5-1.11 Advance fees; accounting

(a) Any broker who charges or collects an advance fee in excess of \$25.00 for services to be rendered, such as, but not limited to advertising costs, under an advance fee agreement, shall within 90 days after such charge or collection furnish his principal with an accounting as to the use of such moneys.

(b) Such accounting shall set forth the actual amount of each individual expenditure, including date of insertion and name of newspaper or periodical, and similarly detail any other type of promotional expenditure if the funds are spent for other than newspaper or periodical advertising.

11:5-1.12 Permanent type records to be maintained by broker

(a) Every broker shall keep records as prescribed herein of all funds and property of others received by him or her for not less than six years from the date of receipt of any such funds or property. All such funds shall be deposited by the broker in accordance with the requirements of N.J.A.C. 11:5-1.8.

1. Whenever a broker receives funds to be held in trust in cash, a written receipt signed by the licensee to whom the funds were paid and specifying the date, amount, purpose and from whom those funds were received shall be issued to the payor of the funds. A copy of that receipt shall be retained by the broker as prescribed in this section.

(b) The records required to be kept pursuant to (a) above shall include:

1. Written references on the checkbook stubs or checkbook ledger pages to all deposits into and withdrawals from the account(s) maintained by the broker in accordance with N.J.A.C. 11:5-1.8, which shall specifically identify the date, amount and payor of each item deposited, the property to which the monies pertain and the reason for their being held by the broker. Such records shall also specify the date, amount, payee and purpose of each disbursement. All trust or escrow account withdrawals shall be only by authorized intrastate or interstate bank transfer or by check payable to a named payee and not to cash;

2. An appropriate ledger book for all trustee accounts or escrow accounts showing, in one location in that ledger book for each separate trust transaction, the payor of all funds deposited in such accounts, the date of deposit, the names of all persons for whom the funds are or were held, the amount of such funds, the amounts and dates of all disbursements of such moneys, and the names of all persons to whom such funds were disbursed. The Commission will not deem a regular checkbook ledger as sufficient to constitute an appropriate ledger book. Such a ledger book may be maintained in a computer or similar device, so long as it is capable of reproducing the electronically stored data on paper so as to depict the complete history of all activity in each separate trust transaction, and the data can be maintained in an easily accessible form for the required six year period. A regular running balance of the individual transaction ledger sheets shall be maintained. The total of the running balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust on that transaction, and deducting the total of all moneys disbursed;

3. Copies of all records, showing that at least quarterly a reconciliation has been made of the checkbook balance, the bank statement balance and the client trust ledger sheet balances;

4. All bank statements, cancelled checks and duplicate deposit slips;

5. Copies of all offers, contracts of sale and sale or rental listing agreements;

6. Copies of all leases and property management agreements;

7. Copies of all statements to owners, sellers, purchasers and tenants showing the disbursement of funds to them or on their behalf, which statements shall identify the property and unit, if applicable, for which the disbursement was made and the reason for the disbursement;

8. Copies of all bills paid for owners, sellers, purchasers or tenants by the broker from escrowed funds, which payments may only be made pursuant to written authorization;

9. Copies of all records showing payments to persons licensed with the paying broker and to cooperating brokers, which records shall contain all information required by N.J.A.C. 11:5-1.8(d); and

10. Copies of all receipts issued for all security deposits accepted from tenants, and of checks for and letters accompanying the release of such funds, and/or the duplicate deposit slips evidencing the deposit of such funds by the broker.

(c) With the exception of the materials described in (d) below, on transactions where a broker has not received the property or funds of others, the following records shall be maintained for six years from the earlier of the date of the listing or property management agreement or of the contract or lease:

1. Copies of all fully executed leases, contracts of sale, property management and listing agreements;

2. Copies of bills for brokerage services rendered in such transactions;

3. Copies of all records showing payments to persons licensed with the paying broker and to co-operating brokers; and

4. Copies of all bank statements, cancelled checks and duplicate deposit slips pertaining to the broker's general business account.

(d) Unaccepted offers and expired listing agreements during the term of which no contract of sale was executed or no tenancy was entered into shall be maintained for six months from the date of the offer or the expiration date of the listing agreement.

(e) The financial books and other records as described in (a), (b), (c) and (d) above shall be maintained in accordance with generally accepted accounting practice. They shall be located at the main New Jersey office of each broker or, in situations where separate general business and/or trust or escrow accounts are maintained at licensed branch offices, either at that branch office or at the main office of the broker. All such records shall be available for inspections, checks for compliance with this section and copying by a duly authorized representative of the New Jersey Real Estate Commission.

Amended by R.1989 d.425, effective August 21, 1989 (operative November 19, 1989).

See: 21 N.J.R. 1310(a), 21 N.J.R. 2520(a).

Clear specifications added regarding the type of business records brokers are required to maintain, new (a)1, new (b)1-10, and new (c)-(e).

Case Notes

Revocation of real estate broker's license was justified. *New Jersey Real Estate Commission v. Roth*, 94 N.J.A.R.2d (REC) 17.

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

Commingling of funds, making misrepresentations to investigator, as well as other violations, warranted revocation of broker's license and imposition of fine. *New Jersey Real Estate Commission v. Eberhardt*, 92 N.J.A.R.2d (REC) 53.

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

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

11:5-1.13 Inspection of records

(a) Every licensee shall make available for inspection by the Commission or its designated representatives all records of transactions, books of account, instruments, documents and forms utilized or maintained by such licensee in the conduct of the licensed business, which may be pertinent to the conduct of the investigation of any specific complaint.

(b) To accomplish the objectives and carry out the duties prescribed by this Act, especially the provisions of N.J.S.A. 45:15-17, the Commission, in addition to other powers conferred upon it by the Act, may issue subpoenas to any person, administer an oath or affirmation to any person, and conduct hearings in aid of any investigation or inquiry.

(c) All files on pending and closed sale, exchange or lease transactions, all files on listings for sales or rentals, and all property management files shall be maintained or stored at the offices of brokers licensed as employing brokers or corporate or partnership brokers. Upon terminating their employment with such a broker, and/or transferring to the

employ of another such broker, no salesperson or broker-salesperson shall remove or cause to be removed any of the contents of such files from the offices of the broker. The term "files" as used herein shall be construed to mean all transaction records required to be kept by brokers pursuant to N.J.A.C. 11:5-1.12.

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

Language citing statute deleted in subsection (a).
Amended by R.1988 d.410, effective September 6, 1988.
See: 20 N.J.R. 883(a), 20 N.J.R. 2295(a).

Added (c).
Petition for Rulemaking: Upon termination from employment with a broker, no salesperson or broker salesperson may remove files from the office pertaining to sale or rental listings.

See: 23 N.J.R. 1968(e).

Public Notice: Petition to amend subsection (c).

See: 23 N.J.R. 2191(b).

Amended by R.1992 d.107, effective March 2, 1992.

See: 23 N.J.R. 3428(a), 23 N.J.R. 3739(a), 24 N.J.R. 852(b).

Meaning of "files" specified at (c).

Case Notes

Real estate licensing law exemption for attorneys held only to authorize attorneys to sell or rent real estate incidental to their normal practice of law; denial of broker's license to attorney who did not meet statutory apprenticeship and testing requirements upheld. *Spirito v. State*, *New Jersey Real Estate Commission*, 180 N.J.Super. 180, 434 A.2d 623 (App.Div.1981).

11:5-1.14 Use of license for the benefit of others

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

(b) Lending a broker's license for the benefit of another person, firm or corporation shall be construed as including any arrangement whereby a broker fails to personally oversee and direct the operations of the business of which he or she is licensed as broker of record or employing broker. For the purposes of this section, personal oversight and direction of the business shall be construed as requiring the broker to be physically present in the main office or branch office locations of the business at least one day each week (excluding vacations and emergencies). Communication via telephone and/or mail alone for an extended period of time may be considered by the Commission as evidence of prohibited license lending.

