

TITLE 11

DEPARTMENT OF INSURANCE

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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**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.

**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).

Subsection (c) added.

**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).

(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 voca-

tion, 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 prelicensure 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 preclicensure 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).

#### 11:5-1.5 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.

“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 Collection of Social Security numbers of licensees**

(a) All application forms for licensure or relicensure, including the forms utilized to register for a license examination, shall include a request that each applicant voluntarily submit his or her Social Security number to the Commission. The Commission shall include on all forms containing that request the following information:

1. That disclosure of the Social Security number is voluntary, not mandatory;
2. That the Social Security number will be used as an internal identifier so as to enhance the Commission's ability to correctly identify applicants for licenses and current licensees; and
3. A specific reference to this rule as the legal authority on the basis of which the Commission is making the request.

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).

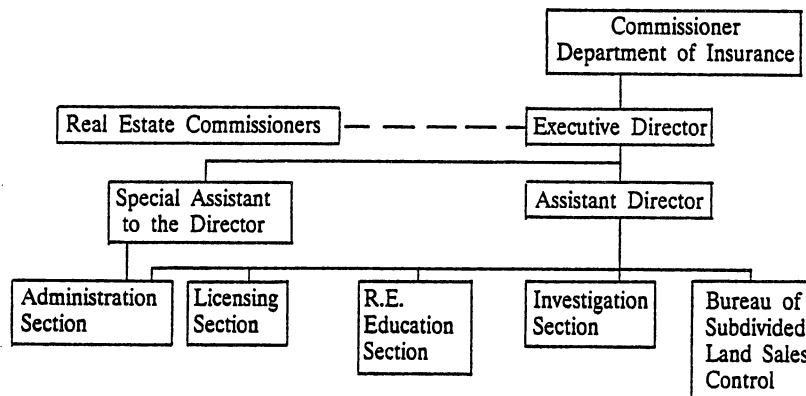
**SUBCHAPTER 2. ORGANIZATIONAL RULES**

**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.

19. A statement indicating whether the applicant, or a parent or subsidiary of the applicant, or any of their current officers or principals have, during the past 10 years, or any of their former officers or principals have during the last two years been convicted of a crime involving any aspect of the real estate sales or real estate securities business in this State, the United States or any other state or foreign jurisdiction and whether the applicant has been subject to any permanent injunction or final administrative order restraining a false or misleading promotional plan involving real property disposition, or any final administrative order or judgement by any court finding that the applicant or any such persons have engaged in any unfair acts and/or fraudulent or deceptive practices involving the disposition of real property or of other products or services;

20. A copy of the proposed budget for the operation and maintenance of the common elements and facilities based upon full occupancy together with the estimated annual assessment and monthly charges to be assessed to each type of unit. If the proposed offering is a condominium, time-share or homeowners association, or involves any common ownership interest, the budget shall specifically state the amount set aside as reserves for the replacement of the common elements and facilities, as certified by an independent public accountant, or property manager or other independent expert. The budget should also indicate whether the applicant is subsidizing the maintenance fee or plans to subsidize the maintenance fee during sales prior to transfer of control to any association, and if so, the amount of the subsidy and the probable effect of the applicant's discontinuing the making of such payments upon the maintenance fee payable by each owner. The budget shall be accompanied by a letter of adequacy issued by an independent public accountant, or certified property manager, attesting that the budget was prepared in good faith and a letter from an independent insurance agent or broker confirming that the insurance coverage meets any standards required in the project documents and as required by situs state law;

21. A covering letter specifying the following information with regard to the project:

- i. The nature of the project (that is, number of lots in each subdivision or number of condominium units in mid-rise, etc.);
- ii. Certifying that the filing fee and other fees are correct as required by N.J.S.A. 45:15-16.27 et seq.;
- iii. Identifying to whom all correspondence should be directed, with an address; and
- iv. Identifying to whom Annual Report Notices and forms should be sent, with an address and telephone number; and

22. Such other additional information as the Commission may require, after review of an application for registration, to assure full and fair disclosure.

#### 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.

#### 11:5-6.5 Public Offering Statements

(a) No registrant may dispose of any lot, parcel, unit or interest in a registered subdivision unless said registrant delivers to the purchaser a current New Jersey Public Offering Statement or approved equivalent, and affords the purchaser a reasonable opportunity to read the same before the purchaser signs the contract or purchase agreement.

