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Department of Banking and Insurance  
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*The Commission Strongly Urges You  
to Provide Copies of The REC News  
to ALL licensees and Instructors..*



**COMMISSION ADOPTS RULE AMENDMENTS ON INTERNET ADS AND RELATED TOPICS**

**On May 18, 1998 formal notice of the Commission's adoption of several amendments to its broker supervision, record keeping, advertising and office rules was published in the New Jersey Register. The amendments all became effective on that date.**

**Most of these rule changes were the result of recommendations made to the Commission by a Task Force formed last year to analyze the impact of new communication technology on the real estate brokerage business. The Task Force first examined the use of such technologies by non-broker licensees and whether the**

**Commission's current rules were adequate to address the issues raised by their doing so. After several meetings, the Task Force recommended revisions to the rules on the four topics mentioned above. These rules, as amended effective May 18, 1998, are reprinted below in their entirety.**

**N.J.A.C. 11:5-1.4 Broker supervision and oversight of individual licensees, office operations, and escrowed monies**

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

- 1. The Commission will hold responsible individual brokers for any actions of the broker licensee or any person employed by or licensed through the broker licensee taken in the pursuit of its real estate brokerage business which violate any of the provisions of the real estate license law, N.J.S.A. 45:15-1 et seq., or the regulations promulgated thereunder.**
  - 1. This responsibility shall apply regardless of where the persons licensed through the broker licensee engage in actions in pursuit of the broker licensee's real estate brokerage business.**
- 2. Every real estate transaction in which a broker licensee participates as a broker shall be under the ultimate supervision of the individual broker.**
- 3. The individual broker shall, in addition to ascertaining that a separate account is maintained for the funds of others coming into the possession of the broker licensee, make certain that no such funds of others are disbursed or utilized without his or her express authorization and knowledge.**
- 4. The provisions of this subsection do not apply to brokers licensed as broker-salespersons.**

**N.J.A.C. 11:5-1.12 Records to be maintained by brokers**

**(a)-(d) (No change.)**

**(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. Paper copies of all items designated as records in (a) through (d) above shall be maintained by brokers as provided in this section. This requirement shall apply to all such records, including any items generated through E-mail or any other means which does not require the creation of a paper document. 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.**

**N.J.A.C. 11:5-1.15 Advertising Rules**

**(a) Unless otherwise set forth herein, subsections (b) through (n) below shall apply to all categories of advertising including all publications, radio or television broadcasts, all electronic media including E-mail and the Internet, business stationery, business cards, business and legal forms and documents, and signs and billboards.**

**1.-2 (No change.)**

**(b) No change**

- 1. With the exception of business cards, in all advertisements which contain the name of a salesperson or broker-salesperson the regular business name of the individual, partnership, firm or corporate broker through whom that person is licensed shall appear in larger print or be displayed in a more prominent manner than the name of the salesperson or broker-salesperson.**
- 2. Where a webpage on the worldwide web established by a salesperson, a broker-salesperson, or a team of such licensees is not linked electronically to the webpage of the broker through whom the person or team is licensed, the webpage shall display the telephone number and may display the street address of the**

licensed brokerage office from which the individual or team operates as real estate licensees. That information shall appear in wording as large as the predominant size wording on the webpage.

3. Where a webpage of an individual or team is linked electronically to the webpage of the broker through whom such person or persons are licensed, the webpage of the non-broker licensee(s) shall display information which clearly indicates how to link to the broker. That information shall appear in wording as large as the predominant size wording on the webpage.

(c) No change.

(d) With the exception of business cards, any advertising which contains a home telephone number, cell-phone number, beeper or pager number, home fax number, or E-mail address of an individual salesperson or broker-salesperson, or a team of such licensees, shall also include the telephone number and may include the street address of the licensed brokerage office from which the advertising licensee(s) operate. All such advertising shall contain language identifying each number included in the advertising. For example, a home telephone number may be followed or preceded by the word "home" or the abbreviation "res."

1. No advertising shall represent that a location is a place at which the business of a real estate licensee is conducted unless that location is the licensed main office or a licensed branch office of the broker through whom the advertising licensee is licensed. Salespersons and broker-salespersons shall not include in their advertisements any reference to a "home office."