(c) Nothing in this section shall be construed to limit a broker's responsibility to insure the adequate supervision of all offices in accordance with the requirements of N.J.A.C. 11:5-1.18 and 1.19.

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

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

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

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

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

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

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

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

11:5-1.15 Advertising rules

(a) Unless otherwise set forth herein, subsection (b) through (n) below shall apply to all categories of advertising including all publications, radio or television broadcasts, business stationery, business cards, business and legal forms and documents, and signs and billboards.

1. Individuals operating as sole proprietors and licensed as employing brokers shall conspicuously display on the exterior of their maintained place of business their name and the words "Licensed Real Estate Broker".

2. Firms licensed as corporate or partnership brokers shall conspicuously display on the exterior of their maintained place of business their regular business name and the name of the individual licensed as their broker of record and the words "Licensed Real Estate Broker".

(b) All advertising of any licensed individual, partnership, firm, or corporate broker shall include their regular business name which, for the purposes of these rules, shall mean the name in which that individual, partnership, firm or corporation is on record with the Commission as doing business as a real estate broker. All advertising by a salesperson or broker-salesperson shall include the name in which they are licensed and the regular business name of the individual, partnership, firm or corporate broker through whom they are licensed. If such advertisements contain a reference to the licensed status of the person placing the ad, their status as a salesperson or broker-salesperson must be indicated through inclusion of a descriptive term as provided in (e) below. A salesperson may not indicate in any advertisement or otherwise that he or she is licensed as a broker-salesperson.

(c) All advertising, with the exception of lawn signs placed on residential properties containing four or fewer units, shall clearly indicate after the licensee's regular business name that the advertising licensee is engaged in the real estate brokerage business. Except as prescribed by N.J.S.A. 45:15-17(j), examples of permissible language shall include, but are not limited to, "Realtor," "Realtist," "real estate broker," "broker," or "real estate agency". Examples of prohibited language when used alone shall include, but are not limited to, "realty," "real estate," "land sales," and "land investments." This provision shall not apply when the word "agency" appears in the advertisement as part of the licensee's regular business name or when the licensee has legal or equitable ownership of the property.

(d) No advertising, with the exception of business cards, shall list home telephone numbers of any broker or salesperson, unless the advertising also contains language such as "evenings", "Sundays", or "holidays", limiting the use of the home telephone numbers to non-office hours. Business cards may list home telephone numbers without also containing such additional language.

(e) The business card of any licensed salesperson shall indicate that this licensee is a salesperson by the use of the words salesperson or sales representative, or sales associate, or where permitted by law, realtor-associate or realtist associate. The business card of any licensed broker-salesperson shall indicate that this licensee is a broker-salesperson by the use of any of the aforementioned words or by the use of the words broker-salesperson. The business card of any licensed broker shall indicate that this licensee is a broker by use of the word broker or, where permitted by law, Realtor or Realtist.

(f) Any advertising which refers to amounts of down payment, monthly payment, or carrying charges, or which indicates that a mortgage is obtainable (where the mortgage referred to is not already a lien against the premises advertised), shall contain the words "to a qualified buyer".

(g) Any advertisement which sets forth amounts of down payment, monthly payment, carrying charges, taxes or mortgage money obtainable shall contain appropriate qualifying words such as "approximate" or "estimated", which qualifying words shall be clearly associated with the amounts set forth. If such amounts are mentioned without qualification, the broker shall maintain written proof of the validity of these statements in the broker's files. Such written proof shall be maintained for a period of 12 months from the date upon which an advertisement containing such unqualified references shall have last appeared in any publication.

(h) With the exception of magazine or newspaper advertisements published under municipality headings, any advertisement for the sale, exchange or rental of real property, or any interest therein, shall designate the geographical area containing that property by specifying the municipality within which that property is located.

(i) No licensed individual, limited or general partnership, firm or corporation shall advertise or use any form of application or make any inquiry which expresses directly or indirectly any limitation, specification or discrimination as to race, religion, creed, color, sex, affectional or sexual orientation, marital status, national origin, ancestry or as to whether a person is handicapped as that term is defined in N.J.A.C. 11:5-1.23(h).

(j) Any use of an insignia, emblem, logo, trade name or other form of identification in any advertising or other public utterance, either by a single licensee or any group of licensees, which suggests or otherwise implies common ownership or common management among such licensees, shall be prohibited except in the case of branch offices controlled by a single broker or licensee and duly licensed as branch offices pursuant to the provision of N.J.S.A. 45:1-1 et seq. Nothing herein provided is intended to preclude or inhibit the use, advertising or display of any insignia, emblem, logo or trade name of any bona fide trade association by any licensee provided that such licensee is a member of such trade association.

1. Any franchised licensee using in any advertising the trade name of a franchisor shall include in such advertising in a manner reasonably calculated to attract the attention of the public the franchised licensee's regular business name.

2. Any licensee including the franchisor using the trade name of franchisor in any advertising shall also include in a manner reasonably calculated to attract the attention of the public the following legend or a substantially similar legend: "each office is independently owned and operated", except in the following categories of advertising:

i. "For sale" signs located on the premises of specific properties for sale;

ii. Small "spot" classified advertising by a licensee in newspapers, magazines or other publications advertising properties. A small spot classified advertisement is defined as an advertisement which is no more than one column wide and 20 lines long and which describes no more than two properties; a line is defined as a standard newspaper classified advertising line of the newspaper, magazine or other publication in which the advertisement is published;

iii. Business cards; and

iv. Advertising placed or distributed by offices which are wholly owned by the franchisor, which contains the office address and contains language which identifies the office as being wholly owned or the franchisor.

3. The intent of this subsection is to further promote the general purpose of the Real Estate License Act of ensuring that all individuals, firms or corporations are clearly identifiable to the public as the licensed brokers who are financially and otherwise responsible to the consuming public for their real estate brokerage activities. It is not the intent of this subsection to limit or otherwise inhibit the operation of branch offices as set forth in N.J.S.A. 45:15-12 and sections 18 and 19 of this subchapter, nor is it the intent of this subsection to prevent the franchising of any group of licensees provided such franchising or other association is not inconsistent with the purpose of the Real Estate License Act as expressed herein.

(k) Any advertising by any licensed individual, partnership, firm or corporation referring generally to membership in any real estate multiple listing service operation shall specify the complete name of the listing service in which membership is held, except in the following categories of advertising:

1. "For sale" signs and small "spot" classified advertising of any licensee as described in (j) above;

2. Business cards;

3. All business signs.

(l) Any home warranty offer contained in any advertisement shall comply with all Federal and State warranty legislation, including the New Home Warranty and Builder's Registration Act, c.467, L.1977, N.J.S.A. 46:3B-1, et seq., and the Magnuson-Moss Warranty Act, P.L. 93-637, 15 U.S.C. 2301 et seq. Such advertising shall specify clearly whether the warranty is by inspection or non-inspection of the premises, whether the warranty is mandatory, and whether the purchaser or the seller is responsible for payment for the warranty. No advertisement shall contain an offer for a warranty unless a warranty may be secured for the property being advertised.

(m) Except as herein provided, no free offering, including the offering of a free appraisal, shall be made in any advertisement or promotional material. "Appraisal" as used herein is given its technical meaning as a complete study and analysis by a specialist or expert to ascertain fair market value by using a process in which all factors that would fix price in the market place must be considered.

1. Nothing herein shall be construed as prohibiting the use of such words as "included" or "included in the purchase price" in reference to items included by the owner in the sale of any real property or interest therein.

2. Free offerings ancillary to the real estate transaction process and that are informational or educational in nature, including, but not limited to, offerings of market studies or seminars, and offerings in the nature of promotional items of token value, such as calendars or pens, are not prohibited. A market study is not an appraisal as herein defined.

i. The prohibition upon licensees from making free offerings of items of more than token value applies to all offerings which confer upon consumers a monetary benefit of a value of more than \$5.00 retail. Examples of prohibited free offerings include free or subsidized homeowners warranties, property, radon and pest inspections, surveys, mortgage fees and other costs typically incurred by parties to real estate transactions.

