

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

As amended, R.1972 d.168, effective August 26, 1972.
See: 4 N.J.R. 160(d), 4 N.J.R. 190(a).
As amended, R.1973 d.43, effective February 5, 1973.
See: 5 N.J.R. 13(b), 5 N.J.R. 86(b).
As amended, R.1973 d.306, effective October 25, 1973.
See: 5 N.J.R. 350(a), 5 N.J.R. 338(a).
As amended, R.1983 d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
"Salesman" replaced by "salesperson".
Amended by R.1995 d.23, effective January 17, 1995.
See: 26 N.J.R. 3111(a), 27 N.J.R. 370(a).

11:5-1.6 (Reserved)

As amended, R.1983 d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
Rule concerning examination and failure deleted.

11:5-1.7 (Reserved)

As amended, R.1983 d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
Rule on examination as a condition to restoration of license deleted; reserved.

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

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

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

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

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

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

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

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

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

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

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

As amended, R.1982 d.101, effective April 5, 1982.
See: 13 N.J.R. 302(b), 14 N.J.R. 345(b).

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

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

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

Amended by R.1993 d.8, effective January 4, 1993.
See: 24 N.J.R. 3483(a), 25 N.J.R. 118(a).

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

Case Notes

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

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

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

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

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

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

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

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

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

11:5-1.9 Funds of others; safeguards

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

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

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

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

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

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Salesman" replaced by "salesperson".

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

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

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

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

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

Case Notes

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

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

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

11:5-1.11 Advance fees; accounting

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

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

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

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

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

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

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

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

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

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

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

6. Copies of all leases and property management agreements;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

See: 20 N.J.R. 1160(a), 21 N.J.R. 1312(b), 21 N.J.R. 2523(a).
Clarification obligation of brokers of record to supervise their main office on a full time basis and unusual business hours, added to (a) and new (a)1.

Case Notes

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

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

11:5-1.18 (Maintained offices)

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

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

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

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

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

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

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

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

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

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

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

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

(f): Substantially amended.

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

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

Required that branch offices be supervised by broker-salespersons.

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

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

Case Notes

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

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

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

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

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

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

11:5-1.21 Employment of salesperson sponsored by broker

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

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

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

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

"Salesman" replaced by "salesperson".

11:5-1.22 Broker insurance placement provision

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

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

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

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

(b) Every licensee shall make reasonable effort to ascertain all pertinent information concerning every property for which he accepts an agency, and concerning the financial qualifications of every person for whom he submits an offer to his client or principal. The licensee shall reveal all information material to any transaction to his client or principal and when appropriate to any other party. This information shall include any actual or potential conflicts of interest which the licensee may reasonably anticipate.

(c) Every licensee shall fully cooperate with all other New Jersey licensees utilizing cooperation arrangements which shall protect and promote the interests of the licensee's client or principal. Commission splits shall be governed by the provisions of N.J.A.C. 11:5-1.33 and 11:5-1.34. Full cooperation requires a listing broker to transmit to their principal(s) all written offers submitted through the offices of other licensees on properties listed with the listing broker. Full cooperation also requires listing brokers not to place restrictions upon the showing of properties listing with them to prospective purchasers who are working through cooperating brokers. This obligation shall be a continuing one unless the client or principal, with full knowledge of all relevant facts, expressly relieves his agent from this responsibility. Should the client or principal direct the licensee not to cooperate with all other licensees, evidence of this intent shall be in writing in the form of a WAIVER OF BROKER COOPERATION as set forth below and signed by the client or principal. Copies of this WAIVER OF BROKER COOPERATION and of the listing agreement to which it relates shall be provided to the client or principal and to their authorized representative by the Broker. This waiver shall become a part of the listing agreement at the time it is signed, and shall be made available for inspection by other Brokers upon request. However, no direction or inducement from the client or principal shall relieve the licensee of his responsibility of dealing fairly and exercising integrity with all other licensees.

WAIVER OF BROKER COOPERATION

I UNDERSTAND THAT COOPERATION AMONGST BROKERS PRODUCES WIDER EXPOSURE OF MY PROPERTY AND MAY RESULT IN IT BEING SOLD OR LEASED SOONER AND AT A HIGHER PRICE THAN WOULD BE THE CASE WERE MY BROKER NOT TO COOPERATE WITH OTHER BROKERS. I FURTHER UNDERSTAND THAT WHEN MY BROKER COOPERATES WITH OTHER BROKERS, I CAN STILL HAVE THE ARRANGEMENTS FOR THE SHOWING OF THE PROPERTY AND ALL NEGOTIATIONS WITH ME OR MY ATTORNEY MADE ONLY THROUGH MY LISTING BROKER'S OFFICE, SHOULD I SO DESIRE.

However, despite my awareness of these factors, I direct that this property is to be marketed only through the efforts of the Listing Broker. This listing is not to be published in any multiple listing service. I will only consider offers on this property which are obtained by, and I will only allow showings of this property to be conducted by the Listing Broker or his or her duly authorized representatives. THE LISTING BROKER IS HEREBY DIRECTED NOT TO COOPERATE WITH ANY OTHER BROKER.