(e)-(l) (No change.)

(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 certified or licensed appraiser to ascertain fair market value by using a process in which factors that would fix price in the marketplace must be considered.

1. (No change.)

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.

1. 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, offers to pay other costs typically incurred by parties to real estate transactions, and coupons offering discounts on commissions charged by brokerage firms.
2. Any written comparative market study or analysis (CMA) provided by a licensee to a consumer shall include a statement indicating that the CMA is not an appraisal and should not be considered the equivalent of an appraisal. The said statement shall appear in print as large as the predominant size print in any writing reporting the results of the CMA.

(n) (No change.)

#### **N.J.A.C. 11:5-1.18 Maintained offices**

(a)-(c) (No change.)

(d) Sole proprietor employing brokers and persons licensed as a broker of record for a licensed entity are responsible to supervise, track and oversee the brokerage activity of persons licensed under their authority regardless of where such activity takes place.



## **COMMISSION ADOPTS AMENDMENTS TO CONSUMER INFORMATION STATEMENT (AGENCY DISCLOSURE) RULE**

On May 18, 1998 a formal Notice of Adoption of amendments to N.J.A.C. 11:5-1.43, the Commission's rule on "Consumer Information Statements" (CIS) was published in the New Jersey Register. With one exception, all of the amendments became operative on that date. The amendment requiring the distribution of a CIS with slightly revised introductory text by licensees selling properties owned by the brokers with whom they are licensed becomes operative on August 16, 1998, 90 days subsequent to the publication of the Notice of Adoption.

The amended sections of the rule are either set forth in their entirety or summarized below:

### **Section 11:5-1.43 (a) 6:**

"Short term rental" shall mean the rental of a residential property for not more than the 125 consecutive day time period specified in N.J.S.A. 46:8-19 as constituting the "seasonal use or rental" of real property 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.

### **Sections 11:5-1.43 (e) 1. iii, (e) 2. iii, and iv:**

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

#### **1. With respect to buyers:**

1. (No Change)
2. (No Change)
3. Where the written Consumer Information Statement has not been delivered to buyers as provided in (e)1 ii above, licensees shall deliver the written statement to buyers no later than the first showing and, if no showing is conducted, no later than the preparation of an initial offer or contract.
4. (No change.)

#### **2. With respect to sellers:**

1. (No Change)
2. (No Change)
3. On unlisted properties where the written Consumer Information Statement has not been delivered to sellers as provided in (e)2ii above, licensees shall deliver the written statement to sellers no later than the first showing of the property, and if no showing is conducted, no later than the presentation of an initial offer or contract.
4. Those licensees who intend to enter into a listing or transaction brokerage agreement with a seller shall deliver the Consumer Information Statement no later than the commencement of their listing or transaction brokerage agreement presentation.

### **Sections 11:5-1.43 (h) and (i)**

(The amendment to section (h) added the relationship "Seller's agent on properties on which this firm is acting as a seller's agent and transaction broker on other properties" as one of the business relationships in which a firm may declare it intends to operate if the firm chooses to make such a declaration in a CIS. The adopted amendment to section (i) added the same relationship to the list of relationships contained in that rule, which requires firms to declare in all brokerage agreements the business relationship in which they intend to operate.)

### **Section 11:5-1.43 (j) 3.**

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

1. (No Change)
2. (No change)
3. In all offers, contracts, or leases, including leases for short term rentals, prepared by licensees as permitted by N.J.A.C. 11:-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:

(Name of Firm) and (Name of Licensee(s)), as its authorized representative(s), are working in this transaction as (indicate one of the the following): seller's agents, buyer's agents, disclosed dual agents, transaction brokers.

1. (No Change)
2. (No Change)

### Section 11:5-1.43 (m)

(m) Notwithstanding anything appearing in (g) and (h) above to the contrary, where a brokerage firm is itself the owner of property being sold by individuals licensed through the broker-owner of the property, a Consumer Information Statement, revised as provided in this section, shall be delivered to prospective purchasers in accordance with the provisions of this section.

