



Spring, 2000



Fortunately 1/1/00 passed without much ado.

Personally, I share with you the excitement of leaping from the old century into the new, relinquishing the past and fervently anticipating the future.

Professionally, my tenure at the Real Estate Commission has seen the familiar give way to the new, resistance to change give way to appreciation of the quicker and easier methods made possible by the age of technology. High powered computer systems housing megabytes of information, the capacity to electronically scan and store mountains of paper and the replacement of an antiquated phone system have all enhanced the efficiency of the Commission's operations and enabled us to better serve consumers and licensees.

The last year of the century was also the second occasion for two year license renewals. As required by law the task also involved confirming the U.S. citizenship or legal presence, and gathering the dates of birth and social security numbers of some eighty thousand licensees. This monumental task was successfully accomplished by my able staff, with the assistance of all New Jersey brokers.

Another glimpse into the future may see the realization of Continuing Education for New Jersey Real Estate licensees. At this time New Jersey is the only state in the union which does not require continuing education of its real estate brokerage professionals. A task force is presently analyzing the issues which will have to be addressed in the event that a continuing education system is implemented.

As we experience the first year of the new century I wish you and yours success and prosperity, health and happiness as well as the inclination and knowledge to successfully meet the challenges and grasp the opportunities presented by the age of technology.

COMMISSION ADOPTS RULE CHANGE ON ACCESS TO LISTINGS VIA THE WEB

On June 19, 2000 amendments to N.J.A.C. 11:5-6.1(n) were formally adopted. The amendments will become operative 90 days later, on September 17, 2000. The amendments resolved a conflict between the prior text of the rule and the widespread practice of licensees other than those affiliated with the listing broker providing information of listings through websites via links to the websites of multiple listing systems or general real estate information sites. The amended rule only applies to information on the listings of other licensees which is disseminated through the internet. It does not authorize licensees to advertise properties that are not listed by their firm in print or any other medium without having first secured the listing broker's written consent to do so, which consent may not be given without the owner's knowledge. It also does not authorize a licensee who maintains a website through which information on a property not listed with his firm may be viewed to misrepresent, through a frame or otherwise, that the property is listed by that licensee.

The full text of N.J.A.C. 11:5-6.1(n) as amended follows.

11:5.6.1 Advertising rules

(a) (m) (No change)

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

1. With regard to information on listings disseminated through the Internet by licensees other than the listing broker, listing brokers shall be deemed to have given the consent referred to in (n) above with the knowledge of the owner where:

i. A written listing agreement contains the seller's authorization for information on the listing to be posted on the website of the broker, or of a multiple listing service to which the broker belongs, or of another party to which the broker or such an MLS submits information on listings; and

ii. The website on which the listing information shall initially appear has instituted no measures to prevent other parties with websites from utilizing an electronic link to enable consumers to view that information while remaining in the website of the other party.

COMMISSION PROPOSES REVISED AMENDMENTS ON THE TIMELY SUBMISSION OF LISTINGS AND OFFERS AND ON DISCLOSURES REGARDING COMMISSION SPLITS

The proposed amendments to N.J.A.C. 11:5-6.4(f) more clearly define the general obligation of real estate licensees to fully cooperate with each other in a manner which serves to protect and promote the interests of their clients. A prior version of these amendments was proposed on September 20, 1999 at 31 NJR 2679. As a result of comments received on that proposal the Commission determined to make substantive changes requiring the issuance of a new Notice of Proposal which will be published on June 19, 2000 in the New Jersey Register.

The revisions to subsection (f) state more clearly the cross-reference in the current text to N.J.A.C. 11:5-7.5 and 7.6 which prohibit collusion and discrimination on commission rates and splits.

Proposed new subparagraph 1. of the rule establishes certain minimum actions which listing firms must take in order to fulfill their obligation to fully cooperate with other brokers. These include notifying any multiple listing system (MLS) to which a listing will be submitted within 48 hours of having acquired the listing, and transmitting all written offers received from cooperating licensees to the owner within 24 hours of the delivery of the offer to the listing firm. In addition, current text in the rule which prohibits the placing of "unreasonable restrictions" upon showings by cooperating licensees is clarified by new text stating that a requirement that all appointments for showings shall be made through the listing broker's office is not deemed an unreasonable restriction.

The rule currently provides that the obligation to fully cooperate with other licensees continues to apply unless the client or principal, with full knowledge of all relevant facts, "expressly relieves" the listing broker from that responsibility. The proposed amendments would explicitly require that the communication from the owner purporting to do so be in writing and would provide that, upon request, a listing broker must make such a writing available for inspection by other brokers.

An additional amendment (new subparagraph 3.) imposes a new requirement that a commission split provision be included in all listing agreements prepared by licensees. Such provisions will be required to contain the complete formula for determining the commission split offered to potential cooperating brokers. The provision also explains how cooperating firms are generally compensated and the effect which a listing firm's commission split policy can have upon the marketability of the owner's property.

This is the section of the proposed amendments wherein substantial revisions to the previously proposed version of the amendments were made. By requiring the inclusion of such a provision in all licensee-prepared listing agreements the Commission is responding to comments submitted on the initial proposal which asserted that the inclusion of a reference to a certain amount of commission split in the "Commission Split Addendum" referenced in that proposal

would convey to the public the impression that the rates or amounts of commissions which brokers may charge, and/or the amounts of shared compensation listing brokers may offer to cooperating brokers are prescribed by Commission rule. The amendment as revised would require that whenever a licensee prepares a listing agreement, adequate disclosure of the ramifications of marketing the property in a manner which might adversely affect the interests of the seller must be provided to the seller.