By signing below, the parties hereto confirm that no pressure or undue influence has been exerted upon the owners as to how this property is to be marketed by the Listing Broker.

The owner(s) further confirm receipt of a fully executed copy of the listing agreement on this property, and of this Waiver of Broker Cooperation form.

DATED: _____ Owner _____
 Owner _____
 Listing Broker _____
 By: Authorized Licensee or Broker _____

(d) If any offer on any real property or interest therein is made orally, the licensee shall advise the offeror that he is not obligated to present to the owner or his authorized representative any offer unless the offer is in writing, and the licensee shall secure forthwith the offer in writing. Unless a writing containing or confirming the terms of the listing agreement otherwise provides, the licensee shall transmit forthwith every written offer on any real property or interest therein presented to or obtained by the licensee during the term of the listing to the owner or his authorized representative. For the purposes of this section, the term of a listing shall be deemed to expire either on the termination date established in the listing agreement, or upon the closing of a pending sale or lease. If any acceptance of an offer is given orally, the licensee shall secure forthwith the acceptance in writing.

(e) Back-up offers shall be handled as follows:

1. As used in this subsection, the term "back-up offer" shall mean a written and signed offer to purchase or lease an interest in real estate which is received by a licensee at a time when a previously executed contract or lease pertaining to the same interest in real estate is pending and in effect, having survived attorney review if it was subject to such review. Offers obtained while a previously executed contract or lease is still pending attorney review are not considered back-up offers and must be presented as provided in (d) above.

2. Whenever a licensee transmits a back-up offer to an owner, the licensee shall advise the owner in writing to consult an attorney before taking any action on the back-up offer, and shall retain a copy of such written notice as a business record in accordance with N.J.A.C. 11:5-1.12.

3. Whenever a licensee receives a back-up offer, the licensee shall notify the offeror in writing that the property to which the offer pertains is the subject of a pending contract of sale or lease and, in the event that the licensee receiving the back-up offer is not licensed with the listing broker, a copy of that notice shall be delivered to the listing broker at the time the offer is presented. The said notice shall not disclose the price and terms of the pending contract or lease. A copy of such written notice shall be retained by the licensee as a business record in accordance with N.J.A.C. 11:5-1.12.

(f) It shall be the duty of a licensee to recommend that legal counsel be obtained whenever the interests of any party to a transaction seem to require it.

(g) At the time of the taking of any listing of residential property, a licensee shall furnish to the owner a copy of a summary of the New Jersey Law Against Discrimination N.J.S.A. 10:5-1 et seq. which summary shall have been prepared and furnished by the Attorney General of the State of New Jersey, shall state the provisions of the Law Against Discrimination, and shall state which properties are covered by this law and which properties are exempt from this law. Should the owner profess an unwillingness to abide by or an intention to violate this law then the licensee shall not accept these listings.

(h) No licensee shall deny real estate brokerage services to any person for reasons of race, religion, color, sex, affectional or sexual orientation, marital status, national origin or because a person is handicapped; and no licensee shall participate or otherwise be a party to any plan, scheme or agreement to discriminate against any person on the basis of race, religion, color, sex, affectional or sexual orientation, marital status, national origin or because a person is handicapped. For the purposes of this subsection, the term "handicapped" means suffering from physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness including epilepsy, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment,

muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or from any mental, physiological or developmental disability resulting from anatomical, psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques. Handicapped shall also mean suffering from AIDS or HIV infection, as defined in N.J.S.A. 10:5-5(ff) and (gg).

As amended, R.1975 d.260, effective August 28, 1975.

See: 7 N.J.R. 333(d), 7 N.J.R. 469(c).

As amended, R.1976 d.10, effective January 13, 1976.

See: 7 N.J.R. 567(e), 8 N.J.R. 70(e).

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

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

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

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

Statutory cite added.

Amended by R.1988 d.69, effective February 16, 1988 (operative March 1, 1988).

See: 19 N.J.R. 1621(a), 20 N.J.R. 402(a).

Amended to clearly define full cooperation.

Amended by R.1988 d.412, effective September 6, 1988.

See: 20 N.J.R. 725(a), 20 N.J.R. 2295(b).

Added text to (g) that is favorable to handicapped individuals.

Amended by R.1993 d.365, effective July 19, 1993.

See: 24 N.J.R. 3486(a), 25 N.J.R. 3219(a).

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

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

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).

Transaction where vendor and purchaser are not represented by counsel; broker required to identify when independent counsel needed; duty to inform either vendor or purchaser of that fact; same duty applies to title officer. In re Opinion No. 26 of Committee on Unauthorized Practice of Law, 139 N.J. 323, 654 A.2d 1344 (1995).