(n) No licensee shall publish or cause to be published any advertisement or place any sign which makes reference to the availability of a specific property which is exclusively listed for sale by another broker unless the licensee obtains the prior written consent of the broker with whom the property is exclusively listed. Such consent shall not be given or withheld by the listing broker without the knowledge of the owner.

As amended, R.1976 d.276, effective August 31, 1976.

See: 8 N.J.R. 387(a), 8 N.J.R. 482(a).

As amended, R.1977 d.84, effective March 10, 1977.

See: 9 N.J.R. 91(d), 9 N.J.R. 178(a).

As amended, R.1978 d.42, effective January 31, 1978.

See: 9 N.J.R. 534(c), 10 N.J.R. 116(c).

As amended, R.1979 d.461, effective November 26, 1979.

See: 10 N.J.R. 499(a), 12 N.J.R. 44(b).

As amended, R.1980 d.52, effective January 31, 1980.

See: 12 N.J.R. 44(a), 12 N.J.R. 128(a).

As amended, R.1980 d.213, effective May 14, 1980.

See: 12 N.J.R. 44(a), 12 N.J.R. 343(a).

As amended, R.1980 d.279, effective June 26, 1980.

See: 12 N.J.R. 340(b), 12 N.J.R. 484(d).

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

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

Time limits on compliance deleted.

As amended, R.1986 d.91, effective April 7, 1986.

See: 17 N.J.R. 666(a), 18 N.J.R. 699(a).

(m)3.-5. deleted.

Amended by R.1987 d.69, effective January 20, 1987.

See: 18 N.J.R. 1679(a), 19 N.J.R. 232(b).

Amended (d) and (e).

Petition: Notice of Action upon petition for Declaratory Ruling and/or

Rulemaking limiting the scope of Advertising Rules.

See: 19 N.J.R. 570(d), 19 N.J.R. 664(a).

Amended by R.1988 d.237, effective June 6, 1988.

See: 20 N.J.R. 497(a), 20 N.J.R. 1205(a).

Substantially amended subsection (j).

Amended by R.1989 d.447, effective August 21, 1989.

See: 21 N.J.R. 1312(a), 21 N.J.R. 2552(b).

Exempted residential lawn sign advertisement for properties of four or fewer units, corrected spelling of realtor and added new (n) regarding consent of exclusive listing broker.

Amended by R.1993 d.9, effective January 4, 1993 (operative May 4, 1993).

See: 24 N.J.R. 3484(a), 25 N.J.R. 178(b).

Requirements for signs, cards, etc. amended to show name of broker, identified as such.

Amended by R.1994 d.266, effective June 20, 1994 (operative July 1, 1994).

See: 26 N.J.R. 729(a), 26 N.J.R. 1194(a), 26 N.J.R. 1222(a), 26 N.J.R. 2581(b).

Amended by R.1997 d.26, effective January 21, 1997.

See: 28 N.J.R. 3064(a), 29 N.J.R. 365(a).

In (l), inserted reference to the seller regarding warranty payment; in (m)2, inserted reference to informational or educational; and added (m)2i.

Case Notes

New Jersey Land Sales Full Disclosure Act discriminated in its plain effect against interstate commerce and violated dormant commerce clause. *Old Coach Development Corp., Inc. v. Tanzman, C.A.3 (N.J.)1989, 881 F.2d 1227.*

Barring real estate broker's merchandise coupon program pursuant to statute was not improper regulation of competition. *Coldwell Banker Residential Real Estate Services, Inc. v. New Jersey Real Estate Com'n, 242 N.J.Super. 354, 576 A.2d 938 (A.D.1990).*

Statute prohibiting real estate brokers from using promotions involving "prizes" did not deprive broker that wished to use merchandise coupon program of property without due process. *Coldwell Banker Residential Real Estate Services, Inc. v. New Jersey Real Estate Com'n, 242 N.J.Super. 354, 576 A.2d 938 (A.D.1990).*

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

11:5-1.16 Contracts of sale, leases and listing agreements

(a) The following paragraphs specify licensees' obligations to obtain written confirmation of the intentions of, and to deliver copies of documents to, parties to a real estate transaction.

1. Where a licensee memorializes the terms of an offer or counter-offer on a writing which will itself become an "instrument" as defined in (a)3 below, the licensee shall deliver to the maker of such an offer or counter-offer a clear copy of the executed offer or counter-offer immediately upon its being signed, and initialed if necessary as provided in this section, by the maker of the offer or counter-offer. Any addition, deletion, or other change in any such offer or counter-offer shall be initialed by the party proposing such a revision and, if accepted, by the other party to the transaction.

2. Where a licensee records the terms of an offer or counter-offer on a writing which is not intended to be binding upon either party, and which so states on its face, in the event that the licensee secures the signature and/or initials of any party on such a writing, the licensee shall provide to the signing and/or initialing party a clear copy of the writing as signed and/or initialed by them.

3. As used in this subsection, the term "instrument" means any complete and fully executed written contract of sale, lease, option agreement, or other writing affecting an interest in real estate, or any complete and fully executed addendum or amendment to any such contract, lease, option agreement or writing. The term instrument as used in this subsection does not include listing agreements and buyer brokerage agreements.

4. Licensees shall immediately deliver to all parties to any fully executed instrument a clear copy with original signatures of any such fully executed instrument. Licensees shall provide their clients with a fully executed copy of any sale or exclusive sale or rental listing contract at the time of execution thereof.

5. Licensee-prepared revisions or additions reflected on the instrument itself shall be initialed by all parties to the transaction. Licensee-prepared revisions or additions to an instrument not memorialized by changes on the instrument itself shall be reflected on amendments or addenda to the instrument signed by all parties to the transaction.

i. Licensees shall immediately deliver to the party proposing a revision or addition to an instrument a clear copy of any proposed revised instrument initialed by that party and a clear copy of any proposed amendment or addendum signed by that party.

ii. All revisions, amendments and addenda to any fully executed instrument which are prepared by licensees must comply with New Jersey law as it pertains to the attorney review of contract and lease documents prepared by real estate licensees.

6. This rule is to ensure prompt communication of the executed evidence of a transaction to all interested parties.

(b) No listing agreement or contract for the sale of real property, or any interest therein, shall contain a prescribed or predetermined fee, commission rate, or commission amount; nor shall any such writing contain a commission clause or provision which suggests (such as with a small blank space and percent sign) to a seller that the commission is a prescribed rate or amount.

(c) The commission clause or provision in all listing agreements for the sale of one to four family dwelling units or interest therein, or in all contracts for such sale, if there is no listing agreement, shall contain in print larger than the predominant size print in the writing, the language: "As

seller you have the right to individually reach an agreement on any fee, commission, or other valuable consideration with any broker. No fee, commission or other consideration has been fixed by any governmental authority or by any trade association or multiple listing service." Nothing herein is intended to prohibit an individual broker from independently establishing a policy regarding the amount of fee, commission or other value consideration to be charged in transaction by the broker.

(d) Upon request, the listing broker shall advise the seller of the rate or amount of any commission split or distribution.

(e) All listing agreements of any licensed individual, partnership, firm or corporation which provide for the listing of property with any real estate multiple listing service operation shall specify the complete name of that listing service.

(f) No licensed individual, partnership, firm or corporation shall enter into a "net listing" contract for the sale of real property, or any interest therein. A "net listing" is defined as an agency agreement in which a prospective seller lists real estate for sale with an authorization to a broker to sell at a specified net dollar return to the seller, and which provides that the broker may retain as commission the difference between the specified dollar return to the seller and the actual sales price.

(g) Licensees shall comply with the following provisions:

1. All contracts prepared by licensees for the sale of residential real estate containing one to four dwelling units and for the sale of vacant one-family lots in transactions in which the licensee has a commission or fee interest shall contain, at the top of the first page and in print larger than the predominant size print in the writing, the following language:

THIS IS A LEGALLY BINDING CONTRACT THAT WILL BECOME FINAL WITHIN THREE BUSINESS DAYS. DURING THIS PERIOD YOU MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND CANCEL THE CONTRACT. SEE SECTION ON ATTORNEY REVIEW FOR DETAILS.