For the purposes of this rule, the Commission considers a listing agreement to be prepared by a licensee whenever the text of the agreement is prepared by the licensee or his or her brokerage firm, or when a licensee fills in blank spaces on a form listing agreement prepared by a trade association, multiple listing system, or other third party. This approach is similar to that recognized by New Jersey Courts for determining when a residential contract or lease is prepared by a real estate licensee for the purposes of triggering the requirement that such a contract or lease include the required Attorney Review Notice and clause. See Calvert v. K. Hovmanian at Galloway, 247 N.J. Super. 518 App. Div. 1991)

The text of subsection (f) which addresses total waivers of broker cooperation is also being slightly amended. The reference to a direction of this nature from an owner to the "licensee" is being replaced by a reference to such a direction to the "listing broker". This revision is appropriate because it is not the individual licensee who procures the listing, but the brokerage firm with whom they are licensed that is being retained by the owner to provide brokerage services. In addition, this section of the rule (new subparagraph 4) is being clarified to indicate that it is only applicable to total office exclusive listings, i.e. those listings on which the listing broker's client or principal directs that the listing broker is not to cooperate at all with all other licensees. Also, a grammatical correction is made in the final sentence in the "Waiver of Broker Cooperation" form prescribed by the current rule so as to have it refer to "copies" of the two documents previously mentioned in that sentence.

Finally, again as a result of comments received on the prior proposal, the Commission has determined to also propose an amendment to N.J.A.C. 11:5-6.4(g). Subparagraph (f) 1. ii. as proposed for amendment would require listing firms to transmit to their principals all written offers submitted by licensees with cooperating firms within 24 hours of delivery of the offer to the listing firm. Comments on the initial proposal noted that this requirement might be inconsistent with the current text of N.J.A.C. 11:5-6.4(g), which requires licensees to, unless otherwise directed in writing by the owner, transmit "forthwith" every written offer received on a property. In an effort to ensure consistency between these two references in the rule, the Commission is proposing to delete the legalistic term "forthwith" from subsection (g) and replace it with the same plain language statement proposed to be added to subparagraph (f) 1. ii, i.e. "within 24 hours of receipt of the written offer by their firm".

The full text of the proposal follows:

(additions indicated with underlines thus: deletions indicated in brackets [thus].)

N.J.A.C. 11:5-6.4 Obligation of licensees to public and to each other.

a. – (e) No change.

f. Unless directed not to do so in writing by an owner as provided herein, [Every] 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. Collusion and discrimination with respect to commission rates and [commission] splits [shall be governed by the provisions of] are prohibited as provided in N.J.A.C. 11:5-7.5 and 7.6 [Full cooperation requires a]

1. The obligation to fully cooperate with all other licensees includes the requirements that listing [broker] brokers:

i. notify any Multiple Listing System to which a listing is to be submitted of having acquired the listing within 48 hours of the effective date of the listing;

ii. transmit to their principal(s) all written offers on their listings submitted [through the offices of other] by licensees with other firms [on properties listed with the listing broker] within 24 hours of receipt of the written offer by their firm; [Full cooperation also requires listing brokers not to] and

iii. place no unreasonable restrictions upon the showing of properties listed with them to prospective purchasers who are working through cooperating brokers. A requirement that all appointments for showings must be made through the listing broker's office is not considered an unreasonable restriction upon showings.

2. [This] All requirements imposed by the obligation to fully cooperate shall be [a continuing one] complied with on all listings unless the client or principal, with full knowledge of all relevant facts, expressly relieves [his agent] the listing broker from [this responsibility] one or more of those requirements in writing. Such a writing shall be signed by the owner and made an attachment to the listing agreement. Such a writing shall be made available for inspection by other brokers upon request.

3. All written listing agreements prepared by licensees shall include a provision as set forth below, which provision shall be in print larger than the predominant size print in the agreement. Prior to securing the owner's signature on the listing agreement the listing broker shall specify the complete formula for determining the commission split in the indicated location in the provision.

COMMISSION SPLITS

LISTING BROKERS USUALLY COOPERATE WITH OTHER BROKERAGE FIRMS BY SHARING INFORMATION ABOUT THEIR LISTINGS AND OFFERING TO PAY PART OF THEIR COMMISSION TO THE FIRM THAT PRODUCES A BUYER. THIS IS GENERALLY REFERRED TO AS THE "COMMISSION SPLIT".

SOME LISTING BROKERS OFFER TO PAY COMMISSION SPLITS OF A PORTION OF THE GROSS COMMISSION, USUALLY EXPRESSED AS A PERCENTAGE OF THE SELLING PRICE, LESS A SIGNIFICANT DOLLAR AMOUNT. OTHER LISTING BROKERS OFFER A PORTION OF THE GROSS COMMISSION LESS ONLY A MINIMAL LISTING FEE OR LESS ZERO.

THE AMOUNT OF COMMISSION SPLIT YOUR BROKER OFFERS CAN AFFECT THE EXTENT TO WHICH YOUR PROPERTY IS EXPOSED TO PROSPECTIVE BUYERS WORKING WITH LICENSEES FROM OTHER BROKERAGE FIRMS.

ON THIS LISTING, THE BROKER IS OFFERING A COMMISSION SPLIT OF _____ MINUS _____ TO POTENTIAL COOPERATING BROKERS.

IF YOU FEEL THAT THIS MAY RESULT IN YOUR PROPERTY RECEIVING LESS THAN MAXIMUM EXPOSURE TO BUYERS, YOU SHOULD DISCUSS THOSE CONCERNS WITH THE LISTING SALESPERSON OR HIS/HER SUPERVISING BROKER.

BY SIGNING THIS LISTING AGREEMENT THE OWNER(S) ACKNOWLEDGE HAVING READ THIS ADDENDUM.

4. Should the client or principal direct the [licensee] listing broker not to cooperate at all 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 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] listing broker 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] copies 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. 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 within 24 hours of receipt of the written offer by their firm. 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) – (l) No change.

Interested parties may submit written comments on the proposed amendments by July 19, 2000 by mailing same to:

Gloria A. Decker, Executive Director,

New Jersey Real Estate Commission

P.O. Box 328

Trenton, New Jersey 08625-0328

or via FAX at 609-292-0944

or via E-mail to gdecker@dobi.state.nj.us

COMMISSION PROPOSES RULE AMENDMENTS ON WHEN PROPERTIES MAY BE ADVERTISED AS "SOLD" AND OTHER TOPICS

On June 19, 2000 a Notice of Proposed Amendments to N.J.A.C. 11:5-6.1 will be published in the New Jersey

Register.