(b) The Public Offering Statement shall disclose fully and accurately the characteristics of the subdivision and the lots, parcels, units or interests offered and shall make known to prospective purchasers all unusual and material circumstances and features affecting the subdivision. The Public Offering Statement shall be in clear and concise language and combine simplicity and accuracy in order to fully advise purchasers of their rights, privileges, obligations and restrictions.

1. The Public Offering Statement shall be in a form designated by the Commission. No change in form may be made without the consent of the Commission.

(c) The Commission may require an applicant to alter or amend the proposed Public Offering Statement in order to assure full and fair disclosure to prospective purchasers and may require the revision of a Public Offering Statement which it finds to be unnecessarily complex, confusing, illegible or incomplete.

(d) A Public Offering Statement shall not be deemed current unless it contains all amendments approved by the Commission.

(e) The Public Offering Statement shall contain the following information:

1. The name and address of the subdivision being offered, the name and principal address of the applicant and the name and address of the New Jersey broker of record;

2. A narrative description of the interest to be offered including; but not limited to; the rights and obligations of purchasers in their lots, parcels, units or interests and in the common elements;

3. A narrative description of the subdivision including, but not limited to, specific designation of the total number of lots, parcels, units or interests contained in the offering, the total number of lots, parcels, units or interests which will or may be constructed in the entire project, the present and proposed access to the development and the promised completion date of the present offering for sale and the estimated completion date of the entire development;

4. Relevant community information including, but not limited to, the existence and location of hospitals, health and recreational facilities, schools, fire and police protection, places of worship, streets, water supplies, levees, drainage control systems, irrigation systems, customary utilities, etc.;

5. A statement of the nature, type and capacity of improvements to be installed by the developer and the proposed dates of completion for sections offered for sale and estimated dates of completion for sections not yet offered for sale. The developer may indicate that the estimated dates of completion of improvements in sections not yet offered for sale are subject to market conditions and other variables, or similar qualifying language. (Note: The Public Offering Statement shall be amended to reflect proposed dates of completion when sections which were not previously offered for sale are offered for sale). Also, a statement of any approvals not yet obtained, the acquisition of which is a precondition to the completion of such improvements, and whether the identified improvements will be dedicated to public use;

6. A statement of the proposed method of operation and management of the common elements and facilities, and of all fixed, estimated or proposed fees, assessments, and reserves for future replacement and repair of common elements. If there are no provisions for reserves, a statement indicating same shall be included. If the proposed offering is a condominium, time-share or homeowners association, or involves any common ownership interest, in addition to the amount set aside as reserves for the replacement or repair of the common elements and facilities, the risk to purchasers if the applicant fails to sell out shall also be stated. A statement indicating whether the applicant is subsidizing the maintenance fee or plans to subsidize the maintenance fee during sales prior to transfer of control to any association, and if so, the amount of the subsidy and the probable effect of the cessation of the payment of the subsidy upon the maintenance fee payable by each owner shall also be included;

7. A description of any management or service contract, lease or other contract or agreement affecting the use, maintenance or access from and to any and all of the common elements or community facilities, together with a statement as to the effect of each upon the purchaser;

8. A statement of the relationship, if any, between the applicant and any management or servicing agent or firm;

9. A statement explaining any restrictions on occupancy, on the right of alienation and on the right of alteration of the lot, parcel, unit or interest, and on the use of any common facilities or amenities;

10. The significant terms of any encumbrances, easements, liens and restrictions including, but not limited to, zoning regulations affecting such lands and each lot, parcel, unit or interest, as well as the uses on and the zoning classification of adjoining lands at the time of registration, consolidation or the last filed annual report;

11. A statement as to whether the property or any portion thereof is regularly or periodically subject to natural forces that would tend to adversely affect the use or enjoyment of the property and whether the property or any portion thereof is located in a Federally designated flood hazard area;

12. A statement as to whether the property or any portion thereof is subject to man-made forces that would tend to adversely affect the use or enjoyment of the property such as, but not limited to, the property's proximity to airports or flight paths, railroads, noisy or polluting industrial use, landfills, dumps, nuclear or toxic waste facilities or other similar forces;

13. A statement of all current or estimated taxes;

14. A statement of all existing or proposed special taxes and proposed assessments or assessments of record and identifying who shall be responsible for payment thereof;