2. The contract shall also contain the following language within the text of every such contract.

ATTORNEY REVIEW:

1. Study by Attorney

The Buyer or the Seller may choose to have an attorney study this contract. If an attorney is consulted, the attorney must complete his or her review of the contract within a three-day period. This contract will be legally binding at the end of this three-day period unless an attorney for the Buyer or Seller reviews and disapproves of the contract.

2. Counting the Time

You count the three days from the date of delivery of the signed contract to the Buyer and the Seller. You do not count Saturdays, Sundays or legal holidays. The Buyer and the Seller may agree in writing to extend the three-day period for attorney review.

3. Notice of Disapproval

If an attorney for the Buyer or the Seller reviews and disapproves of this contract, the attorney must notify the Broker(s) and the other party named in this contract within the three-day period. Otherwise this contract will be legally binding as written. The attorney must send the notice of disapproval to the Broker(s) by certified mail, by telegram, or by delivering it personal-

ly. The telegram or certified letter will be effective upon sending. The personal delivery will be effective upon delivery to the Broker's office. The attorney may but need not also inform the Broker(s) of any suggested revisions in the contract that would make it satisfactory.

3. The contract shall also contain the names and full addresses of all persons to whom a Notice of Disapproval must be sent in order to be effective as provided in item three of the Attorney Review Provision.

4. All leases prepared by licensees for a term of one year or more for residential dwelling units in transactions in which they have a commission or fee interest shall, at the top of the first page and in print larger than the predominant size print of the writing, contain the following language:

THIS IS A LEGALLY BINDING LEASE THAT WILL BECOME FINAL WITHIN THREE BUSINESS DAYS. DURING THIS PERIOD YOU MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND CANCEL THE LEASE. SEE SECTION ON ATTORNEY REVIEW FOR DETAILS.

5. The lease shall also contain the following language within the text of every such lease.

ATTORNEY REVIEW:

1. Study by Attorney

The Tenant or the Landlord may choose to have an attorney study this lease. If an attorney is consulted, the attorney must complete his or her review of the lease within a three-day period. This lease will be legally binding at the end of this three-day period unless an attorney for the Tenant or the Landlord reviews and disapproves of the lease.

2. Counting the Time

You count the three days from the date of delivery of the signed lease to the Tenant and the Landlord. You do not count Saturdays, Sundays or legal holidays. The Tenant and the Landlord may agree in writing to extend the three-day period for attorney review.

3. Notice of Disapproval

If an attorney for the Tenant or the Landlord reviews and disapproves of this lease, the attorney must notify the Broker(s) and the other party named in the lease within the three-day period. Otherwise this lease will be legally binding as written. The attorney must send the notice of disapproval to the Broker(s) by certified mail, by telegram, or by delivering it personally. The telegram or certified letter will be effective upon sending. The personal delivery will be effective upon delivery to the Broker's office. The attorney may but need not also inform the Broker(s) of any suggested revisions in the lease that would make it satisfactory.

6. The lease shall also contain the names and full addresses of all persons to whom a Notice of Disapproval must be sent in order to be effective, as provided in item three of the Attorney Review Provision.

7. The failure of any licensee to include such language in any such contract of sale or lease agreement prepared by the licensee shall be construed by the Commission as engaging in the unauthorized practice of law and shall be considered by the Commission as conduct which demonstrates the licensee's unworthiness and incompetency, thereby subjecting the licensee to sanctions pursuant to N.J.S.A. 45:15-17(e).

Amended by R.1977 d.84, effective March 10, 1977.

See: 9 N.J.R. 91(d), 9 N.J.R. 178(a).

Amended by R.1977 d.391, effective October 19, 1977.

See: 9 N.J.R. 344(a), 9 N.J.R. 536(a).

Amended by R.1979 d.461, effective November 26, 1979.

See: 10 N.J.R. 499(a), 12 N.J.R. 44(b).

Amended by R.1980 d.51, effective January 31, 1980.

See: 12 N.J.R. 127(e).

Amended by R.1980 d.214, effective May 14, 1980.

See: 12 N.J.R. 342(d).

Amended by R.1980 d.274, effective June 19, 1980.

See: 12 N.J.R. 423(d).

Amended by R.1980 d.408, effective September 23, 1980.

See: 12 N.J.R. 340(b), 12 N.J.R. 665(c).

(c) substantially amended.

Amended by R.1980 d.409, effective September 24, 1980.

See: 12 N.J.R. 665(d).

(c) compliance date amended from November 1, 1981 to January 2, 1981.

Amended by R.1983 d.471, effective November 7, 1983.

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

Time limits on compliance deleted.

Amended by R.1987 d.159, effective April 6, 1987.

See: 18 N.J.R. 1677(a), 18 N.J.R. 2112(a), 19 N.J.R. 551(a).

Added (g).

Amended by R.1987 d.359, effective September 8, 1987.

See: 19 N.J.R. 503(b), 19 N.J.R. 1646(a).

Added (h) "Agreement to Honor".

Invalidity Annotation

N.J.A.C. 11:5-1.16(h) held invalid as an intrusion upon the State Supreme Court's constitutional authority to regulate the practice of law. *Carmagnola v. Hann*, 233 N.J.Super. 547 (App. Div. June 12, 1989), 559 A.2d 478.

Amended by R.1989 d.539, effective October 16, 1989.

See: 21 N.J.R. 2438(b), 21 N.J.R. 3299(a).

Subsection (h) deleted due to Appellate Court decision — N.J.Super. —, Dkt. No. A-2211-88T2F (App.Div.1989).

Amended by R.1993 d.10, effective January 4, 1993.

See: 24 N.J.R. 3485(a), 25 N.J.R. 179(a).

Text at (a) substantially amended to specify licensees' obligations to parties in a real estate transaction involving offers or counter-offers. *Petition for Rulemaking*.

See: 25 N.J.R. 4523(c), 26 N.J.R. 505(b).

Case Notes

Statute giving terminated agents full commission rights if they continued to service policies would prevail over strict terms of contract settlement between insurance company and terminated agents. *Matter of Terminated Aetna Agents*, 248 N.J.Super. 255, 590 A.2d 1189 (A.D.1990), certification denied 126 N.J. 319, 598 A.2d 880.

Regulation requiring that all real estate contracts subject to attorney review contain an "agreement to honor," was void. *Carmagnola v. Hann*, 233 N.J.Super. 547, 559 A.2d 478 (A.D.1989).

11:5-1.17 Participation in trade associations or listing services

(a) No licensed individual, partnership, firm or corporation shall become a member of or otherwise participate in the activities or operation of any trade association or organization or of any multiple listing service operation which engages in the following policies and practices:

1. Places requirements, obligations, or standards upon licensed members or participants which conflict with the Real Estate Licensed Act, N.J.S.A. 45:15-1 et seq., the Land Sales Disclosure Act, N.J.S.A. 45:15-16.3 et seq., the New Jersey Antitrust Act, N.J.S.A. 56:9-1 et seq., or the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., or which otherwise relate to the comprehensive scheme of regulation already preempted by the State of New Jersey;

2. Interferes with the licensee's obligation of fidelity to his client's interests, his obligation of dealing fairly with all other parties in a transaction, or his obligation of fully cooperating with any other New Jersey licensee, as more fully set forth in N.J.A.C. 11:5-1.23;

3. Directly or indirectly imposes or attempts to impose prescribed or predetermined fees or commission rates or commission amounts, or prescribed or predetermined commission splits, between the listing broker and the selling broker.

(b) Except as specifically provided in (a) above, nothing herein is intended to prohibit any trade association or organization or any multiple listing service operation from imposing rules, practices and standards upon licensed members or participants which reasonably relate to the conduct of that association or service and which will not otherwise require the association or service to be licensed as a real estate broker.