In addition to amending existing sections of the regulation, the proposed amendments would add two new sections, (o) and (p). The amendment to section (a) confirms the applicability of the new sections to all types of advertising. The proposed amendments to section (b)(1) and section (d) would make the existing advertising rules applicable to business cards that are used by real estate licensees. Currently, business cards are subject to lesser standards than are other forms of advertising. Business cards are widely distributed to the consuming public and are a major form of advertising. Business cards are often secured by an individual licensee without any input from that person's supervising broker. In reviewing the regulation, the Commission took into consideration the possibility that the consuming public could be confused or misled by the manner in which sales associates' names were printed on their business cards. Since all salespersons and broker-salespersons may only operate as such under the authority of the broker with whom they are licensed, the Commission deems it important that the name of the brokerage firm appear in a prominent manner on any individual licensee's advertisements, including their business cards.

Real estate licensees commonly use electronic devices such as pagers, cellular telephones, home fax machines, electronic mail and the like in order to be conveniently accessible to their customers. The proposed amendment to section (d) would require licensees who use such devices to identify the nature of the telephone numbers on their business cards and to include the telephone number of the licensed brokerage office from which the advertising licensee operates to eliminate the possibility of confusion to consumers. Licensees may also include the street address of the licensed brokerage office.

The proposed amendment to section (g) makes the second sentence in that section consistent with the first sentence as amended in 1998. The first sentence requires that qualifying terms be used in advertisements which set forth amounts of down payment, monthly payment, carrying charges, taxes or mortgage money obtainable. The second sentence referring to advertisements containing "unqualified" terms is therefore not consistent. The word "unqualified" should have been deleted from that sentence when the rule was amended and recodified in 1998 but, through an oversight, it was not.

After receiving a request for an advisory opinion from the New Jersey Association of Realtors, the New Jersey Real Estate Commission engaged in discussions regarding the representation of the true status of properties that are offered for sale both prior to and after the closing of title. Proposed new section (o) clarifies that the listing broker is the only broker who can advertise that they have sold a property. The broker who produced the buyer may advertise that they participated in the sale of the property. Section (p) clarifies that a property is not considered "sold" until closing of title has occurred and requires that advertisements of properties on which closing of title has not yet occurred reflect the true status of the property.

The full text of the proposal follows (additions indicated with underlines thus; deletions indicated in brackets [thus]):

N.J.A.C. 11:5-6.1 Advertising Rules

(a) Unless otherwise set forth herein, subsections (b) through [(n)] (p) 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.

(b) No change.

1. [With the exception of business cards, in] In all advertisements which contain the name of a 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. and 3. No change.

(c) No change.

(d) [With the exception of business cards, any] 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 also 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."

(e) – (f) No change.

(g) – Any advertisement which sets forth amounts of down payment, monthly payment, carrying charges, taxes or mortgage money obtainable shall contain appropriate qualifying words such as "approximate" or "estimated," which qualifying words shall be clearly associated with the amounts set forth. If such amounts are mentioned the broker shall maintain written proof of the validity of these statements in the broker's files. Such written proof shall be maintained for a period of 12 months from the date upon which an advertisement containing such [unqualified] references shall have last appeared in any publication.

(f) – (n) No change.

(o) Brokerage firms and their licensees who participated in the sale of a property listed with another broker shall not advertise that they sold that property. Subject to (p) below, selling firms and licensees may advertise that they participated in the sale of such properties.

(p) No licensee shall indicate in any advertisement that a property has been sold, or that they participated in the sale of a property, until a closing has occurred at which title to the property was transferred from the seller to the buyer.

1. For the purposes of subsection (p) the term "advertisement" shall include communications to other licensees through notices submitted to a multiple listing service or otherwise.

2. In the time period after a contract prepared by a licensee emerges from Attorney Review or a contract not subject to Attorney Review is fully executed and delivered to all parties, but before a closing occurs at which title is transferred, unless such a contract is cancelled and the seller authorizes the listing broker to renew efforts to market the property any advertisement of the property which is the subject of the contract shall include the term "under contract".

Interested parties may submit written comments on the proposed amendments by July 19, 2000 by mailing same to:

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P.O. Box 328

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RULE AMENDMENTS PERMIT ACCEPTANCE OF CHARGED DEPOSIT AND RENT PAYMENTS ON SHORT TERM RENTALS

On December 20, 1999 the following amendments to Commission rules N.J.A.C. 11:5-5.1 and 11:5-5.4 went into effect. The amendments address the forms in which brokerage firms may accept funds to be held by the broker in escrow, as a trustee, or as the temporary custodian of the funds of others in a real estate transaction. Most of the amendments impose requirements with respect to the acceptance of credit card charges in payment of deposits and rents on short term rental transactions. The rules specify that deposits and rents paid via credit cards may only be

accepted on Short Term Rentals, and not on any other type of real estate transaction.

The full text of the amended rules follows.

11:5-5.1 Special accounts for funds of others; commingling

(a) – (h) No change.

(i) Brokers may accept payments to be held in trust or in escrow, or as the temporary custodian of the funds of others in any real estate transaction in the following forms: cash; a negotiable instrument payable to the broker's firm; a charge against a check debit card resulting in a credit to the broker's trust or escrow account; or a wire transfer of funds directly from an account of the payor to the trust or escrow account of the broker. As provided herein, brokers may also accept deposit and rent payments to be held by them in trust or in escrow or as a temporary custodian in the form of charges made upon the credit cards of tenants in short term rental transactions.

1. All payments to be held by a broker in trust or in escrow, or as the temporary custodian of monies in a real estate transaction made in the form of cash, negotiable instruments, wire transfers or by charges made upon credit cards or check debit cards shall be recorded in the broker's trust or escrow account ledger and as otherwise required by N.J.A.C. 11:5-5.4.

2. Brokers shall not accept payments made through credit card charges in any real estate transaction other than a short term rental. For the purposes of this rule a "short term rental" is a rental of a residential property for not more than 125 consecutive days with a specific termination date.