15. A statement of all of the estimated title closing or settlement costs to be paid by the purchaser, including, but not limited to, all costs that are charged by the applicant and its agents and any person or entity controlled by the applicant;

16. A statement explaining the warranty or guarantee given by the applicant, if any, and the rights and remedies of the purchaser;

17. A statement by the applicant confirming that all monies paid by New Jersey residents to the applicant or his agents prior to closing will be held in an escrow account, or in trust by an attorney licensed to practice law in this State or the state or country where the property is located, or be guaranteed by some means acceptable to the Commission. The statement shall specify the name and location of the institution where the escrow account is maintained as well as the name and address of any trustee or escrow agent. The statement shall include the applicant's acknowledgement that he shall hold all funds in escrow or in trust until the closing and delivery of the deed or until the applicant posts a bond or some other guarantee acceptable to the Commission to ensure New Jersey purchaser deposits, which bond shall be separate from and in addition to any bond or assurance for the completion of infrastructure and promised improvements. In the event that interests in the subdivision, including fee simple interests in timeshare projects, are offered through installment sale contracts where closing and delivery of deed or deed in trust are postponed until three or more installment payments, including, but not limited to, monthly payments for licenses, memberships or other non-fee interests in the subdivision, have been paid, the statement shall confirm that all monies paid by New Jersey purchasers will be escrowed until:

i. The statutory seven-day rescission period has expired; and

ii. A deed in trust memorializing the transaction has been offered to the purchaser, which offer shall be made within 180 days of the date on which the first installment payment was made, presuming that all payments are current as of that time, and which deed in trust will, presuming that the purchaser has performed all acts required to enable the subdivider to do so, be recorded within the said 180 day period with the appropriate recording authority in the situs state; and

iii. All statutory and other rescission periods have passed; and

iv. All contingencies other than the completion of secured promised improvements have been fulfilled. In the alternative, the statement shall confirm that evidence acceptable to the Commission that a bond, irrevocable bank letter of credit, or other financial assurances acceptable to the Commission, but in no event bonds issued by the applicant or any affiliated company, in an amount sufficient to ensure all monies paid by New Jersey purchasers prior to the delivery of a deed or deed in trust has been posted by an acceptable third party surety or entity on behalf of the applicant. In order for a surety or entity to be deemed acceptable, it must be authorized to do business in the situs state and engaged in the general business of providing financial assurances on the open market. Such a bond or other financial assurance must provide that the New Jersey Real Estate Commission on behalf of all New Jersey purchasers, or the appropriate regulatory agency of the situs state on behalf of all purchasers, is the insured and shall ensure all purchasers' deposits paid and/or all installment payments made prior to the delivery of a deed in recordable form to the purchaser or trustee. Whether the amount of such instruments is acceptable shall be determined based upon past and projected sales, purchase price and other contract terms and shall be reviewed annually by the Commission if it is a named insured;

18. A statement printed in 10-point boldface type or larger, conspicuously located, which states that the purchaser has the right to cancel any contract or agreement for the purchase of any lot, parcel, unit or interest in the development, without cause, by sending or delivering written notice of cancellation to the developer or his agent by midnight of the seventh calendar day following the day on which such contract or agreement was executed and that all monies paid will be promptly refunded, and further stating that the purchaser should read the Public Offering Statement in its entirety before signing any contracts or paying any monies;

19. A statement indicating that, regardless of whether the registrant offers or recommends financing the purchase of an interest in the subdivision through a particular lender or lenders, alternate sources of financing are available;

20. Where applicable, a statement explaining the nature, type and amount of hazard and liability insurance supplied or to be supplied by the applicant or association and what the insurance covers and an explanation of the nature and type of hazard and liability insurance available to the owner, and the necessity of flood or hazard insurance; and

21. Any additional information required by the Commission to assure full and fair disclosure to prospective purchasers.

(f) Applicants and registrants shall immediately report to the Commission any material change, as defined in N.J.A.C. 11:5-6.7(c) and 6.10(b), in the information contained in any proposed or approved Public Offering Statement and shall simultaneously submit a request for approval of the appropriate amendment.

1. Subsequent to the Commission having approved a Public Offering Statement, no revised Public Offering Statement shall be given to prospective purchasers without having first been filed with and approved by the Commission.

2. Applications for approval of an amended or corrected Public Offering Statement shall be made by filing a red-lined copy of the proposed Revised Public Offering Statement with the Commission and an application update.