Amended by R.1979 d.461, effective November 26, 1979.

See: 10 N.J.R. 499(a), 12 N.J.R. 44(b).

11:5-1.18 Maintained offices

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

1. In the event the main office of a broker is under the direct supervision of a broker-salesperson, the broker who maintains such a main office shall be ultimately responsible for all activities conducted by licensees and employees. Such a broker shall also provide sufficient information to the personnel at such offices so as to allow them to make communication with such broker at all times. Nothing in this section shall be construed to limit a broker's responsibility to comply with the requirements of N.J.A.C. 11:5-1.14.

(b) If such office is located in a residence, it shall be independent of living quarters and shall have a separate exterior entrance plainly visible from the street upon which the licensed premises shall have frontage. This subsection shall not apply to offices in existence prior to December 1, 1963.

(c) No broker's maintained place or places of business shall be in the dwelling premises of any salesperson in that broker's office.

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

"Salesman" replaced by "salesperson".

Amended by R.1989 d.427, effective August 21, 1989 (operative November 19, 1989).

See: 20 N.J.R. 1160(a), 21 N.J.R. 1312(b), 21 N.J.R. 2523(a).

Clarification obligation of brokers of record to supervise their main office on a full time basis and unusual business hours, added to (a) and new (a)1.

Case Notes

Regulation of the New Jersey real estate commission which states holders of reciprocal licenses for non-resident brokers are not permitted to maintain offices in New Jersey is invalid as there is no statutory prohibition on the maintenance of a branch office by a reciprocally licensed non-resident broker in New Jersey which is under the direct, full-time supervision of a competent New Jersey licensee. Atty.Gen. F.O.1977, No. 14.

11:5-1.19 Branch office compliance with N.J.A.C.

11:5-1.18 (Maintained offices)

(a) In the event a real estate broker maintains a branch office or offices, every such place of business shall comply with the provisions of N.J.A.C. 11:5-1.18 (Maintained offices) of this subchapter.

(b) No license shall be issued for a branch office situated in the dwelling premises of a salesperson or broker-salesperson.

(c) Any branch office shall be under the direct supervision of a licensed broker employed as a broker salesperson by the broker maintaining the branch office.

(d) Such individual shall devote his or her full time to management of said office during the usual business hours.

(e) The name of the individual responsible for the supervision of the branch office shall be recorded at all times with the Commission.

(f) When a branch office license is issued to a broker it shall specifically set forth the name of the broker and the address of the branch office, and shall be conspicuously displayed at all times in the branch office. The branch office shall also prominently display the name of the broker-salesperson licensee in charge as "office supervisor" and the names of all other broker-salespersons and the salespersons doing business at that branch office.

(g) The said branch office license shall be returned for cancellation or correction upon the change of an "office supervisor".

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

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

Correct N.J.A.C. citations added.

Amended by R.1985 d.187, effective April 15, 1985.

See: 16 N.J.R. 2228(a), 17 N.J.R. 970(a).

(f): Substantially amended.

Amended by R.1989 d.428, effective August 21, 1989 (operative February 21, 1990).

See: 21 N.J.R. 1313(a), 21 N.J.R. 2523(a).

Required that branch offices be supervised by broker-salespersons.

Amended by R.1995 d.23, effective January 17, 1995.

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

Case Notes

Regulation of the New Jersey real estate commission which states holders of reciprocal licenses for non-resident brokers are not permitted to maintain offices in New Jersey is invalid as there is no statutory prohibition on the maintenance of a branch office by a reciprocally licensed non-resident broker in New Jersey which is under the direct, full-time supervision of a competent New Jersey licensee. Atty.Gen. F.O.1977, No. 14.

11:5-1.20 Payment of fees as prescribed by statute

Any and all fees prescribed by the Real Estate License Act shall be paid by broker's business account check, certified or bank check or money order payable to the State Treasurer of New Jersey. No cash or currency shall be accepted.

Amended by R.1986 d.92, effective April 7, 1986.

See: 17 N.J.R. 2353(a), 18 N.J.R. 702(a).

Added text, "brokers business account check, certified or bank".

11:5-1.21 Employment of salesperson sponsored by broker

(a) Recognizing the statutory requirement that any licensee shall be of good moral character, the sponsoring broker, before applying for the licensing of any salesperson applicant, shall assure himself that such applicant bears a good reputation for honesty and fair dealings.

(b) To this end, a competent investigative report is recommended.

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

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

"Salesman" replaced by "salesperson".

11:5-1.22 Broker insurance placement provision

Where a contract provided by a real estate broker contains a provision to the effect that such broker, in his

capacity as a licensed insurance agent or broker, is authorized to place or procure insurance on the property being sold, the licensee benefitting by such a provision shall obtain separate written reaffirmation of such provision by the prospective insured not less than five days prior to the closing of title.

11:5-1.23 Obligations of licensees to the public and to each other

(a) All licensees are subject to and shall strictly comply with the laws of agency and the principles governing fiduciary relationships. In accepting employment as an agent, the licensee pledges himself to protect and promote, as he would his own, the interests of the client or principal he has undertaken to represent; this obligation of absolute fidelity to the client's or principal's interest is primary but does not relieve the licensee from the obligation of dealing fairly with all parties to the transaction.

(b) Every licensee shall make reasonable effort to ascertain all material information concerning the physical condition of every property for which he or she accepts an agency or which he or she is retained to market as a transaction broker, and concerning the financial qualifications of every person for whom he or she submits an offer to his or her client or principal. Information about social conditions and psychological impairments as defined in (d) below is not considered to be information which concerns the physical condition of a property.

1. A reasonable effort to ascertain material information shall include at least:

- i. Inquiries to the seller or seller's agent about any physical conditions that may affect the property; and
- ii. A visual inspection of the property to determine if there are any readily observable physical conditions affecting the property.

2. As used in this section, information is "material" if a reasonable person would attach importance to its existence or non-existence in deciding whether or how to proceed in the transaction, or if the licensee knows or has reason to know that the recipient of the information regards, or is likely to regard it as important in deciding whether or how to proceed, although a reasonable person would not so regard it.

(c) Licensees shall disclose all information material to the physical condition of any property which they know or which a reasonable effort to ascertain such information would have revealed to their client or principal and when appropriate to any other party to a transaction. Licensees shall also disclose any actual or potential conflicts of interest which the licensee may reasonably anticipate.

1. With respect to off-site conditions which may materially affect the value of the residential real estate, in all sales contracts involving newly constructed residential real estate they prepare, licensees shall include a statement as set forth below. By including this statement in a contract of sale prepared by the licensee, the licensee shall be deemed to have fulfilled his or her disclosure obligations under (c) above with respect to such off-site conditions. The statement shall be in print as large as the predominant size print in the document and shall read as follows:

**"NOTIFICATION REGARDING
OFF-SITE CONDITIONS**

Pursuant to the New Residential Construction Off-Site Conditions Disclosure Act, P.L. 1995, c.253 (C.46:3C-1 et seq.), sellers of newly constructed residential real estate are required to notify purchasers of the availability of lists disclosing the existence and location of off-site conditions which may affect the value of the residential real estate being sold. The lists are to be made available by the municipal clerk of the municipality within which the residential real estate is located and in other municipalities which are within one-half mile of the residential real estate. The address(es) and telephone number(s) of the municipalities relevant to this project and the appropriate municipal offices where the lists are made available are listed below. Purchasers are encouraged to exercise all due diligence in order to obtain any additional or more recent information that they believe may be relevant to their decision to purchase the residential real estate. Purchasers are also encouraged to undertake an independent examination of the general area within which the residential real estate is located in order to become familiar with any and all conditions which may affect the value of the residential real estate.

The purchaser has five (5) business days from the date the contract is executed by the purchaser and the seller to send notice of cancellation of the contract to the seller. The notice of cancellation shall be sent by certified mail. The cancellation will be effective upon the notice of cancellation being mailed. If the purchaser does not send a notice of cancellation to the seller in the time or manner described above, the purchaser will lose the right to cancel the contract as provided in this notice.