3. Brokers who accept payments in the form of credit card charges in short term rentals shall cause those payments to be credited to a special trust or escrow account, distinct from the escrow or trust account(s) maintained by the broker for other purposes. Brokers who accept such payments shall also maintain a business account, separate and apart from all trust or escrow accounts including the account to which the credit card charges will be credited. The said business account may be the same business account maintained by the broker for general purposes.

4. Before accepting any payment in the form of a credit card charge on a short term rental a broker shall inform the owner in writing of the potential for such payments to be "charged-back" by the tenant and obtain written authorization signed by the owner for the broker to accept such payments.

i. For the purposes of this rule "charged-back" means the re-crediting of a previously charged payment to the account of a cardholder through the electronic debiting of an account of the broker.

ii. Where an owner's written authorization is secured by the listing broker it shall be made a part of or an addendum to a listing agreement.

iii. In all cases the owner's written authorization shall be retained by the broker to whom it was given as a business record in accordance with N.J.A.C. 11:5-5.4.

5. In the event that a dispute concerning a charged-back payment arises between a broker and a consumer, under no circumstances shall the broker apply or set-off against the disputed amount any monies paid to the broker on another transaction in which the same consumer is a party.

6. Brokers who accept credit card charges in payment of deposits or rent on short term rentals shall formulate a written statement of their policy on credit card payment cancellations. All such cancellation policies shall include:

i. an indication of the time period during which the cardholder may cancel the charged payment made to the broker; and

ii. a statement that, in the event a cancellation request is not received by the broker within the specified cancellation time period the request will not be honored and the disposition of the monies credited to the

broker will be governed by the terms of the lease or rental agreement between the landlord and the cardholder.

7. In no event shall the cancellation period terminate prior to the delivery to the cardholder of a fully executed written lease containing the final terms of the rental agreement, or the full acceptance by the parties of the final terms of a verbal rental agreement.

8. Brokers shall provide copies of the written cancellation policy in the following manner:

i. to property owners upon the earlier of the broker obtaining a listing on the rental property or presenting an offer to rent the property; and

ii. to prospective tenants at the time of first accepting a payment in the form of a credit card charge. In the event that the same tenant makes subsequent payments on the same rental transaction through charges against a credit card, the broker accepting such payments shall not be required to provide additional copies of the written cancellation policy.

9. Except as otherwise provided in (j) below, brokers who accept payments in the form of credit card charges shall comply with all restrictions and requirements imposed by N.J.S.A. 45:15-17(o) and this rule with regard to the deposit and maintenance of such funds.

(j). In all cases the amount credited to a broker's special escrow or trust account as a result of a charged payment on a short term rental transaction shall be the full amount of the payment made by the tenant to the broker. All transaction fees payable by the broker to the company which issued the credit card shall not be paid before the full amount of the charged payment is credited to the broker's special escrow or trust account. Brokers who accept payments through charges on credit cards shall also comply with one of the procedures specified in subparagraphs 1 and 2, below.

1. A business account of the broker shall be designated in the contract between the broker and any company whose credit card charges the broker will accept as the sole source of funds for the payment by the broker of all credit card transaction fees due to the company, and the sole source of funds for all charge-backs which may be assessed against the broker by the company; or

2. The broker shall maintain a reserve amount of the broker's funds in the special escrow or trust account to which charged payments will be credited. The said reserve shall be sufficient to cover all transaction fees incurred by the broker on charged transactions and all estimated charge-backs of payments by cardholders. The maintenance of such reserve funds in the said special escrow or trust account shall not be construed as commingling. In all cases where brokers utilize this procedure:

i. Transaction fees debited from the said reserve amount shall be replenished by the broker on at least a monthly basis; and

ii. In the event that a broker is notified that a charge-back has occurred after some or all of the funds received through the charged-back payment have been disbursed, the broker shall, within one business day of receipt of such notice, replenish the reserve funds in the special escrow or trust account in an amount equal to the amount debited from the reserve through the charge-back; and

iii. Brokers may replenish or increase the said reserve amount as often as necessary. Brokers may only reduce the said reserve amount on an annual basis. All credits to and debits from the special escrow or trust account made by the broker to replenish, increase or decrease the reserve amount shall be duly noted in the business records of the broker and maintained as such as required by N.J.A.C. 11:5-5.4.

11:5.4 Records to be maintained by broker.

(a) No change.

(b) The records required to be maintained by (a) above shall include:

1. No change.

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;

i. Brokers who accept credit card charges on short term rental transactions and who maintain a reserve in their special trust or escrow account to which funds received through such charges are credited as provided in N.J.A.C. 11:5-5.1(j) shall record in one location in their ledger book, entries specifying deposits made to establish, replenish, and increase the reserve amount and all withdrawals made to reduce the reserve amount. Brokers who maintain reserves in such special escrow or trust accounts shall not be required to make an entry in their ledger for each transaction fee debited from the said account as a result of their acceptance of a payment through a charge on a credit card.

3. No change.

4. All bank statements, cancelled checks, [and] duplicate deposit slips and if the broker accepts credit card charges on short term rental transactions as provided in N.J.A.C. 11:5-5.1, all confirmation slips or other written material reflecting the broker's acceptance of such payments.

LICENSURE REQUIREMENTS VARY FOR RESIDENTIAL AND COMMERCIAL MORTGAGE BROKERS

Persons and firms engaged in the business of brokering residential mortgage loans for compensation must be licensed by the Department of Banking and Insurance. The New Jersey Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq., requires the licensure and regulation of mortgage bankers, correspondent mortgage bankers, and mortgage brokers relating to the solicitation, brokering and origination of residential first mortgage loans on New Jersey property. Similarly, licensure is required for the origination of secondary or subsequent mortgage loans on residential property to consumers. The law defines a first mortgage loan to be any loan secured by a first mortgage on real property containing a one to six family dwelling, a portion of which may be used for a non-residential purpose. Similarly, a second mortgage loan is defined as a loan on such real property which is subject to one or more prior mortgages. Licensing and regulation under this statute are administered by the New Jersey Department of Banking and Insurance, Division of Banking. An individual licensed as a New Jersey real estate broker, broker-salesperson or salesperson is not, by virtue of being so licensed, authorized to engage in the residential mortgage brokerage business. For more information on the licensure requirements applicable to residential mortgage brokers please contact the Licensing Services Section within the New Jersey Division of Banking at 609-292-5340.