1. On the line immediately below the title of the Consumer Information Statement the following text shall appear in print larger than the predominant size print in the writing:

As the holder of a New Jersey real estate license, I am required by law to inform you how I will operate in this transaction, should you pursue it, and to provide this statement to you.

My employer is the owner of the property(s) in which you have expressed an interest. For the purposes of its business relationship disclosure rules, the New Jersey Real Estate Commission deems brokers selling property they own and licensees employed or retained by such brokers-owners to be operating as seller's agents when they sell property owned by the broker. The statements which follow with regard to licensees who act as sellers' agents apply to me and other persons employed or retained by the owner, particularly those statements concerning the obligation of sellers' agents to pass on to the seller all material information with regard to the buyers' ability to pay.



### WARNING: DON'T MESS WITH ATTORNEY REVIEW!



In the early Spring the Commission staff received several inquiries about the legality of clauses inserted into residential contracts which purported to bind the sellers to a promise not to show their property, and the buyers to a promise not to submit offers on other comparable properties during the contract's attorney review period. The legality of such clauses and the propriety of licensees inserting them into contracts was decided by the Appellate Division of the Superior Court in 1989. In the case of Carmagnola v. Hann, 233 NJ Super. 547 (1989), the Appellate Court voided a regulation which the Commission had adopted to address the chaotic conditions which existed in the residential real estate market during the mid 1980's. That regulation had required licensees to insert an "Agreement to Honor" in contracts they prepared.

In ruling that that regulation was contrary to the Supreme Court's holding in the seminal Attorney Review case

of New Jersey State Bar Association v. New Jersey Association of Realtor Boards, 93 NJ 470 (1983), modified at 94 NJ 449 (1983), the Appellate Court noted that "The attorney review clause renders enforceability of Realtor drawn contracts illusory, at least during the three day review period." Thus any provisions that purport to bind the seller and/or the buyer during the attorney review period are unenforceable and of no effect.

The court in Carmagnola held that the Agreement to Honor was inconsistent with the Supreme Court's Opinion for another reason. It noted that the Supreme Court's ruling provided that "The right of attorney review shall not be waived, disclaimed, relinquished or abridged and real estate brokers and salesmen...are permanently enjoined and restrained from preparing or assisting in any manner in the preparation of any written instrument, the intended effect of which would be to waive, disclaim, relinquish or abridge the right of attorney review." In discussing the consent judgment affirmed by the Supreme Court in its Attorney Review Opinion, the appellate court noted that "The consent judgment enjoins Realtors from drafting, filling in blanks or preparing contracts for the sale of residential real estate except as set forth in paragraphs one, two and three of the judgment (the attorney review provision), and further provides that "the drafting or preparation of any sales contracts for residential real estate except as provided herein shall constitute the unauthorized practice of law." Thus licensees who insert clauses similar to those required by the Commission's defunct Agreement to Honor rule will be susceptible to a charge that they have engaged in the unauthorized practice of law.

Given the foregoing, licensees who have inserted, or are contemplating inserting language in their residential sales contracts which purports to bind the parties to take any action or refrain from taking any action during the attorney review period should seriously consider refraining from doing so. The insertion of such clauses can subject licensees to penalties for the unauthorized practice of law and sanctions by the Commission for violations of N.J.S.A. 45:15-17(e) (incompetency). In addition, based upon the authorities mentioned above, such clauses are unenforceable and of no effect as between the parties to the contracts in which they are inserted.



## SELLING BONUSES



In recent years the Commission staff has received a number of inquiries about the legality of selling licensees accepting bonuses or rewards from the seller for procuring a buyer who closes on the purchase of a residential property.

N.J.S.A. 45:15-16 provides that "No real estate salesperson or broker-salesperson shall accept a commission or valuable consideration for the performance of any of the acts herein specified, from any person except his employer, who must be a licensed real estate broker." N.J.S.A. 45:15-17(m) subjects licensees to sanctions for accepting a commission or valuable consideration for the performance of any of the acts specified in the licensing law from any person except their employing broker.

Given these explicit pronouncements in the law, in order for a salesperson to legally receive a bonus provided by a seller, the entire bonus must be paid to the broker of the selling salesperson. (If the bonus is in the form of airline tickets, a cruise, or some other non-cash monetary benefit, the entire bonus must still be delivered to the broker of the selling salesperson.) The disposition of the bonus would then be subject to the compensation provisions in the employment agreement between the selling salesperson and their broker.