Municipality _____

Address _____

Telephone Number _____"

The statement shall either be included in the text of the contract itself or attached to the contract as an Addendum.

2. In all residential real estate sale contracts they prepare except contracts for newly constructed residential real estate, licensees shall include a statement as set forth below. The statement shall be in print as large as the predominant size print in the document and shall read as follows:

11:5-1.43 Consumer Information Statement

(a) When applied to rental transactions which are not exempt from this rule, references to sellers and buyers, and to the various types of brokerage agreements and business relationships mentioned throughout this rule should be construed as indicating their appropriate counterparts in rental transactions. For example, references to sellers should be read as lessors or owners and references to buyers should be read as lessees or tenants, etc. As used in this rule, the following terms or phrases shall have the following meanings:

1. "Brokerage agreement" means a written agreement between a brokerage firm and a party describing the terms under which that firm will perform brokerage services as specified in N.J.S.A. 45:15-3. Brokerage agreements include, but are not limited to, sale and rental listing agreements, buyer-broker, lessee-broker, transaction broker, and dual agency agreements.

2. "Brokerage firm" means a licensed corporate, partnership or sole proprietor broker, and all individuals licensed with that broker.

3. "Consumer Information Statement" means the Consumer Information Statement on New Jersey Real Estate Relationships as prescribed in (h) below.

4. "Informed consent to dual agency" means the written authorization by a party for the brokerage firm which represents them as their agent in a real estate transaction to also represent the other party to that transaction as an agent. Informed consent can only be obtained after the brokerage firm has disclosed to the consenting party all material facts which might reasonably impact on that party's decision to authorize dual agency, including the extent of the conflicts of interests involved and the specific ways in which each consenting party will receive less than full agency representation from the dual agent. In order to obtain informed consent it is also necessary for the licensee to first advise the consenting party of the other business relationships offered by that licensee and of those not offered by that licensee, and of that party's right to consult an attorney.

5. "Party" shall mean actual or prospective sellers, lessors, buyers or lessees of an interest in real estate.

6. "Short term rental" shall mean the rental of a residential property for not more than 90 consecutive days, under the terms of an oral rental agreement or written lease which contains a specific termination date. Month-to-month tenancies are not considered short term rentals.

7. "Transaction broker" shall mean a brokerage firm which works with both parties in an effort to arrive at an agreement on the sale or rental of real estate and facilitates the closing of a transaction, but does not represent either party, and has no agency relationship with either party to the transaction. The New Jersey Real Estate

License Law, N.J.S.A. 45:15-1 et seq., and the administrative rules promulgated thereunder do not mandate that licensees must act as agents when rendering real estate brokerage services.

8. "Business relationship(s)" means real estate licensees working as a seller's agent; a buyer's agent; a disclosed dual agent; or a transaction broker.

(b) Prior to acting as a dual agent, a brokerage firm must have the written informed consent of the parties to the transaction. Informed consent is not acquired through distribution of the Consumer Information Statement on New Jersey Real Estate Relationships as required by (e) and (k) below alone. At a minimum, licensees must also secure the signature of the party on a separate writing which confirms the party's informed consent to the licensee acting as a Disclosed Dual Agent for that party. Such a writing may be part of, or an attachment to a brokerage agreement.

(c) Licensees shall supply information with regard to their working relationship with parties to real estate transactions as provided in this section.

(d) Licensees shall comply with all requirements of this section when involved in:

1. Transactions which involve the sale of residential real estate containing one to four dwelling units or the sale of vacant one-family lots;

2. Residential lease transactions other than short term rentals. However, in short-term rental transactions, licensees shall include in all leases prepared by them a statement indicating that they are acting in the transaction either as an agent of the landlord, an agent of the tenant, a disclosed dual agent or a transaction broker; and

3. The securing of brokerage agreements on residential properties, including rental listing agreements on residential properties to be offered for short term rentals.

(e) All licensees shall supply information on business relationships to buyers and sellers in accordance with the following:

1. With respect to buyers:

i. All licensees shall verbally inform buyers of the four business relationships described in this section prior to the first discussion at which a buyer's motivation or financial ability to buy is discussed.

ii. If the first such discussion occurs during a business meeting on the buyer's real estate needs, licensees shall deliver the written Consumer Information Statement to the buyers prior to such a discussion. If the first such discussion is telephonic or in a social setting, licensees shall, after having verbally informed the buyer of the four business relationships, deliver the written Consumer Information Statement to the buyer at their next meeting. However, if prior to their first business

meeting after such a discussion, any material is mailed, faxed or delivered by the licensee to the buyer, the Consumer Information Statement shall be included with such material.

iii. In cases where there have been no discussions on motivation or financial ability to buy prior to the first showing, licensees shall deliver the statement no later than the first showing.

iv. Those licensees who intend to enter into a buyer-brokerage relationship with such persons shall deliver the Consumer Information Statement no later than the commencement of their buyer-brokerage agreement presentation.

2. With respect to sellers:

i. All licensees shall verbally inform sellers of the four business relationships described in this section prior to the first discussion at which the seller's motivation or desired selling price is discussed.

ii. If the first such discussion occurs during a business meeting on the seller's real estate needs, licensees shall deliver the written Consumer Information Statement to the sellers prior to such a discussion. If the first such discussion is telephonic or in a social setting, licensees shall, after having verbally informed the seller of the four business relationships, deliver the written Consumer Information Statement to the seller at their next meeting. However, if prior to their first business meeting after such a discussion, any material is mailed, faxed or delivered by the licensee to the seller, the Consumer Information Statement shall be included with such material.

iii. On unlisted properties, absent any discussions prior to their first showing of the property, all licensees shall deliver the statement no later than their first showing of the property.

(f) The purpose of (e) above and (h) below is to require licensees to provide basic and introductory information to the public in a convenient and consistent manner, rather than a comprehensive explanation of agency law.

(g) The statement as supplied by the Commission shall be reproduced and delivered by licensees as required in this section as a separate item, with no deletions or additions, other than the optional additional text referred to in (g)1 and 2 below, and recited in (h) below.

1. Brokerage firms may acknowledge delivery of the Statement by procuring the signature of the party to whom it was delivered and the date of delivery in the appropriate place at the bottom of the Statement.

i. On transactions which result in fully executed contracts of sale or consummated rental transactions, copies of Consumer Information Statements on which receipt has been acknowledged as set forth in (g)1 above, shall be maintained as business records for six years in accordance with N.J.A.C. 11:5-1.12(c).

2. Brokerage firms may also indicate on the Statement the capacity in which they intend to work with the party to whom they deliver the Statement.

3. Regardless of whether brokerage firms choose to include on the Statement the additional information referred to in (g)1 and 2 above, all brokerage firms, as is required by (i) and (j) below, shall:

i. Indicate in all brokerage agreements the business relationship they intend to have with the other party to the agreement; and

ii. Indicate in all offers, contracts, or leases prepared by licensees the business relationship the firm has with respect to the parties named in those documents.

(h) The mandatory text of the Consumer Information Statement to be delivered by licensees as provided in (e) above is as follows:

CONSUMER INFORMATION STATEMENT ON NEW JERSEY REAL ESTATE RELATIONSHIPS

In New Jersey, real estate licensees are required to disclose how they intend to work with buyers and sellers in a real estate transaction. (In rental transactions, the terms "buyers" and "sellers" should be read as "tenants" and "landlords," respectively.)

1. AS A SELLER'S AGENT OR SUBAGENT, I, AS A LICENSEE, REPRESENT THE SELLER AND ALL MATERIAL INFORMATION SUPPLIED TO ME BY THE BUYER WILL BE TOLD TO THE SELLER.

2. AS A BUYER'S AGENT, I, AS A LICENSEE, REPRESENT THE BUYER AND ALL MATERIAL INFORMATION SUPPLIED TO ME BY THE SELLER WILL BE TOLD TO THE BUYER.