(g) The Commission shall process and review requests for amendments to Public Offering Statements in accordance with the standards and procedures established in this section.

(h) The Public Offering Statement shall not be used for any promotional purposes before registration of the project, and thereafter only if used in its entirety.

1. No Public Offering Statement shall indicate, and no person shall represent or imply, that the Commission approves the merits of, or recommends the purchase of, an interest in the properties described in the offering.

#### 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.*

#### 11:5-6.6 Representation of applicants and registrants by New Jersey real estate brokers

(a) The applicant shall designate a currently licensed New Jersey real estate broker as its original broker of record with the initial application for registration, and such broker and any substituted or supplemental brokers must comply with the New Jersey Real Estate Brokers and Salesmen Act, N.J.S.A. 45:15-1 et seq., and the rules promulgated thereunder. An applicant/registrant may substitute another broker

for the one initially designated. The initially designated broker and all substituted brokers shall execute an affidavit in accordance with N.J.A.C. 11:5-6.4(a)1.

1. The applicant may designate, in addition to the broker of record, other additional brokers who may join in the disposition of the registered property subject to filing the proper application with the Commission. The additional brokers, known as supplemental brokers, shall also execute an affidavit as required by N.J.A.C. 11:5-6.4(a). Nothing herein shall prevent any New Jersey broker from cooperating with any other New Jersey broker in any transaction, in accordance with N.J.A.C. 11:5-1.23(c). For the purposes of this section, persons who are licensed as New Jersey real estate brokers, and who have been designated by the applicant/registrant and approved by the Commission as the broker of record or as a supplemental broker for a particular subdivision, and who have been issued a current brokers release for that subdivision, are considered authorized brokers.

(b) Only authorized brokers may receive commissions from the registrant for the sale of interests in registered properties within New Jersey.

(c) Only authorized brokers and persons licensed under them may distribute literature on, or personally or via telephone solicit for prospective purchasers or offer or attempt to negotiate the sale or rental of an interest in a registered property, or provide or prepare contracts in New Jersey pertaining to registered property.

1. Where permitted by local law, unlicensed employees of a registrant working in the situs state and/or from the offices of the registrant may mail to New Jersey purchasers promotional literature on registered properties and may make appointments for New Jersey purchasers to inspect registered properties, provided that such persons make no material representations about such properties.

2. An authorized broker or a person licensed under them shall be present at any promotional booth maintained by a registrant or an agent of a registrant at any trade show or similar exhibition in New Jersey, and at any seminar promoting the sale or rental of registered property conducted by a registrant or any agent of a registrant in this State.

(d) All authorized brokers shall:

1. Prominently display the current broker's release;
2. Provide a copy of the current New Jersey Public Offering Statement to all New Jersey purchasers with whom they have had contact prior to the signing of any contract;
3. Obtain a signed and dated receipt for the same from the purchaser in all cases where the broker provides the Public Offering Statement to the purchaser, which receipt shall be maintained as a business record by the broker in accordance with N.J.A.C. 11:5-1.12; and

4. In all cases where the broker provides or prepares a contract which is signed by a New Jersey purchaser, the broker shall maintain a copy of that contract as a business record in accordance with N.J.A.C. 11:5-1.12.

(e) In all cases where a New Jersey purchaser has not had contact with an authorized New Jersey Broker, registrants shall maintain the signed and dated receipt for the New Jersey Public Offering Statement and a copy of the contract which the New Jersey purchaser signed for a period of seven years.

(f) New Jersey brokers may not represent unregistered subdivisions or sections of unregistered subdivisions unless such projects are exempted from registration pursuant to N.J.S.A. 45:15-16.32 and N.J.A.C. 11:5-6.19.

#### 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.*

#### 11:5-6.7 Fees with respect to the sale of interstate properties

(a) All applicants for registration shall pay application fees as prescribed in N.J.S.A. 45:15-16.34.

(b) All applicants for an exemption or a limited exemption shall pay application fees as prescribed in N.J.A.C. 11:5-6.19.

(c) Any request for approval of a material change in, or an amendment to, an application for registration and/or an Order of Registration and/or a Public Offering Statement shall be accompanied by a fee of \$250. No fee shall be charged for amendments to applications or proposed Public Offering Statements made prior to the issuance of an Order of Registration.