Pursuant to Commission Rule N.J.A.C. 11:5-1.10, brokers are required to have written employment agreements with all individuals licensed through their firms. One of the four mandatory clauses which the rule requires such agreements to contain is a provision which establishes the rate of compensation to be paid to the salesperson during their affiliation with the broker.

A broker is certainly free to pass through any value of the bonus paid as a result of a licensee's successful efforts to that licensee in its entirety, notwithstanding language in their employment agreement that allows the

broker to retain a portion of the bonus. As the offering of such bonuses is becoming increasingly common, brokers and salespersons might consider explicitly spelling out in their employment agreements how such bonuses will be handled, and the extent to which the broker will retain any portion of a bonus paid. Licensees who contemplate doing so should be aware that Rule 1.10(a)4 requires that any revisions to an employment agreement between a broker and a licensee be reduced to writing and signed by both parties.

Under no circumstances can a selling salesperson accept a bonus directly from a seller or a listing broker with whom they are not licensed. Doing so would constitute violations of the statutes cited above.

Listing brokers who are consulted by their sellers about the advisability of offering bonuses to selling salespersons should be mindful of those laws and advise the sellers about the limitations which apply to the acceptance of compensation by real estate licensees.



## LEGISLATION PROPOSED TO AMEND LICENSE LAW

On March 2, 1998 Assembly Bill A-1790 amending a number of provisions in the Real Estate License Law, N.J.S.A. 45:15-1, et seq., was formally introduced by Assemblyman Alex DeCroke, a licensed broker from Morris County. The Commission staff worked closely with the Assemblyman's office in drafting the bill, and all of its provisions have been unanimously endorsed by the members of the Commission.

The following is a brief synopsis of the proposed amendments.

1. Amends 45:15-3 by deleting the reference in the first paragraph to "lots" and stating that in the sale or exchange of any real estate any person or entity employed by or on behalf of the owner(s) of the real estate must be licensed. Also amends two references to licensees being precluded from maintaining lawsuits for compensation unless they can prove that they were licensed at the time "the alleged cause of action arose". The text in quotations is replaced by language requiring licensees to prove that they were properly licensed at the time they performed the services for which compensation is being claimed in the civil action.
2. Amends 45:15-9 to provide that persons who have let their licenses lapse may only reinstate them without requalification if they do so within two years from the date on which their license went into inactive status. (Under the current law, they have two years from the expiration date of the last license they held to do so.) Also provides for the licensure of limited liability companies and limited liability partnerships as New Jersey real estate brokers.
3. Amends 45:15-10.6 and 10.7 to impose late renewal fees upon real estate pre-licensure schools and instructors who do not renew their licenses on a timely basis. (The fee amounts track those presently applicable to late-renewing brokers and salespersons).
4. Amends 45:15-10.7 to waive the real estate instructor license fee for disabled veterans.
5. Amends 45:15-12 by deleting the text which requires that the licenses of all licensed employees of brokers be "prominently displayed" at the main office location of the broker. That text is replaced by a requirement that the licenses of the broker (sole proprietor, corporation or other entity) and broker of record (if applicable) be prominently displayed at the main office and that the licenses of all other persons licensed with the firm be maintained at the main office and made available for inspection by the public or the commission.
6. Amends 45:15-12.1 to provide that, in addition to the offenses now enumerated in it, a conviction for murder, kidnapping, aggravated sexual assault, arson, bribery, racketeering, distribution of a controlled dangerous substance, conspiracy to distribute a controlled dangerous substance, or for conspiring or attempting to commit any of the offenses specified in this section will disqualify an applicant from licensure for five years from the date of the conviction. Also deletes "shoplifting" as an exception to the provision which disqualifies from licensure any applicant convicted of "any theft offense" within five