3. AS A DISCLOSED DUAL AGENT, I, AS A LICENSEE, REPRESENT BOTH PARTIES. HOWEVER, I MAY NOT, WITHOUT EXPRESS PERMISSION, DISCLOSE THAT THE SELLER WILL ACCEPT A PRICE LESS THAN THE LISTING PRICE OR THAT THE BUYER WILL PAY A PRICE GREATER THAN THE OFFERED PRICE.

4. AS A TRANSACTION BROKER, I, AS A LICENSEE, DO NOT REPRESENT EITHER THE BUYER OR THE SELLER. ALL INFORMATION I ACQUIRE FROM ONE PARTY MAY BE TOLD TO THE OTHER PARTY.

Before you disclose confidential information to a real estate licensee regarding a real estate transaction, you should understand what type of business relationship you have with that licensee.

There are four business relationships: (1) seller's agent; (2) buyer's agent; (3) disclosed dual agent; and (4) transaction broker. Each of these relationships imposes certain legal duties and responsibilities on the licensee as well as on the seller or buyer represented. These four relationships are defined in greater detail below. Please read carefully before making your choice.

SELLER'S AGENT

A seller's agent **WORKS ONLY FOR THE SELLER** and has legal obligations, called fiduciary duties, to the seller. These include reasonable care, undivided loyalty, confidentiality and full disclosure. Seller's agents often work with buyers, but do not represent the buyers. However, in working with buyers a seller's agent must act honestly. In dealing with both parties, a seller's agent may not make any misrepresentations to either party on matters material to the transaction, such as the buyer's financial ability to pay, and must disclose defects of a material nature affecting the physical condition of the property which a reasonable inspection by the licensee would disclose.

Seller's agents include all persons licensed with the brokerage firm which has been authorized through a listing agreement to work as the seller's agent. In addition, other brokerage firms may accept an offer to work with the listing broker's firm as the seller's agents. In such cases, those firms and all persons licensed with such firms, are called "subagents". Sellers who do not desire to have their property marketed through sub-agents should so inform the seller's agent.

BUYER'S AGENT

A buyer's agent **WORKS ONLY FOR THE BUYER**. A buyer's agent has fiduciary duties to the buyer which include reasonable care, undivided loyalty, confidentiality and full disclosure. However, in dealing with sellers a buyer's agent must act honestly. In dealing with both parties, a buyer's agent may not make any misrepresentations on matters material to the transaction, such as the buyer's financial ability to pay, and must disclose defects of a material nature affecting the physical condition of the property which a reasonable inspection by the licensee would disclose.

A buyer wishing to be represented by a buyer's agent is advised to enter into a separate written buyer agency contract with the brokerage firm which is to work as their agent.

DISCLOSED DUAL AGENT

A disclosed dual agent **WORKS FOR BOTH THE BUYER AND THE SELLER**. To work as a dual agent, a firm

must first obtain the informed written consent of the buyer and the seller. Therefore, before acting as a disclosed dual agent, brokerage firms must make written disclosure to both parties. Disclosed dual agency is most likely to occur when a licensee with a real estate firm working as a buyer's agent shows the buyer properties owned by sellers for whom that firm is also working as a seller's agent or subagent.

A real estate licensee working as a disclosed dual agent must carefully explain to each party that, in addition to working as their agent, their firm will also work as the agent for the other party. They must also explain what effect their working as a disclosed dual agent will have on the fiduciary duties their firm owes to the buyer and to the seller. When working as a disclosed dual agent, a brokerage firm must have the express permission of a party prior to disclosing confidential information to the other party. Such information includes the highest price a buyer can afford to pay and the lowest price a seller will accept and the parties' motivation to buy or sell. Remember, a brokerage firm acting as a disclosed dual agent will not be able to put one party's interests ahead of those of the other party and cannot advise or counsel either party on how to gain an advantage at the expense of the other party on the basis of confidential information obtained from or about the other party.

If you decide to enter into an agency relationship with a firm which is to work as a disclosed dual agent, you are advised to sign a written agreement with that firm.

TRANSACTION BROKER

The New Jersey Real Estate Licensing Law does not require licensees to work in the capacity of an "agent" when providing brokerage services. A transaction broker works with a buyer or a seller or both in the sales transaction without representing anyone. A **TRANSACTION BROKER DOES NOT PROMOTE THE INTERESTS OF ONE PARTY OVER THOSE OF THE OTHER PARTY TO THE TRANSACTION**. Licensees with such a firm would be required to treat all parties honestly and to act in a competent manner, but they would not be required to keep confidential any information. A transaction broker can locate qualified buyers for a seller or suitable properties for a buyer. They can then work with both parties in an effort to arrive at an agreement on the sale or rental of real estate and perform tasks to facilitate the closing of a transaction. A transaction broker primarily serves as a manager of the transaction, communicating information between the parties to assist them in arriving at a mutually acceptable agreement and in closing the transaction, but cannot advise or counsel either party on how to gain an advantage at the expense of the other party. Owners considering working with transaction brokers are advised to sign a written agreement with that firm which clearly states what services that firm will perform and how it will be paid. In addition, any transaction brokerage agreement with a seller or landlord should specifically state whether a notice

on the property to be rented or sold will or will not be circulated in any or all Multiple Listing System(s) of which that firm is a member.

YOU MAY OBTAIN LEGAL ADVICE ABOUT THESE BUSINESS RELATIONSHIPS FROM YOUR OWN LAWYER.

THIS STATEMENT IS NOT A CONTRACT AND IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

(END OF MANDATORY CONSUMER INFORMATION STATEMENT TEXT)

(OPTIONAL ACKNOWLEDGEMENT OF RECEIPT AFTER TEXT OF CONSUMER INFORMATION STATEMENT:

FOR SELLERS AND LANDLORDS

“By signing this Consumer Information Statement, I acknowledge that I received this Statement from (Name of Brokerage Firm) prior to discussing my motivation to sell or lease or my desired selling or leasing price with one of its representatives.”

FOR BUYERS AND TENANTS

“By signing this Consumer Information Statement, I acknowledge that I received this Statement from (Name of Brokerage Firm) prior to discussing my motivation or financial ability to buy or lease with one of its representatives.”

(OPTIONAL INDICATION OF IN WHAT CAPACITY FIRM INTENDS TO WORK WITH RECIPIENT OF CONSUMER INFORMATION STATEMENT AS PERMITTED BY (g)2 ABOVE:)

I, _____, as an authorized representative of _____, intend, as of this time, to work with you as a _____.

(indicate one of the following):

- seller’s agent only
- buyer’s agent only
- seller’s agent and disclosed dual agent if the opportunity arises
- buyer’s agent and disclosed dual agent if the opportunity arises
- transaction broker

(i) In all brokerage agreements, brokerage firms must include the following:

1. A statement acknowledging receipt of the Consumer Information Statement; and
2. A declaration of business relationship indicating the regular business name of the broker and in what capacity the licensee servicing the agreement and their firm will operate as real estate licensees with respect to the other party to the brokerage agreement. The declaration of business relationship in all brokerage agreements shall contain, in print larger than the predominant size print in the writing, the following language:

I, _____, as an authorized representative of _____, intend, as of this time, to work with you as _____.

(indicate one of the following):

- seller’s agent only
- buyer’s agent only
- seller’s agent and disclosed dual agent if the opportunity arises
- buyer’s agent and disclosed dual agent if the opportunity arises
- transaction broker

3. Where brokerage firms secure a written acknowledgement of receipt of the Consumer Information Statement on the Statement itself as provided in (g)1 above and include on the Consumer Information Statement a declaration of the business relationship they intend to have with the other party to the brokerage agreement as provided in (g)2 above, the attachment of a copy of the Consumer Information Statement to the brokerage agreement and the inclusion of a reference to the receipt of the Consumer Information Statement in the brokerage agreement shall constitute compliance with this section.