1. If applications for approval of a material change in and/or for an amendment to an Order of Registration and/or an amendment to a Public Offering Statement are made simultaneously, only one fee will be payable;

2. If applications are made for approval of multiple material changes, and/or multiple amendments to an Order of Registration, and/or multiple amendments to a Public Offering Statement simultaneously, only one fee will be payable;

3. Notice(s) to the Commission that promised improvements have been completed on schedule or that changes as referenced in N.J.A.C. 11:5-6.10(b) have occurred do not constitute notice(s) of a material change requiring the payment of a fee.

(d) The Commission shall maintain a copy of every application for registration, together with all amendments thereto, that has been approved and shall make them reasonably available for public inspection during ordinary business hours at the Commission's office.

1. The Commission will furnish to the public, upon request, a copy of the statement of record of any registered subdivision at a cost of \$0.50 per page.

(e) All fees paid are non-refundable.

#### **11:5-6.8 Issuance by the Commission of a Notice of Filing**

(a) Upon receipt of an application for registration in proper form and accompanied by payment of the required filing fee in the correct amount as prescribed by N.J.S.A. 45:15-16.34, the Commission shall, within 10 business days of its receipt of the same, issue a Notice of Filing to the applicant. The notice of filing shall not be construed as an approval of the registration or any portion thereof.

1. The date of filing shall be considered as the date when all required documents have been submitted in proper form and all fees, including the inspection fee, if requested, have been paid.

#### **11:5-6.9 Inspection of properties by the Commission**

(a) As provided in N.J.S.A. 45:15-16.41, the Commission, at its discretion, may make on-site inspections of any subdivision which is the subject of an application for registration, either before an Order of Registration has been issued or thereafter. In any instance where an Order of Registration has been issued prior to the subdivision being inspected by the Commission, such Order shall be considered conditional and subject to the results of the Commission's inspection of the premises. The Commission may at its discretion conduct subsequent on-site inspections.

(b) The costs of inspections shall be paid by the applicant who shall provide a deposit when requested by the Commission. After the inspection the Commission shall provide the applicant/registrant with a statement of costs incurred and a refund of any portion of the deposit not expended or a request for additional funds if required.

#### **11:5-6.10 Amendments to registration applications and Public Offering Statements**

(a) The registrant shall immediately file with the Commission amendments to its registration application and/or Public Offering Statement reflecting any material change(s) in previously supplied information or documents, in order that the information provided purchasers is current.

(b) The definition of "material change" includes, but is not limited to, situations in which any significant change which has a material adverse impact upon the offering or registrant has occurred with respect to any man made or natural forces affecting the subdivision and/or in the size or character of the subdivision and/or in the promotional plan

of disposition of the interests being offered, and specifically includes any situation having a significant adverse affect on the rights, duties or obligations of the applicant/registrant or of New Jersey purchasers. Changes in selling prices and advertising and in the identity of the officers and directors of a registrant are not considered material changes. The Commission shall determine what is a material change pursuant to the above standard. All changes in the information required by N.J.A.C. 11:5-6.5(e)1 through 21 to be contained in the New Jersey Public Offering Statement are presumed to be material changes, with the exception of notices of the completion of improvements on a timely basis as represented in a previously approved Public Offering Statement.

1. The transfer of control of any association responsible for the maintenance of common areas and/or the operation of common facilities or amenities by the registrant to the owners of interests in the subdivision is a material change.

(c) Any change meeting the definition of "material change" shall not be made unless such change has been approved by the Commission by way of amendment to the New Jersey Public Offering Statement and Order of Registration. Amended Public Offering Statements shall be designated as "First Amended Public Offering Statement", "Second Amended Public Offering Statement", etc. With the exception of those items specified in (b) above and in N.J.A.C. 11:5-6.7(c)3, all changes are presumed to be material changes requiring Commission approval as provided herein.

(d) The Commission shall process and review requests for amendments to Orders of Registration and Public Offering Statements in accordance with the standards and procedures established in the Act and this subchapter for the review of applications for registration. Requests for amendments shall be accompanied by a fee of \$250.00, as provided in N.J.A.C. 11:5-6.7.

#### **11:5-6.11 Annual reporting upon and the termination of registrations**

(a) No later than 30 days after the anniversary date of the latest Order of Registration, and while the registrant retains any interest in the subdivision, the registrant shall file, on a form designated by the Commission, an annual report reflecting any material changes in the information contained in the original application for registration or in the most recent Annual Report previously filed.