- years of making application for licensure. Also adds language providing that, in cases where the applicant committed the offense for which they were convicted more than seven years prior to their application date and was not on probation or parole at that date, the Commission would not be compelled to deny the application notwithstanding that the conviction was entered within five years of making application.
7. Amends 45:15-12.8 by adding "wire transfer" to the forms of payment (currently only "cash or a negotiable instrument") which licensees may accept when receiving monies to be held in trust or in escrow by them.
  8. Amends 45:15-15 to provide that salespersons and broker-salespersons licensed through brokers whose main office is not located in New Jersey must hold a valid real estate license from the state in which their broker's main office is situated in order to qualify to receive a New Jersey license issued through that broker.
  9. Amends 45:15-17 by empowering the Commission to order unlicensed persons and firms to cease and desist from engaging in brokerage activity and from compensating unlicensed persons for real estate brokerage activity. Revises 45:15-17(f) to require licensees to specify definite termination dates in all brokerage agreements and to supply to their clients a copy of any fully executed brokerage agreement. (Presently, the statute only imposes these requirements with respect to sale and rental listing contracts, with no mention of buyer-brokerage, tenant-brokerage and transaction broker agreements). Also amends subsection (s) to require that the notice which licensees must provide to the Commission whenever they are charged with, indicted or convicted of a criminal offense or have a real estate license from another state suspended or revoked be in writing.
  10. Amends 45:15-18 to provide that the failure to answer or otherwise respond to formal charges by the Commission is deemed an admission by the respondent to all of the factual and legal allegations recited in the pleading.
  11. Amends 45:15-19.1 (which mandates that the Commission revoke the license of a person convicted of any of the offenses listed therein) to include the additional offenses, including conspiracy and attempt, to be added to 45:15-12.1. Also revises this section to specify that the revocation shall be for a term of five years or until the former licensee has completed any term of incarceration and has been discharged from probation or parole, whichever is longer. Also deletes "shoplifting" as an exception to the provision mandating a five year revocation for a conviction on "any theft offense".
  12. Amends 45:15-19.2 by adding "or related offense", after "any theft offense", and attempts and conspiracy to the list of offenses which can form the basis for suspending a license upon the filing of an indictment charging a licensee with the commission of such an offense. Also extends the Commission's authority to suspend a license based upon the filing of a Criminal Accusation or Criminal Information charging a licensee with a listed offense after they had waived their right to an indictment.

The Commission believes the enactment of this legislation will enhance its ability to ensure that only licensed individuals and firms engage in brokerage activity in New Jersey and that only persons of good character receive and retain real estate licenses. In addition, several provisions in the bill alleviate administrative burdens on brokers and make it easier for brokers to sue for compensation earned while they were duly licensed. Licensees who agree that these amendments are desirable might consider contacting their local state representatives and urging them to support the passage of this important legislation.



## UNCLAIMED FUNDS IN ESCROW ACCOUNTS -- WHAT'S A BROKER TO DO?

As hard as it may be to believe, the problem of parties abandoning funds held in escrow by a broker on a real estate transaction is not particularly uncommon. Recently, the Commission obtained guidance from the Attorney General's Office on the proper way for brokers to disburse such funds.

**N.J.S.A. 46:30B-37** provides: "Intangible property and any income or increment derived therefrom held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner, within five years



after it has become payable or distributable, has increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest as evidenced by memorandum or other record on file prepared by the fiduciary."

In cases where neither party has made a claim for an escrowed deposit nor communicated with the broker about such funds for more than five years, the broker should take the following steps in order to legally disburse the money in question:

1. The broker should call the [Unclaimed Property Administrator](#) in the New Jersey Department of the Treasury and request that a "Holder's Property Package" be mailed to the broker. The phone number for the Unclaimed Property Administrator is 609-984-8235;
2. The broker should issue a check payable to the New Jersey State Treasurer and forward it with the completed forms to: Unclaimed Property Administrator, Division of Taxation, Building 64, 50 Barrack Street, P.O. Box 214, Trenton, New Jersey 08625.

In order to ensure compliance with N.J.A.C. 11:5-1.12, the broker should keep detailed records of the manner in which the funds were disbursed, including appropriate entries on the record of the transaction in question in the broker's escrow or trust account ledger.