Persons and firms who broker loans secured by mortgages on commercial real estate for compensation must be licensed as New Jersey real estate brokers. Individuals licensed as a real estate broker-salesperson or salesperson may engage in such activity, but only if it is done under the authority of and through the brokerage firm with which they are licensed. Like all other real estate brokerage activity, a broker-salesperson's or salesperson's compensation for such activity must be paid by the broker through whom they are licensed, rather than by a party to the commercial mortgage transaction.

For more information on the requirements for licensure as a New Jersey real estate broker, broker-salesperson or salesperson call the Commission at 609-292-7053.

LEGISLATION UPDATE

Licensure of Home Inspectors.

As of the publication date of this edition, the rules necessary to implement the amendments to N.J.S.A. 45:8-1 et seq. providing for the licensure of home inspectors had not yet been proposed. The Commission will attempt to monitor the status of the licensure of home inspectors and keep real estate licensees informed.

Division Of Consumer Affairs Rulemaking Regarding Property Condition Disclosure Statements

As of our publication date the Division of Consumer Affairs had not yet published proposed rules to implement the 1999 amendments to the Consumer Fraud Act. Those amendments provided that if licensees took certain actions, including utilizing a Property Condition Disclosure Statement which complied with regulations promulgated by the Director of the Division of Consumer Affairs, they would not be liable for certain types of damages under the Consumer Fraud Act.

The Commission will also attempt to monitor the status of the rulemaking to be done in this area. However, rule proposals typically provide for only a 30 day period within which to submit comments on the proposed rulemaking. Therefore licensees who might wish to submit comments on DCA's rule proposal should not rely on the Commission to provide them with timely information regarding the publication of a notice of proposed rulemaking on Property Condition Disclosure Statements.

WHAT'S IN A NAME?

The following Notice was mailed to all licensed brokerage offices in December, 1999. It emphasizes the importance of individuals being licensed in their legal names and the long-standing requirement found in Commission rule N.J.A.C. 11:5-6.1(b) that individual licensees may only advertise in the name in which they are licensed by the Commission.

NOTICE

TO: All Real Estate Licensees and Other Interested Parties

FROM: Gloria A. Decker, Executive Director

DATE: December 15, 1999

RE: N.J.A.C. 11:5-6.1 – Names in Which Licensees Advertise

Commission rule N.J.A.C. 11:5-6.1(b) requires that all advertising by a salesperson or broker-salesperson include the name in which that individual is licensed and the regular business name of the broker through whom they are licensed. (The "regular business name" is defined as the name in which the broker is on record with the Commission as doing business as a real estate broker.)

There are several reasons why it is required that licensed individuals advertise in the name in which they are licensed. The requirement allows the Commission to effectively and efficiently respond to and investigate consumer complaints against licensees. In addition, it enables the Commission to accurately respond to inquiries from the public about the licensed status of particular individuals. If such an inquiry is received on a salesperson operating as "Skip" or "Didi", it may be impossible to determine who the subject of the inquiry is and whether they are currently licensed. The Commission's inability to do so could adversely affect the licensee's relationship with the consumer making the inquiry.

This Notice is being issued in an effort to clarify the requirements regarding licensee advertising and the procedures applicable to name change requests. Licensees who are currently advertising in a name other than the name in which they are licensed have the following options:

1. Change their advertising (business cards, sign riders etc.) to match the name on their license;

2. Change their legal names in court;

3. Add the name in which they are licensed to the advertisements in which their nickname currently appears.

With regard to option 2, after a legal name change has been accomplished, as evidenced by a court order, marriage certificate, or divorce decree allowing the resumption of the use of a maiden name, an appropriate application and fee must be submitted to the Commission in order to change the name in which the individual is licensed by the Commission.

It is only in the case of a person who erroneously applied for and was issued a license in a name other than their legal name that the licensee may request a correction through the submission of a letter accompanied by two forms of government-issued identification reflecting the correct legal name in which they wish to be licensed. Acceptable forms of such identification include a valid drivers license, a social security card or INS "Green Card", a birth or marriage certificate, and a valid passport. Where someone is licensed in their legal name, the submission of one of these forms of identification with a "request" that the Commission revise its records to license the person in another name which may appear on such a document will not result in the person being licensed in that name. Rather, such persons will be advised that they must complete the process described above with respect to a legal name change.

With regard to the requirements imposed on licensee advertising (including business cards) by N.J.A.C. 11:5-6.1(b), licensees should be aware that:

1. If a person is licensed in their first, middle and last name, it is not required that all advertising include the middle name. It is also not required that the advertisements include the middle initial;

2. It is not sufficient for a person to include in their advertising their first initial and last name, or their first and middle initials and last name;

3. It is not sufficient for a person to include in their advertising their first initial and middle and last names, or just their middle initial and last names.

Finally, so long as the name in which a person is licensed appears in their ads and on their business cards, it is permissible for the ad or card to also include a nickname in quotation marks or parentheses. The name in which they are licensed may appear in smaller type than the nickname, however it may not be so small as to make it unreasonably difficult for the public to read.



Remax Licensees Are Employees Of Brokers For Purposes Of Computing Workers Compensation Insurance Premiums

On January 27, 2000 the New Jersey Supreme Court issued a ruling in ReMax of New Jersey, Inc. et al. v. Wausau Insurance Cos., et al., 162 NJ 282 (2000) Based upon New Jersey's real estate licensing act, which defines salespersons as employees of the broker and imposes upon brokers the duty to supervise and control their salespersons, and after applying both the "control test" and "relative nature of the work test" crafted by the courts to determine disputes as to the applicability of the Workers Compensation Act, the Court concluded that, salespersons licensed with New Jersey ReMax brokers are employees of those brokers under that Act. Consequently, those brokers were and are obligated to pay workers compensation insurance premiums on their salespersons.

