

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

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

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

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

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

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**SUBCHAPTER 1. RULES AND REGULATIONS**

**11:5-1.1 Disciplinary action; restitution**

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

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

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

As amended, R.1977 d.392, effective October 19, 1977.  
See: 9 N.J.R. 438(a), 9 N.J.R. 536(b).  
As amended, R.1983 d.471, effective November 7, 1983.  
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).  
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).

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

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

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

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

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

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

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

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

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

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

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

#### 11:5-1.21 Employment of salesperson sponsored by broker

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

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

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

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

"Salesman" replaced by "salesperson".

#### 11:5-1.22 Broker insurance placement provision

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

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

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

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

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

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

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

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

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

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

**"NOTIFICATION REGARDING  
OFF-SITE CONDITIONS**

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

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

Municipality \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone Number \_\_\_\_\_"

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

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

**"NOTICE ON OFF-SITE CONDITIONS"**

Pursuant to the New Residential Construction Off-site Conditions Disclosure Act, P.L. 1995, c.253 the clerks of municipalities in New Jersey maintain lists of off-site conditions which may affect the value of residential properties in the vicinity of the off-site condition. Purchasers may examine the lists and are encouraged to independently investigate the area surrounding this property in order to become familiar with any off-site conditions which may affect the value of the property. In cases where a property is located near the border of a municipality, purchasers may wish to also examine the list maintained by the neighboring municipality."

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

i. Licensees who possess actual knowledge of an off-site condition which may materially affect the value of residential real estate other than newly constructed properties shall disclose that information to prospective purchasers of such residential real estate affected by the condition. That disclosure shall be made prior to the signing of the contract by a prospective purchaser.

ii. In cases where the licensee did not possess actual knowledge of the presence of an off-site condition which might materially affect the value of the residential real estate, by virtue of including the foregoing statement in a contract of sale prepared by him or her, the licensee shall be deemed to have fulfilled his or her disclosure obligations under (c) above with respect to such off-site conditions.

3. As used in this subsection, the following words and terms shall have the following meanings:

i. "Newly constructed" means any dwelling unit not previously occupied, excluding dwelling units constructed solely for lease and units governed by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §§ 5402 et seq.

ii. "Off-site conditions" refers to the following conditions as set forth in the New Residential Construction Off-Site Conditions Disclosure Act, N.J.S.A. 46:3C-3 (P.L. 1995 c.253), or as amended:

(1) The latest Department of Environmental Protection listing of sites included on the National Priorities List pursuant to the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," 42 U.S.C. §§ 9601 et seq.;

(2) The latest sites known to and confirmed by the Department of Environmental Protection and included on the New Jersey master list of known hazardous discharge sites, prepared pursuant to P.L. 1982, c.202 (N.J.S.A. 58.10-23.15 et seq.);

(3) Overhead electric utility transmission lines conducting 240,000 volts or more;

(4) Electrical transformer substations;

(5) Underground gas transmission lines as defined in 49 C.F.R. 192.3;

(6) Sewer pump stations of a capacity equal to, or in excess of 0.5 million gallons per day and sewer trunk lines in excess of 15 inches in diameter;

(7) Sanitary landfill facilities as defined pursuant to section 3 of P.L. 1970, c.39 (N.J.S.A. 13:1E-3);

(8) Public wastewater treatment facilities; and

(9) Airport safety zones as defined pursuant to section 3 of P.L. 1983, c.260 (N.J.S.A. 6:1-82).

iii. "Residential real estate" means a property or structure or both which will serve as a residence for the purchaser.

(d) Information about social conditions or psychological impairments of a property is not considered information which affects the physical condition of a property. Subject to (d)3 below, licensees are not required by (c) above to disclose such information.

1. As used in this section, the term "social conditions" includes, but is not limited to, neighborhood conditions such as barking dogs, boisterous neighbors, and other conditions which do not impact upon or adversely affect the physical condition of the property.

2. As used in this section, the term "psychological impairments" includes, but is not limited to, a murder or suicide which occurred on a property, or a property purportedly being haunted.

3. Except as provided below, upon receipt of an inquiry from a prospective purchaser or tenant about whether a particular property may be affected by a social condition or psychological impairment, licensees shall provide whatever information they know about the social conditions or psychological impairments that might affect the property.

i. In accordance with N.J.S.A. 10:5-1 et seq. (the "Law Against Discrimination"), licensees shall make no inquiry and provide no information on the racial composition of, or the presence of a group home in, a neighborhood. In response to requests for such information, licensees shall inform the persons making the inquiry that they may conduct their own investigation. This paragraph does not apply to the owner of a multiple dwelling or his agent to the extent that such inquiries are necessary for compliance with N.J.A.C. 13:10.

ii. In accordance with N.J.S.A. 2C:7-6 through 11 ("Megan's Law") and the guidelines promulgated thereunder, licensees shall make no inquiry about and provide no information on notifications from a county prosecutor issued pursuant to that law. In response to requests for such information, licensees shall inform the person making the inquiry that information about registered sex offenders is maintained by the county prosecutor.

(e) In all contracts and leases on residential real estate they prepare, licensees shall include the following statement in print as large as the predominant size print in the document:

**MEGAN'S LAW STATEMENT**—Under New Jersey law, the county prosecutor determines whether and how to provide notice of the presence of convicted sex offenders in an area.

In their professional capacity, real estate licensees are not entitled to notification by the county prosecutor under Megan's Law and are unable to obtain such information for you. Upon closing the county prosecutor may be contacted for such further information as may be disclosable to you.

(f) 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 \_\_\_\_\_

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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).

(l) Licensees may engage in brokerage activity in transactions involving the resale of mobile and manufactured homes as provided in N.J.S.A. 39:10-19. Licensees who do so shall be familiar with all laws applicable to such transactions. These laws include N.J.S.A. 39:1-1 et seq. as it

applies to the resale of and the transfer of the titles to such motor vehicle units, N.J.S.A. 46:8C-1 et seq., as it applies to the resale of such units when situated in Mobile Home Parks, N.J.S.A. 17:16C-1 et seq., as it applies to the financing of purchases of personal property and New Jersey's Truth in Renting Act, N.J.S.A. 46:8-43 et seq. Licensees who, when involved in transactions of this type, evidence a lack of familiarity with these laws either through acts of omission or commission shall be subject to sanctions by the Commission for having engaged in conduct demonstrating incompetency, in violation of N.J.S.A. 45:15-17(e).

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).

Amended by R.1997 d.27, effective January 21, 1997.

See: 28 N.J.R. 3065(a), 29 N.J.R. 366(a).

Added (i).

Amended by R.1997 d.275, effective July 7, 1997.

See: 29 N.J.R. 300(a), 29 N.J.R. 2849(a).

Substantially amended (b); recodified former second sentence of (b) as (c) and amended; added (c)1 through 3, (d) and (e); and recodified former (c) through (i) as (f) through (l).

#### 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. *Melveny 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.