## SECURITY DEPOSIT LAW AMENDED

Effective January 8, 1998 New Jersey's Security Deposit Law, N.J.S.A. 46:8-19, was amended. Among other things, this law requires owners or brokers holding security deposits on residential rentals to place such deposits into interest bearing accounts and provide notice to the tenant confirming their having done so. However, the law contains an exemption from those requirements for the "seasonal use or rental of real property." The recently enacted amendment extended the definition of a seasonal rental from "a rental for a term of not more than 60 consecutive days for residential purposes by a person having a permanent place of residence elsewhere" to a rental of not more than 125 consecutive days for such purposes by such a person. This amendment should be of interest to all brokers who maintain security deposits on short term residential rentals. While in the past the majority of such brokers have been engaged in vacation rentals at the shore, brokers throughout the state may benefit from this expanded exemption for the "seasonal use or rental of real property."

One of the recently adopted amendments to Commission Rule N.J.A.C. 11:5-1.43 tracks this revision to the Security Deposit Law. (See related story on adopted amendment to Rule 1.43.)



## RECENT DISCIPLINARY ACTIONS

Jane Blevins, salesperson, Union County, November 18, 1997. The Commission placed Ms. Blevins' license on probation until June 30, 1999 and required that she re-take the salesperson's prelicensure education course and pass the examination for same. The Commission also ordered that she provide quarterly reports from her employing broker regarding her real estate activities. The Commission found Ms. Blevins guilty of violations of N.J.S.A. 45:15-1, 45:15-3 and 45:15-17(e) incompetency after finding that she engaged in real estate brokerage activity after her employing broker had closed his office.

Doris Espino t/a Bohorquez Realty, (broker of record), Middlesex County, December 16, 1997. The Commission revoked Ms. Espino's broker's license for 3 1/2 years and imposed a fine of \$500. Ms. Espino may apply for a salesperson's license after 6 months. The Commission found Ms. Espino guilty of violations of N.J.S.A. 45:15-1, 45:15-3, 45:15-17(a), (e) and (l). In order to re-apply for a broker's license, Ms. Espino must completely re-qualify for same, including meeting all education, examination and experience requirements in effect at the time. Ms.

**Espino submitted late renewal applications, submitted renewal fees by a check which was returned for insufficient funds, and made misrepresentations to a Commission investigator regarding payments allegedly made to replace the check which had been returned.**

**Jane Moon, salesperson, Mercer County, December 16, 1997. The Commission suspended Ms. Moon's license for 6 months and imposed a fine of \$1,000. The Commission found Ms. Moon guilty of violations of N.J.S.A. 45:15-17(a), (e) as to bad faith and (l). Ms. Moon was found to have made misrepresentations to the seller of property for which she was the buyer, to the mortgage company to whom she had applied for financing, and to the Court in litigation which resulted from her breach of the contract of sale.**

**Resorts, U.S.A., Treetops, Inc. and H.R.P. Corporation, Bushkill, Pa., January 6, 1998 (timeshare projects registered with the Commission under the Real Estate Sales Full Disclosure Act). The Commission issued an Order Approving Settlement whereby the Respondents agreed to discontinue their use and promotion of an owner referral program known as "Lucky Bucks" and agreed to pay a fine in the amount of \$60,000. Further, Respondents agreed to make full restitution and rescission on complaints filed by New Jersey residents who purchased in reliance upon their ability to offset mortgage payments through participating in the "Lucky Bucks" program. This obligation applies to complaints filed with the Commission through January 6, 2000. The Respondents' registrations were placed on probation for a period of two years.**

**Robert Meyer, salesperson, Ocean County, January 13, 1998. After a full hearing, the Commission found Mr. Meyer to be in violation of N.J.S.A. 45:15-12.8, 45:15-17(o), 45:15-17(d), and 45:15-17(a), (c), (e), (k) and (l). Mr. Meyer's license was suspended until June 30, 1999 and a fine of \$2,000 was assessed against him. Mr. Meyer handled rental transactions without reporting them to his broker and, in one case, to the owner of the property in question, made misrepresentations to his broker, to the owners of properties, and to the tenants regarding the status of the rentals and deposited rent monies into his personal account.**