Given that the court attached no weight to what it referred to as the "innovative structure created by the standard ReMax Independent Contractor Agreement", which as was noted by the trial court, "contains a variety of provisions intended to underscore the agent's independent contractor status", it appears to be a safe assumption that this ruling would extend to most, if not all New Jersey brokers. Individual brokers should seek advice from legal counsel if they believe their relationship with their salespersons is so unique as to render the ruling inapplicable to them.

There is a bill (S-916) now pending in the legislature which would exempt real estate licensees from the Workers Compensation Act.

Supreme Court Committee Affirms That the Preparation of Contracts and Leases on Commercial Properties by Real Estate Licensees is the Unauthorized Practice of Law

On or about September 13, 1999 the New Jersey Supreme Court's Committee on the Unauthorized Practice of Law issued its Opinion 35. The Committee concluded that, based upon the Supreme Court's 1983 rulings in NJ State Bar Assn. v. NJ Assn. of Realtors Boards (citations omitted), the exception to the prohibition upon the unauthorized practice of law established for real estate licensees in those opinions extended only to their preparation of certain contracts and leases in residential transactions. Consequently, any non-attorney real estate licensee who prepared a contract or lease on a commercial property would, by doing so, have engaged in the unauthorized practice of law and be subject to sanctions. Many attorneys and real estate professionals had independently concluded that this was the law in New Jersey before Opinion 35 was issued. The issuance of the Opinion serves as a formal confirmation of that position.

Licensees who deal in commercial properties should avoid taking any actions which might be considered the preparation of a contract or lease on such a property, even if the Attorney Review Notice and Provision are included in the document. Furthermore, licensees should be mindful that since the issuance of the initial attorney review opinions other courts have ruled that the filling in of blank spaces on a form contract or lease is considered the preparation of the document for the purpose of determining whether the contract or lease would be subject to the Attorney Review requirements.

Licensees who are unsure about the legality of their actions with respect to contracts and leases on commercial properties should consult with private counsel or submit inquiries directly to the Committee on the Unauthorized Practice of Law at Administrative Office of the Courts, P.O. Box 037, Trenton, New Jersey 08625-0037. Because this issue does not involve a real estate licensing or regulatory matter, the Commission's role is limited to providing pertinent information.

Appellate Court Decision Leaves Challenge to Prohibition on Rebating Commissions Unresolved

On January 29, 1999 the Appellate Division of the Superior Court rendered a ruling in Markheim-Chalmers, Inc. v. Masco Corp., et al., 322 NJ Super. 452 (App. Div. 1999).

The case involved a request for a declaratory ruling by commercial broker Markheim-Chalmers to determine the enforceability of an agreement it entered into with Masco Corp., the parent of another corporation for which Markheim-Chalmers had obtained a lease. The agreement provided that the broker would pay 1/3 of its brokerage commission to Masco, an unlicensed entity. Markheim-Chalmers sought a ruling that the agreement was unenforceable because, pursuant to N.J.S.A. 45:15-17(k), as a licensed real estate broker Markheim-Chalmers was prohibited from paying a rebate on a commission to an unlicensed entity. Masco counter-claimed for fraud. After a summary judgment motion brought by Markheim-Chalmers was granted, Masco appealed. Masco's position was based upon an assertion that N.J.S.A. 45:15-17(k) only proscribed payments by real estate licensees to unlicensed persons for brokerage activity performed by them. In this case, it was agreed by all parties that no such activity had been performed by Masco.

The Appellate Court reversed the ruling granting summary judgment to the broker and remanded the case for further proceedings. In doing so, the court stated; "we sense that the issue potentially has broad implications...The motion judge did not focus on this precise issue...It is an issue, moreover, that the New Jersey Real Estate Commission may have an interest in. It is not one that should be resolved on the basis of what has been presented to us..."

The Commission sought to intervene in the remanded proceeding, but before any decision was rendered the parties settled the case.

The Commission continues to construe N.J.S.A. 45:15-17(k) as prohibiting licensees from rebating a portion of their commissions to unlicensed persons, including the parties to the transaction which generated the commission and persons or entities related to those parties. The Commission does not interpret N.J.S.A. 45:15-17(k) as only prohibiting the payment by a licensee of any "rebate, profit, compensation or commission" in return for the performance of brokerage activity by an unlicensed person. The ruling of the Appellate Division in the Markheim-Chalmers case did not determine that this construction is incorrect. Until a court so concludes or the Commission revises its position of its own volition, licensees should be guided by the interpretation set forth above.

Appellate Court Rules Compliance With New Residential Construction Off-Site Conditions Disclosure Act Does Not Absolve Builders And Brokers From Liability Under The Consumer Fraud Act

On January 21, 2000 an Appellate Division panel rendered a decision in Nobrega v. Edison Glen Associates. The case involved a claim by purchasers of new residential condo units who alleged that the developer had knowingly failed to disclose to them material information. The information involved the fact that the units were located within two miles of two Superfund sites which, it was alleged, had "a substantial depreciating effect" on the units' value. The plaintiffs averred that such conduct subjected the developer to liability under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

In defense the builder asserted that it had fully complied with the notice requirements imposed upon the sellers of new residential properties by the New Residential Construction Off-Site Conditions Disclosure Act, N.J.S.A. 46:3C-1 to 46:3C-12, and that they were therefore immune from liability for the non-disclosure of off-site conditions.

The Appellate Court agreed with the defendant with respect to its liability under the common law for wrongful non-disclosures, but held that the Off-Site Conditions Disclosure Act did not abrogate the developer's obligation to comply with the Consumer Fraud Act. In doing so, the court relied upon the text of the Disclosure Act, legal precedents, public policy considerations, and the legislative history of the Disclosure Act, including a statement and press release issued by the Governor at the time she signed that act into law.

After discussing related laws and prior court decisions, the court concluded that the primary goal of the Legislature in enacting the Disclosure Act was to preserve liability for intentional conduct, i.e. the non-disclosure of material information known to the seller. The court concluded that immunity for such an "unconscionable commercial practice" would be inconsistent with "the jurisprudence and public policy that have guided the courts and the Legislature for more than a quarter century in defining and expanding the rights of consumers".