1. This requirement shall not diminish the obligation of the registrant to notify the Commission of material changes as they occur.

2. The annual report shall contain an audited financial statement or compilation prepared by an independent public accountant showing the receipts and expenditures of any association serving the project and under the control of the registrant, which financial statements shall be compiled on a yearly basis, and certified if required by the situs state.

3. The yearly audit submitted with the annual report shall be the most current audit available. In no event may the date of the yearly audit be earlier than 18 months prior to the date of the annual report. The registrant will not have to file a separate audit with the Commission for any association controlled by the owners of interests in the subdivision.

(b) The registrant may file an application for termination of its obligations with the Commission in which the registrant shall certify the grounds for termination.

1. Upon a determination by the Commission that an annual report is no longer necessary for the protection of the public interest because the registrant no longer retains any interest and no longer has any contractual, bond or other obligations to New Jersey purchasers in the subdivision, including having fulfilled all undertakings referred to in the Public Offering Statement, and the registrant has ceased all marketing activity in New Jersey, the Commission shall issue an order terminating the responsibilities of the registrant under the Act upon the registrant making application for the issuance of an Order of Termination, accompanied by acceptable proofs that the above requirements have been met.

#### 11:5-6.12 Home builders

Unless exempt pursuant to N.J.S.A. 45:15-16.32, a home builder selling house and lot packages offered as part of a common promotional plan, regardless of whether the lots are contiguous, is a "subdivider" as defined in N.J.S.A. 45:15-16.28, and therefore such offerings are subject to the Act and to this subchapter.

#### 11:5-6.13 Grounds for denial of registration applications and for the revocation of Orders of Registration

A finding that an applicant or registrant has previously been determined to have engaged in unfair acts and/or fraudulent or deceptive practices by the Federal Trade Commission, or as set forth in the Federal Interstate Land Sales Full Disclosure Act (82 Stat. 590; 15 U.S.C. § 1701 et seq.), or to have violated the Act and/or similar acts in other States, may constitute grounds for the Commission, after providing the applicant or registrant with the opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, to refuse to issue or to revoke an Order of Registration.

#### 11:5-6.14 Advertising and sales promotions with respect to the sale or marketing of registered properties

(a) Advertisements that refer to the purchase price of any lot, unit, parcel or interest in real estate shall state the full purchase price and shall disclose any known or estimated additional assessments or costs to the purchaser.

1. In order to eliminate fictitious pricing or illusionary discounts, no certificates shall be distributed indicating that a discount from the advertised price shall be given. This shall not preclude the giving of a discount on the basis of any reasonable criteria.

2. Advertising shall not refer to a price increase unless the amount and date of the increase are indicated.

(b) Advertising that contains statements regarding taxes shall not use terms such as "low" and "stable", but shall state what the current taxes are, or an accurate estimate of such taxes based on current tax rates or value ratios.

1. Any reference to proposed improvements for which the purchaser will be assessed shall clearly set forth the facts of the assessment and the estimated amount of the assessment.

2. Advertising shall not state that items or services are free when the cost thereof is included in the assessment.

(c) Advertising shall not refer to any common element or facility that does not presently exist unless that fact is prominently stated in the advertising, accompanied by the proposed date of completion, which shall also appear prominently in the advertising.

(d) Advertising shall not contain photographs, sketches or artist's conceptions unless the fact that these are conceptions are stated immediately adjacent to them in the advertisement.

(e) Advertising shall not refer in wording, photograph, sketch or conception to any recreation, medical, social, shopping or other facility that is not located within the subdivision unless it clearly states that the facilities are not located in the subdivision and states the approximate distance therefrom in miles via paved roads.

(f) Any model unit that is used as part of a promotional plan shall be in substantial conformity with the units that are subsequently constructed unless otherwise noted in the contract of sale. If changes are to be made in the units other than landscaping, appliances, furnishings, heating, air conditioning, electrical or plumbing, a legible notice shall be conspicuously placed in the model, or picture photo or rendering of the model, advertising prospective purchasers of the change. In the event that there are items in the model that are available only at additional cost, legible notice informing purchasers that the items are available only at additional cost should be posted in a prominent place in the model.