**Vincent Da Silva, formerly licensed salesperson, Essex County, March 4, 1998. After a full hearing, the Commission found Mr. Da Silva to have violated N.J.S.A. 45:15-17(a) and (e). Mr. Da Silva's license was suspended for six months and, prior to applying for relicensure, he must take and pass the salesperson's prelicensure course. Mr. Da Silva had his insurance producer's license revoked in April, 1997. When he applied in July, 1997 for reinstatement of his expired real estate license, he falsely indicated that he had not had the right to engage in any other business or profession revoked or suspended in New Jersey.**

**Kenneth Ravida, Passport Travel Services, Bruce Michaud, Dale Pautsch, Resort Owner Services, all unlicensed persons and entities, January 6, 1998. The Commission found that all Respondents were in violation of N.J.S.A. 45:15-1 and 45:15-3 and were subject to sanctions pursuant to 45:15-17(t). The Commission issued an Order of Determination requiring all Respondents to cease and desist from real estate marketing and brokerage activities and assessing a fine in the amount of \$85,000. The Commission further ordered that Respondents make full restitution to all persons who had filed complaints. The Respondents had operated an unlicensed timeshare resale and listing service.**

**Thomas Demetriades (broker-salesperson), Thomas Hogan (broker of record) and Loebus Hogan, Inc., Monmouth County, March 3, 1998. The Commission issued an Order Approving Settlement wherein Mr. Demetriades admitted to having violated N.J.S.A. 45:15-17(a) and (t), and N.J.A.C. 11:5-1.23 and 11:5-1.43. Mr. Hogan admitted to having violated N.J.S.A. 45:15-17(t), and N.J.A.C. 11:5-1.23 and 11:5-1.43. The licenses of Mr. Demetriades and Mr. Hogan were placed on probation for one year, they each agreed to pay a fine of \$5,000, and they both must complete the two thirty hour courses on agency/ethics and office management which are currently offered as a part of the broker's pre-licensure education requirements. The violations arose out of the failure of Respondents to provide a Consumer Information Statement to the sellers in a timely manner, and the failure to timely notify the sellers that a buyer's deposit check had been returned for insufficient funds and that no deposit monies were being held on the transaction.**

**Ricky K. Bedford, salesperson, Atlantic County, March 30, 1998. After a full hearing, the Commission found Mr. Bedford to have violated N.J.S.A. 45:15-17(s) for failing to report that he had been charged with a crime**

within 30 days of the filing of the criminal charges against him. A fine of \$1,000 was assessed against him, and his license was placed on probation until June 30, 1999.



## **ATTENTION BROKERS -- WHEN COMPLETING BROKER EXPERIENCE REPORT FORMS PLEASE FOLLOW DIRECTIONS**

In recent months the Commission's Education Section has received a number of broker experience report forms that were not properly completed by brokers. The directions on these forms are explicit and unambiguous. The section of the form which is to reflect information contained in the broker's records is to be completed by the broker alone, without input from the candidate. Furthermore, only original forms are to be submitted. Photocopies of forms cannot be accepted and will be returned to the submitting candidate.

Brokers are asked to strictly comply with the instructions on completing Broker Experience Report forms.

The Commission appreciates your anticipated cooperation.



## **MUST BUYER AGENCY AGREEMENTS BE IN WRITING?**

Some brokers may be operating under the misconception that the licensing law or the Commission's administrative rules require the use of a written buyer brokerage agreement in all cases where the broker's firm is retained to operate as a buyer's agent. This is not the case.

While the Commission strongly recommends to brokers and consumers that written agreements be utilized to memorialize the terms under which a firm is retained to operate as a buyer's agent, no regulatory provision mandates that such written agreements be used in all cases.

Rule 11:5-1.43(h) contains the prescribed text of the Consumer Information Statement on New Jersey Real Estate Relationships. In the "Buyers Agents" section of the CIS, the following statement appears: "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 of their agent." The operative phrase in this sentence is "advised to enter into a separate written buyer agency contract." Were licensees required to utilize written agreements in all cases, that sentence would have so stated.