As this was written, an application by the defendant in Nobrega for certification to the New Jersey Supreme Court, so as to enable the defendant to file an appeal of the Appellate Court's ruling, remained pending.

Licensees involved in the sale of new residential construction should attempt to monitor the status of this case. Presently it is clear that the Off-site Conditions Disclosure Act and the Consumer Fraud Act both apply to such licensees. All licensees should be mindful of their obligation to disclose material information on off-site conditions of which they are aware as clarified by the court in Nobrega with respect to sales of new construction, and as required by Commission rule N.J.A.C. 11:5-6.4(c) with regard to resales.



Cathy Laltrello, broker, Atlantic County. On June 15, 1999, the Commission assessed a fine in the amount of \$3,000 for violations of N.J.S.A. 45:15-17(a) and (l) and N.J.A.C 11:5-6.4 for misrepresenting the status of deposit monies which were held in escrow.

Gina DeLeon, salesperson, Burlington County. On September 14, 1999, pursuant to N.J.S.A. 45:15-19.2 the Commission suspended Ms. DeLeon's license pending the outcome of criminal charges which were pending against her. Ms. DeLeon later consented to the revocation of her license.

Anita Maksimow, salesperson, Monmouth County. On September 14, 1999 after a full hearing, the Respondent was found to have violated N.J.S.A. 45:15-17(e) and 45:15-9 because she did not disclose a prior criminal conviction on her application for a real estate salesperson's license. The Commission imposed a one year period of suspension and ordered that she take the salesperson's education course and again pass the licensing examination. The Commission also imposed a fine of \$250 and ordered that once her license is reinstated, it shall be held on a probationary basis for two years.

Dominick G. Basso, salesperson, Atlantic County. On September 14, 1999 in an uncontested matter, the Commission found that Basso had violated N.J.S.A. 45:15-17(a), (c), (e) and (l) when he engaged in a continued course of misrepresentation by presenting fraudulent contracts for the purchase of new construction and misrepresenting the status of deposit monies to have been held in escrow. The Commission revoked Mr. Basso's eligibility to hold a real estate license for 5 years and imposed a fine of \$5,000.

Emily Venetsanos, salesperson, Bergen County and Matthew Brown, formerly licensed broker. On September 21, 1999, after a full hearing, Ms. Venetsanos was found to have violated N.J.S.A. 45:15-17(a), (e) and (l) and N.J.A.C. 11:5-6.4(a) for making substantial misrepresentations and failing to deal fairly with the parties to a transaction. The Commission suspended Ms. Venetsanos' license for 6 months to be followed by a one year period of probation. The Commission found that Mr. Brown had violated N.J.S.A. 45:15-17(a), (e) and (l) and ordered that he be barred from ever reapplying for any real estate license. The Commission also assessed a fine of \$1,500 against Mr. Brown.

Ms. Venetsanos and Mr. Brown, who were married at the time of the transaction in question, submitted a fraudulent credit report along with an offer to lease a rental property. Ms. Venetsanos acted as a tenant's agent on behalf of Matthew Brown and did not disclose to the listing broker or to the landlord the fact that she and Mr. Brown were married and that she and her children were actually going to occupy the property that was to be rented in Mr. Brown's name.

Terrence Moeller, salesperson, Ocean County. On October 26, 1999, after a full hearing, Respondent was found to have violated N.J.S.A. 45:15-17(e) and (n) for procuring a real estate license through fraud, misrepresentation or deceit. Mr. Moeller's eligibility to hold a real estate license was revoked until July 1, 2002 and a fine of \$2,000 was imposed.

Raymond J. Dziadul, salesperson, Middlesex County. On November 9, 1999, after a full hearing, Mr. Dziadul was found to have violated N.J.S.A. 45:15-1 by engaging in unlicensed activity through brokering a loan secured by a mortgage on commercial real estate while not licensed. The Commission imposed a fine of \$250, ordered a six month term of probation and required Mr. Dziadul to re-take the salesperson's pre-licensure education course and pass both the course and the state license examinations within the probationary period.

Arlate Souza Harris, salesperson, Essex County. On November 16, 1999, the Commission approved a settlement whereby Ms. Souza Harris accepted responsibility for violations of N.J.S.A. 45:15-17(c), (e) and (n) for procuring a real estate license through fraud, misrepresentation or deceit and engaging in a flagrant and continued course of misrepresentation when she submitted a false social security number on her license application, certified to the truthfulness of the statements contained on her license application and gave false and conflicting explanations to the Commission investigator. The settlement terms included a fine of \$2,000, the suspension of her license for a period of one year, the submission of adequate proof of U.S. citizenship or legal residency prior to relicensure, and a one year term of probation commencing upon the re-issuance of her license.

Edson P. Francisco, salesperson, Essex County. On November 16, 1999, the Commission approved a settlement whereby Mr. Francisco accepted responsibility for violations of N.J.S.A. 45:15-17(c), (e) and (n) for procuring a real estate license through fraud, misrepresentation or deceit and engaging in a flagrant and continued course of misrepresentation when he submitted a false social security number on his license application, certified to the truthfulness of the statements contained on his license application and gave false and conflicting explanations to the Commission investigator. The settlement terms included a fine of \$2,000, the suspension of his license for a period of three months, the submission of adequate proof of U.S. citizenship or legal residency prior to relicensure, and a one

year term of probation commencing upon the re-issuance of his license.

Maria F. Santos, salesperson, Essex County. On November 16, 1999, the Commission approved a settlement whereby Ms. Santos accepting responsibility for violations of N.J.S.A. 45:15-17(a), (e) and (n) for procuring a real estate license through fraud, misrepresentation or deceit and making a substantial misrepresentation on her license application by submitting a fictitious social security number and certifying to the truthfulness of the statements contained on her license application. The settlement terms included a suspension of her license for a period of three months, the submission of adequate proof of U.S. citizenship or legal residency prior to relicensure, and a one year term of probation commencing upon the re-issuance of her license.