Purchasers of new homes stated cause of action against home builders and selling brokers for violation of Consumer Fraud Act. *Strawn v. Canuso*, 271 N.J.Super. 88, 638 A.2d 141 (A.D.1994), leave to appeal granted 137 N.J. 303, 645 A.2d 134, affirmed 140 N.J. 43, 657 A.2d 420.

Real Estate broker who receives a commission from a seller for negotiating a sale held statutorily barred from also earning a consideration from the buyer in the same transaction for assistance and obtaining the necessary financing. *Mortgage Bankers Ass'n of New Jersey v. New Jersey Real Estate Commission*, 200 N.J.Super. 584, 491 A.2d 1317 (App.Div.1985), reversed 102 N.J. 176, 506 A.2d 733 (1986).

Real estate agent held not liable for damages for any tortious interference with vendors' existing or prospective contracts where agent transmitted to vendor each bidder's offer on property as they were submitted to her, and secured for vendors a purchaser at the highest price obtainable through competitive bidding. *Melveney v. McCrane*, 138 N.J.Super. 456, 351 A.2d 385 (App.Div.1976).

Real estate broker's license; revocation for failure to file federal tax returns. N.J.S.A. 45:15-17. *New Jersey Real Estate Com'n v. McLeod*, 93 N.J.A.R.2d (REC) 9.

Failure to disclose material information; license of broker revoked; fines imposed on both broker and salesperson. *New Jersey Real Estate Commission v. Hunt*. 93 N.J.A.R.2d (REC) 1.

Broker's failure to pay commission after receiving advice of legality to pay it constituted bad faith; penalty imposed. *New Jersey Real Estate Commission v. Latour*. 92 N.J.A.R.2d (REC) 50.

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

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

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

Salespersons' misrepresentations regarding offer warranted license revocations and assessment of fines. *New Jersey Real Estate Commission v. Ahuja*. 92 N.J.A.R.2d (REC) 7.

11:5-1.24 Return of license when broker ceases to be active; office closing; change of broker of record

(a) Each broker who ceases to be active shall immediately return to the Commission his license, and licenses of all salespersons and broker-salespersons for cancellation.

(b) Each employee's license must be accompanied by a letter terminating employment in compliance with N.J.S.A. 45:15-14.

(c) No broker engaging in the real estate brokerage business as a sole proprietor, as a broker of record of a partnership or as a broker of record of a corporation shall be relicensed as broker or salesperson unless within 30 days of the date of which the broker ceases engaging in the real estate brokerage business he or she shall complete and submit an affidavit to the Commission certifying that:

1. The broker's license, the corporate or partnership license, and the licenses of all salespersons and broker-salespersons have been returned to the Commission for cancellation;

2. The broker's trust account has been closed and that all funds held in trust for others have been disbursed to proper parties;

3. All commissions owed to salespersons and broker-salespersons have been paid, or, if not yet received by the broker, will be paid upon receipt;

4. No further commissions are due the broker except that any commissions for services previously rendered and payable in the future upon the occurrence of specified events are described on a list attached to the affidavit. The list shall describe the nature and amounts of such outstanding commissions with sufficient information to identify each transaction;

5. The broker has notified all principals in ongoing transactions, in writing, that the broker has ceased engaging in the real estate brokerage business or that the broker will hereinafter engage in the real estate brokerage business in another capacity. The notice shall describe the disposition of pending transactions and the name of custodian and place of deposit of any funds received from principals;

6. The broker has removed from the licensed premises all signs indicating that the premises contains the office of a licensed real estate broker;

7. The broker has recalled all signs and other advertisements or trade materials indicating that the broker is engaged in the real estate brokerage business;

8. The broker has advised the appropriate telephone services that the firm is no longer engaged in the real estate brokerage business, and that further telephone directories should not contain the name of the individual or firm as licensed brokers;

9. There are no outstanding fines or penalties due and owing the Real Estate Commission;

10. The broker acknowledges his or her responsibility to maintain permanent type records as required in N.J.A.C. 11:5-1.12. The broker must provide the address of the place of depository of such records and acknowledge responsibility to advise the Commission of any change in the name of the custodian or place of depository for a period of six years.

(d) When a new broker of record of a corporation or partnership is being substituted for the existing broker of record, the existing broker of record satisfies the certification requirements of (c) above when in compliance with the substitution procedures of (e) below.

(e) No new broker of record of a corporation or partnership shall be substituted unless the new broker of record and the former broker of record prepare and submit a joint affidavit to the Commissioner certifying that:

1. Custody of all funds held in trust for principals has been assumed by the new broker of record;

2. The new broker of record has reviewed all pending transactions and is satisfied that all funds held in trust have been accounted for;

3. All salespersons' commissions are paid to date;

4. The new broker acknowledges responsibility to pay salespersons' commissions in accordance with the policy for payment existing on the date of substitution;

5. No fines are presently owed to the Real Estate Commission, and if any fines are assessed after the date of substitution for actions occurring prior to substitution, both the former broker and new broker are jointly and severally responsible for payment;