(g) Any advertising of a registered subdivision in newspapers, periodicals or other means, whether to appear in New Jersey media or in interstate media which have a distribution in New Jersey, shall include the registration number assigned to that project by the Commission followed by the letters "NJREC" and the following statement: "This project is registered with the New Jersey Real Estate Commission. Registration does not constitute an endorsement of the merits or value of the project. Obtain and read the N.J. Public Offering Statement before signing anything." The Commission may also consider allowing a registrant to use a brief legend where there is no apparent harm to purchasers. The registrant shall first obtain the New Jersey Real Estate Commission's written permission to use the brief legend.

1. When properties or any interests therein are not registered with the Commission, nor wholly or partially exempt from the Act, and advertisements regarding such properties or interests are placed in any media which is distributed in or broadcast into the State of New Jersey, a disclaimer shall be included, indicating that the properties or interests are not registered with the New Jersey Real Estate Commission, and that the advertisement is not an offer to New Jersey residents.

2. As a result of their failure to register such properties or interests pursuant to N.J.S.A. 45:15-16.27 et seq., the owners of such properties or interests may not make, or cause to be made, an offer or disposition of the properties or interests in this State, nor direct any offer of such properties or interests originating outside of this State to a person or resident within this State.

(h) Reimbursement of travel expenses in cash or merchandise shall be subject to the following:

1. The promotional material shall clearly and conspicuously state the necessity of attendance at or submission to a sales promotion, the minimum length of time required to be spent at such sales promotion in order to qualify for reimbursement or other premium or inducement, the terms and conditions of the offer, and the retail value of any premiums offered.

2. "Travel expenses" may be reimbursed in cash or by merchandise.

3. Any advertisements, including reimbursement of travel expenses, offers of premiums, or other inducements shall also comply with the provisions of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

#### **11:5-6.15 Compliance with situs state requirements**

Any instrument evidencing the sale or disposition of an interest in a registered property shall be executed in accordance with the laws of the situs state. An applicant/registrant may be required to submit proof of compliance.

#### **11:5-6.16 Improvements to be made at registered properties**

(a) A property in a subdivision, or any part thereof, on which construction of a promised improvement for public use, convenience or necessity has not been completed, shall not be registered for disposition unless completion of the improvement is assured by a court order, or government approved improvement district with sufficient taxing or other authority to raise adequate capital to assure completion, or a substantial completion bond or similar undertaking acceptable to the Commission as provided in (c) below, or by adequate reserves established and maintained in a trust or escrow account meeting the following criteria:

1. Such funds shall be kept and maintained in an escrow account separate and apart from the registrant's funds and from any other escrowed funds;

2. The account shall be established in a bank or trust company doing business in this State or the situs state, and approved by the Commission; and

3. The trust or escrow agreement shall have as its purpose the protection of the purchaser or prospective purchaser in the event of a failure to complete construction of promised improvements or a failure to satisfy any obligations or liens encumbering the purchaser's title by reason of the construction.

(b) A property in a subdivision, or a part thereof, on which construction of a promised improvement not for public use, convenience or necessity is represented or implied, shall not be registered for disposition to the public where such improvement has not been completed, unless completion is assured by:

1. An adequate plan of development, including financial resources committed to carry out the plan as provided in (c) below, which plan is subject to the Commission's continuing review and approval; or

2. Adequate funds maintained in a trust or escrow account, or an irrevocable bank letter of credit.

(c) The Commission may accept surety bonds, escrow accounts, irrevocable bank letters of credit, or any other financial security adequate to assure a plan of development. In determining the security required, the Commission shall examine the status of improvements, the overall cost of improvements, the terms of purchaser contracts, the financial condition of the subdivider and such other data as it considers necessary. The Commission may consider whatever financial security has been posted with other governmental authorities in making its determination.

#### **11:5-6.17 Street identification requirements**

All registered properties comprised in whole or in part of lots or lot and house packages should be traversable by roads sufficiently improved to handle automobile traffic. In the alternative, the applicant may qualify for the registration of such property by including a statement in the Public Offering Statement indicating the conditions of access to the property and identifying the location of the filed map on which the property can be identified by purchaser.

#### **11:5-6.18 Contracts for the purchase of an interest in a registered property**

(a) All contracts or agreements for the disposition of a lot, parcel, unit or interest in a registered subdivision shall not impose undue restrictions or hardships upon the purchaser. All contracts shall be in accordance with the laws of the situs state, except that they shall conform to the Real Estate Sales Full Disclosure Act and to this subchapter, and all conflicts shall be resolved to the satisfaction of the Commission.