Ana Stival-DaSilva, salesperson, Essex County. On November 16, 1999, the Commission approved a settlement whereby Ms. Stival-DaSilva accepted responsibility for violations of N.J.S.A. 45:15-17(a), (e) and (n) for procuring a real estate license through fraud, misrepresentation or deceit and making a substantial misrepresentation on her license application by submitting a fictitious social security number and certifying to the truthfulness of the statements contained on her license application. The settlement terms included a suspension of her license for a period of three months, the submission of adequate proof of U.S. citizenship or legal residency prior to relicensure, and a one year term of probation commencing upon the re-issuance of her license.

Eduardo F. Viegas, salesperson, Essex County. On November 16, 1999, the Commission approved a settlement whereby Mr. Viegas accepted responsibility for violations of N.J.S.A. 45:15-17(a), (e) and (n) for procuring a real estate license through fraud, misrepresentation or deceit and making a substantial misrepresentation on his license application by submitting a fictitious social security number and certifying to the truthfulness of the statements contained on his license application. The settlement terms included a fine of \$3,000, the suspension of his license for a period of fifteen days, the submission of adequate proof of U.S. citizenship or legal residency prior to relicensure, and a one year term of probation commencing upon the re-issuance of his license.

James J. Metcalf, broker-salesperson, Hudson County. On December 7, 1999, after a full hearing, Respondent was found to have violated N.J.S.A. 45:15-17(s) for failing to notify the Commission within 30 days of the filing of criminal charges against him and his conviction on those charges. The Commission took into consideration substantial mitigating circumstances and imposed a one year term of probation.

Michael J. Bent, broker-salesperson, Ocean County. On December 14, 1999, the Commission approved a settlement whereby Mr. Bent was found to have violated N.J.S.A. 45:15-17(e) and (s) for his conviction on federal criminal charges and failure to notify the Commission within 30 days of the filing of criminal charges against him and of his conviction on those charges. The settlement terms included a fine of \$2,000 and license revocation concurrent with the term of Mr. Bent's criminal probation.

John R. Cupo, formerly licensed broker, Hudson County ("Cupo I"). On December 14, 1999, the Commission approved a settlement whereby Mr. Cupo admitted to his noncompliance with the terms of a prior Consent Agreement and a prior Order of the Commission, and to engaging in unlicensed real estate activity in violation of N.J.S.A. 45:15-1 and 45:15-3 subsequent to the entry of the said Consent Agreement and Commission Order. The settlement terms included the following provisions: (1) a fine of \$5,000, in addition to previously imposed fines of \$11,000 (which were in arrears), for a total of \$16,000 in fines, with 20% due upon the signing of the settlement order, 20% due within six months of the settlement order, and the balance due by December 20, 2000; (2) an agreement by Mr. Cupo to abide by the Real Estate License Act, N.J.S.A. 45:15-1 et seq., and not to engage in any unlicensed real estate activity; (3) ineligibility to make application for licensure as a broker until May 9, 2005; (4) ineligibility to make application for licensure as a salesperson until December 20, 2000, and then, only if the total fine amount was paid; (5) again passing the salesperson's license examination within thirty days of becoming eligible for licensure; (6) a two year term of probation upon the re-issuance of a license to Mr. Cupo; (7) immediate suspension of any license re-issued to Mr. Cupo, pending a hearing on any future charges of regulatory violations; and (8) issuance of a Commission Order permanently barring Mr. Cupo from obtaining any real estate license upon his failure to comply with any term of the settlement order.

John R. Cupo, formerly licensed broker, Hudson County ("Cupo II"). On March 28, 2000, upon application of the

Commission staff, the Commission found that Mr. Cupo was not in compliance with the terms of the settlement order approved by the Commission on December 14, 1999 ("Cupo I"), and entered an Order permanently barring Mr. Cupo from obtaining any real estate license due to his noncompliance.

Harold Buitrago, unlicensed individual, Union County. On December 21, 1999, after a full hearing, Mr. Buitrago was found to lack the requisite good character, honesty, integrity and trustworthiness that all candidates for licensure must possess pursuant to N.J.S.A. 45:15-9, in that he had notes containing real estate information in his possession during the salesperson's licensing examination. The Commission deemed Mr. Buitrago ineligible for licensure for one year, and that thereafter he would become eligible for licensure only upon his re-taking the salesperson's pre-licensure education course and passing the school and state license examinations.

Lisa Y. Alston, salesperson (inactive), Camden County. On February 1, 2000, the Commission approved a settlement whereby Ms. Alston admitted to a violation of N.J.S.A. 45:15-17(e) for her failure to obtain a new written listing agreement following the transfer of title from a prior owner/seller to a new owner/seller. The settlement terms included a fine of \$1,000, and provisions that prior to any reinstatement of her license she would be required to re-take the salesperson's pre-licensure education course and pass the school and state license examinations, and that any reissued license would be held subject to a one year term of probation.

Leticia Mora, salesperson, Monmouth County. On February 8, 2000, after a full hearing, Ms. Mora was found to have procured a real estate license through misrepresentation in violation of N.J.S.A. 45:15-17(n), in that she represented that no criminal charges were pending against her on her examination pass notice/license application and on her renewal application, when in fact charges were pending at the times those applications were completed. The Commission suspended Ms. Mora's license for a period of thirty days, and ordered a two-year term of probation.

SIMPLE WAYS TO AVOID PROBLEMS

COMMUNICATE with clients, customers and cooperating licensees, especially on a purchaser's failure to timely pay deposits, or the placing of conditions on such payments, such as "Don't deposit this check for two weeks".

Confirm all important communications in writing, especially directives from a client or customer that may be contrary to their interest, such as significantly under-pricing a listing to make a quick sale, or declining to have property inspected.

Do not make or rely on any verbal statements that are inconsistent with what the written documents provide.

Know your limitations, legal, ethical and otherwise.

Explain everything to your clients and customers.

Document all activities regarding a real estate transaction.

Date all offers and contracts, and be sure all counteroffers are acknowledged in writing by all parties.

Make sure all parties to the transaction get a copy of the final, fully executed contract or lease.

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