(j) Licensees shall disclose to consumers what type of brokerage services they will provide in the following manner:

1. Buyer-brokers shall verbally disclose to sellers that they are acting on behalf of a buyer prior to their first communication with the seller during which the seller’s motivation to sell or desired price is discussed.
2. All offers, contracts or leases not exempt by this rule which are prepared by licensees shall include the following statements:

“By signing below the sellers (or landlords as applicable) and purchasers (or tenants as applicable) acknowledge they received the Consumer Information Statement on New Jersey Real Estate Relationships from the brokerage firms involved in this transaction prior to the first showing of the property.”

3. In all offers, contracts, or leases, including leases for short-term rentals, prepared by licensees as permitted by N.J.A.C. 11:5-1.16(g), licensees shall include the regular business name of the broker with whom they are licensed and a declaration of business relationship indicating in what capacity they and their firm are operating as real estate licensees in that real estate transaction. The declaration of business relationship in all offers to purchase or to lease property, including those made on contracts of sale or lease documents prepared by licensees, shall contain, in print as large as the predominant size print in the writing, the following language:

I, _____, as an authorized representative of
 (Name of licensee)
 _____, am working in this transaction as
 (Name of firm)

(indicate one of the following):

- seller’s agent only
- buyer’s agent only
- disclosed dual agent
- transaction broker

i. In transactions in which more than one firm is involved, all licensee-prepared offers, contracts and leases, including leases on short-term rentals, shall contain, in the same size type and immediately following the declaration of business relationship set forth above, the following clause:

Information supplied by _____
 (Name of firm)

has indicated that it is operating in this transaction as a

(indicate one of the following):

- seller’s agent only
- buyer’s agent only
- transaction broker

ii. The requirement to include the clause cited in (j)3i above in licensee-prepared offers, contracts and leases shall not apply with respect to firms whose involvement in a transaction was limited to merely referring a party to another firm.

(k) Licensees shall disclose to other licensees what type of business relationship they have with the party with whom they have a brokerage agreement, and with any other parties with whom they may be working, in the following manner:

1. In all written or computer generated notices directed to other brokerage firms through a Multiple Listing Service or otherwise, the listing broker shall indicate whether they are working as a seller’s agent or as a transaction broker. On listings where the listing broker is operating as a seller’s agent, such notices shall also state:

- i. Whether subagency is offered;
- ii. Whether the seller has authorized the sharing of the listing broker’s compensation with cooperating sub-agents and/or transaction brokers and/or buyer brokers; and
- iii. The amount of compensation offered to cooperating subagents and/or transaction brokers and/or buyer brokers.

2. When a licensee with a listing broker receives an inquiry about a particular property from any other licensee, the licensee with the broker shall, before providing any information to the inquiring licensee beyond general information previously circulated about the listing, verbally ascertain from the inquiring licensee the capacity in which that licensee is operating or intends to operate (buyer-broker, subagent, disclosed dual agent or transaction broker). Inquiries from other licensees in the listing broker’s firm shall also be responded to as set forth in this subsection.

(l) In transactions where brokers seek compensation for their brokerage services from a party to the transaction whom they are not representing or working with, the business relationship with the party they are representing or working with and the compensation arrangement shall also be disclosed to both parties as required by N.J.A.C. 11:5-1.38.

New Rule, R.1995 d.110, effective February 21, 1995 (operative July 1, 1995).
 See: 26 N.J.R. 3113(a), 27 N.J.R. 697(a).
 Administrative corrections.
 See: 27 N.J.R. 1191(a); 27 N.J.R. 1618(b).
 Public Notice: Petition for rulemaking; Agency disclosure.
 See: 27 N.J.R. 5058(b).
 Public Notice: Notice of action on petition for rulemaking.
 See: 28 N.J.R. 1412(d).
 Public Notice: Notice of Action on Petition for Rulemaking.
 See: 29 N.J.R. 385(a).

Case Notes

Builder-developer of residential real estate or broker representing it may be liable for nondisclosure of off-site physical conditions known to it and unknown and not readily observable by purchaser if the existence of those conditions is of sufficient materiality to affect the habitability, use, or enjoyment of the property. *Strawn v. Canuso*, 140 N.J. 43, 657 A.2d 420 (1995).

11:5-1.44 Requests for disclosure of social security numbers

(a) The Commission may request that licensees and license applicants, including registrants for license examinations, submit their social security numbers to the Commission. All such requests shall either include or be accompanied by a notice stating:

1. The purpose or purposes for which the Commission intends to use the social security numbers;
2. That disclosure made pursuant to the request is either voluntary or mandatory; and
3. That the request is authorized by this section and by such other law as may be applicable.

New Rule, R.1994 d.268, effective June 20, 1994 (operative July 1, 1994).
 See: 26 N.J.R. 735(a), 26 N.J.R. 1222(a), 26 N.J.R. 2585(a).
 Repeal and New Rule, R.1997 d.160, effective April 7, 1997.
 See: 29 N.J.R. 302(a), 29 N.J.R. 1324(c).

Section was "Collection of Social Security numbers of licenses".

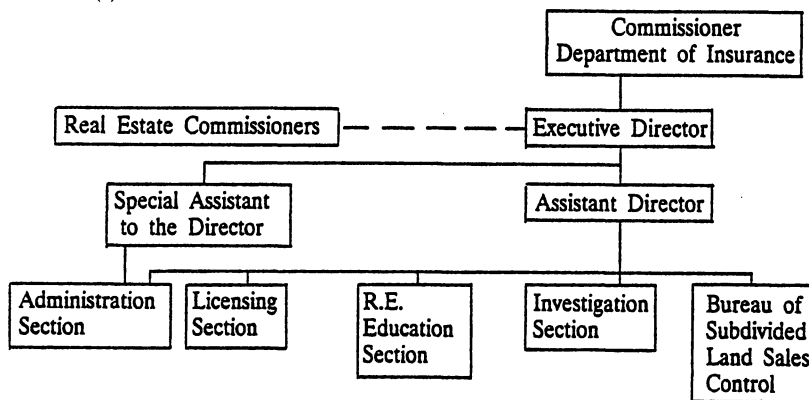
SUBCHAPTER 2. ORGANIZATIONAL RULES

11:5-2.1 Commission responsibilities

The Real Estate Commission is responsible for the supervision and regulation of the education, examination and licensing of real estate brokers and salespersons, the regulation of the sale or lease of out-of-state properties to New Jersey residents through promotional activities in New Jersey, the investigation and adjudication of disciplinary actions against licensees, and the administration of the Real Estate Guaranty Fund.

11:5-2.2 Organization of the Commission

The organization chart of the Real Estate Commission is as follows:



11:5-2.3 Functions of the Commission

(a) The Commission is comprised of five sections whose functions are as follows:

1. The Licensing Section is responsible for processing license applications, transfers, terminations, renewals and upgrades, and for providing licensing information to the public and to licensees.
2. The Investigations Section is responsible for investigating the qualifications of applicants for licensure, and for investigating complaints against licensed brokers or salespersons or individuals who have allegedly engaged in the business of a real estate broker or a salesperson without being licensed to do so.
3. The Real Estate Education Section is responsible for reviewing the qualifications of real estate school and instructor applicants and for regulating their activities as such through the Education Subsection.

4. The Bureau of Subdivided Land Sales Control within the Investigations Section is responsible for enforcing the provisions of the Land Sales Full Disclosure Act. Its duties include, but are not limited to reviewing applications for the registration of new projects, conducting inspections of conditionally registered projects, and reviewing applications for the renewal of projects.

5. The Administration Section is responsible for the budget and accounting functions and also for ensuring that personnel operate in a manner which will accomplish their designated duties in conjunction with the staff of the Department of Insurance. It is also responsible for processing the rulemaking activity of the Commission, the scheduling and processing of contested matters and other functions including administration of the Real Estate Guaranty Fund.

Amended by R.1989 d.324, effective May 24, 1989.
 See: 21 N.J.R. 1364(a), 21 N.J.R. 1709(a).

Amended by R.1989 d.324, effective May 24, 1989.
 See: 21 N.J.R. 1709(a).

At (a)3, reference to Education Subsection added to end of sentence.