Licensees are cautioned, however, that N.J.A.C. 11:5-1.38(d) provides that "A licensee who represents only one party to a sale or rental transaction may receive the entire compensation for such representation from either party or a portion of that compensation from both parties to the transaction, provided that where a licensee prepares a contract or a lease full written disclosure of the agency relationship and of the compensation arrangement is made to both parties to the transaction in the contract or lease. Where a licensee does not prepare the contract or lease, but seeks compensation from a party whom he or she does not represent, that licensee's agency relationship and proposed compensation arrangement shall be disclosed to all parties in a separate writing prior to execution of the contract or lease." Thus, in cases where a buyer-broker is seeking all or a portion of their compensation from a seller, although a complete written buyer brokerage agreement is not mandated, written disclosure of the agency relationship and compensation arrangement must be made in any contract prepared by the buyer-broker, or in a separate writing distributed to all parties prior to execution of any contract not prepared by the licensee whose firm is acting as the buyer's agent.

In addition, licensees need to be mindful of the affect of New Jersey's Statute of Frauds on this issue. It would seem prudent for buyer-brokers to employ procedures similar to those utilized by brokers acting as seller's agents to safeguard their right to sue for compensation when they operate without the benefit of a written and

**signed agency agreement. Brokers acting as buyer's agents are advised to consult with their counsel on this issue.**



## **COMMISSION APPROVES REVISIONS TO CONTENT OUTLINES FOR GENERAL KNOWLEDGE COMPONENTS OF LICENSE EXAMINATIONS**

**The Commission recently approved revisions to the content outlines for the general knowledge sections of the broker and salesperson license examinations. These revisions were made at the recommendation of the Commission's testing contractor, Assessment Systems Incorporated (ASI).**

**In order to ensure the validity of licensure examinations, companies like ASI are required to periodically conduct "job analyses" to ensure that their exams adequately test the knowledge required of minimally competent entry level practitioners in a given profession. The recommendation to revise the general knowledge content outlines was precipitated by the results of a national job analysis conducted by ASI in 1997. The company brought together 14 subject matter experts from various states in order to conduct the job analysis. These real estate professionals compiled a list of 83 tasks licensees are required to perform. That list was then included in a survey mailed to 16,000 licensees in all 50 states. The survey responses were then statistically analyzed and examined by the subject matter experts in order to arrive at conclusions on what knowledge minimally competent entry level licensees need to know in order to successfully perform the tasks determined to be appropriate subjects for examination questions.**

**The results of the job analysis translated into certain conclusions as to how the content outlines might be updated. Among these were a greater emphasis on agency. However, because agency laws are largely state-specific, the emphasis placed on knowledge of agency in the general portion of the exam will be slightly decreased. In addition, the broadest possible agency and fiduciary issues will be addressed in the agency questions which appear in the general knowledge sections of the exams.**

**Under the revised content outlines, greater emphasis will be placed upon general property management issues. Again, state-specific landlord-tenant questions will continue to be included on the State Law portion of the examinations.**

**Finally, under the revised content outline there will be a decreased emphasis upon knowledge of math and math calculations. This decrease reflects a trend which has become evident throughout the country and was reflected in the results of the job analysis, indicating that real estate licensees in the late 1990s are not required to utilize math skills to the same extent that licensees in prior years had. Questions requiring math calculations will continue to appear in all exams. However, fewer such questions will be asked, resulting in additional questions being asked on other areas.**

**The revised content outlines for the general knowledge components of the license exams went into effect earlier this Spring.**



## **INFORMATION ON CONTAMINATED SITES AVAILABLE FROM N.J. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**The State's Department of Environmental Protection maintains an "800" number through which information on known contaminated sites can be obtained. By calling (800) 253-5647 callers can secure lists of contaminated sites in the vicinity of particular properties. Callers may also request a map identifying the sites by using the Department's Geographic Information System. Responses are provided by phone or fax and there is no charge for the use of the system. If requested, Geographic Information System maps are mailed within several days of**

**receipt of the request.**

**In addition, the Department's report of Known Contaminated Sites in New Jersey and other site remediation reports may be viewed on the Department of Environmental Protection's webpage at: <http://www.state.nj.us/dep/srp>. Copies of the statewide list are also available for review at county clerk's offices and in state depository libraries.**

**Through its comprehensive, prioritized system that identifies and oversees the cleanup of sites of all sizes the Department removed more than 2,000 sites from its list in 1997.**

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