(b) Any contract or agreement for the purchase of any lot, parcel, unit or interest in a registered subdivision may be cancelled without cause, by the purchaser sending or delivering written notice of cancellation by midnight of the seventh calendar day following the date on which such contract or agreement was executed. Upon receipt of such a notice of cancellation, the developer or his agent shall promptly refund all monies to the purchaser.

(c) Every contract or agreement shall contain the following notice in 10-point boldfaced type or larger, directly above the space provided for the signature of the purchaser:

**NOTICE to PURCHASER or LESSEE:** You have the right to cancel this contract by midnight of the seventh calendar day following the day on which you have executed this contract or agreement. You should read this entire contract and the Public Offering Statement on this project before signing any documents or paying any monies.

(d) All deposits, down payments, or other funds paid to a registrant or its agents by a purchaser shall be held in a separate trust or escrow account in a banking or similar institution situated within this State or in the situs state, or deposited with an attorney licensed to practice law in this State, or in the situs state or country, until the closing and delivery of the deed or until the applicant posts a bond or some other guarantee acceptable to the Commission to ensure New Jersey purchaser deposits, which bond shall be separate from and in addition to any bond or assurance for the completion of infrastructure and promised improvements. In the event that interests in the registered subdivision, including fee simple interests in timeshare projects, are offered through installment sale contracts where closing and delivery of deed or deed in trust are postponed until three or more installment payments, including, but not limited to, monthly payments for licenses, memberships or other non-fee interests in the subdivision, have been paid, the applicant/registrant shall either produce evidence acceptable to the Commission that a bond in an amount sufficient to ensure all monies paid by New Jersey purchasers prior to closing has been posted by an acceptable third party surety or entity on behalf of the applicant as provided in N.J.A.C. 11:5-6.5(e)17, or all monies paid by New Jersey purchasers shall be escrowed as required by that rule.

#### 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.*

#### 11:5-6.19 Exemptions from the provisions of N.J.S.A. 45:15-16.27 et seq.

(a) Any person who believes that property may be exempt from the provisions of the Act, or who is contemplating marketing property in New Jersey which he believes may be exempt, may apply to the Commission for a Letter of Exemption. Such application shall be in written affidavit form and shall list the reasons why such property or proposed project may be exempt from the Act. Such an application for exemption shall be accompanied by a non-refundable fee of \$80.00.

1. In the event the Commission shall determine that such property is exempt from the Act, it shall issue a Letter of Exemption setting forth the facts upon which the determination is based.

2. In the event the Commission shall determine that such property is not exempt from the provisions of the Act, it shall deny the request for exemption in writing, setting forth therein the facts upon which the determination is based, and shall send such writing to the applicant via certified mail, return receipt requested.

3. Any person who is aggrieved by such a determination is entitled to a hearing on such determination, provided said hearing is requested in writing no later than 30 days from the date of the applicant's receiving notice of such determination.

4. The Commission shall issue a determination as to whether a property is, or is not, exempt within 30 days of its receipt of a complete request for exemption, with the appropriate fee.

(b) If the nature of the property and/or of the proposed offering indicate that the applicant would be subject to the registration requirements of the Act, the applicant may apply to the Commission for a limited exemption. If the Commission determines that enforcement of the entire Act and of all these rules is not necessary in the public interest or for the protection of purchasers, due to the small amounts involved or the limited character of the offering, it may issue a limited exemption from registration to the applicant.

1. A limited exemption may be granted by reason of the small number of lots, parcels, units or interests to be offered only if all improvements necessary for the use of the property have been completed, or adequate surety and/or financial assurances for completion of promised improvements and amenities has been established. No limited exemption may be granted with regard to property contiguous or reasonably contiguous to property for which a limited exemption has previously been granted and which is being offered by the same applicant, or by a predecessor or successor in title to or an affiliate of that applicant.

2. A limited exemption may be granted by reason of the limited character of the offering where the nature of the property, or of the prospective purchasers to whom the property will be offered, is such that it is likely prospective purchasers will have expert advice concerning the purchase independent of that supplied by the applicant or his agents. An application for a limited exemption for this reason shall include a copy of any prospectus, offering statement or other such solicitation. A limited exemption granted for this reason shall be confined to the group of offerees specified in the application.