

4. The provisions of this subsection do not apply to brokers licensed as broker-salespersons.

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

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

Subsections (a) and (c) deleted; subsection (b) recodified as (a).

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

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

Amended by R.1998 d.246, effective May 18, 1998.

See: 30 N.J.R. 278(a), 30 N.J.R. 1827(a).

Rewrote (a).

#### 11:5-1.4A Terms of real estate licenses

Commencing July 1, 1997, broker, broker-salesperson, salesperson and branch office licenses shall be issued on the basis of two year license terms. All licenses issued during each biennial term shall run from the date of issuance to the end of the biennial term. All licenses shall expire on June 30 of the second year following the year in which the license term commenced.

New Rule, R.1997 d.159, effective April 7, 1997.

See: 29 N.J.R. 299(a), 29 N.J.R. 1324(b).

#### 11:5-1.5 Examination rules

(a) In the administration of examinations for licensure as a real estate broker, broker-salesperson or salesperson, the following examination rules shall apply:

1. Examinees shall not be permitted to refer to any notes, books, or memoranda.
2. The copying of questions or making of notes for personal use is strictly prohibited.
3. No examinee shall leave the examining room except at the discretion of the examiner.
4. The real estate broker license and salesperson license examinations, required by N.J.S.A. 45:15-10 to be taken and successfully passed by all applicants for a real estate broker, broker-salesperson or salesperson license before said license may be issued, shall be in the form of a multiple choice examination prepared by a testing service as designated by the Commission. Fees charged applicants to take the real estate examinations shall be considered service fees to be paid directly to the testing service separate and apart from any fee required by N.J.S.A. 45:15-9 to be paid to the Commission at the time of the license application.

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

As amended, R.1972 d.168, effective August 26, 1972.

See: 4 N.J.R. 160(d), 4 N.J.R. 190(a).

As amended, R.1973 d.43, effective February 5, 1973.

See: 5 N.J.R. 13(b), 5 N.J.R. 86(b).

As amended, R.1973 d.306, effective October 25, 1973.

See: 5 N.J.R. 350(a), 5 N.J.R. 338(a).

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

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

"Salesman" replaced by "salesperson".

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

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

#### 11:5-1.6 (Reserved)

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

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

Rule concerning examination and failure deleted.

#### 11:5-1.7 (Reserved)

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

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

Rule on examination as a condition to restoration of license deleted; reserved.

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

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

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

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

1. Mingling the money or other property of his principals with his own;
2. Failure to maintain and deposit promptly in a special account in an authorized financial institution, separate and apart from personal or other business accounts, all moneys received by a real estate broker acting in said capacity, or as escrow agent, or as the temporary custodian of the funds of others in a real estate transaction; or
3. Failure to promptly segregate any properties received which are to be held for the benefit of others.

(d) Where the nature of a given real estate transaction is such that the commissions earned by a broker in connection with services rendered in said transaction are included among the funds deposited to the broker's trust account, the portion of such funds deposited to the broker's trust ac-

count, the portion of such funds which constitute the broker's commission shall be promptly paid from the trust account, with appropriate annotations to the broker's business records to define the amount and source of such commissions; provided, however, that such broker shall have been previously authorized to make such disbursement.

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

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

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

As amended, R.1982 d.101, effective April 5, 1982.

See: 13 N.J.R. 302(b), 14 N.J.R. 345(b).

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

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

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

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

Amended by R.1993 d.8, effective January 4, 1993.

See: 24 N.J.R. 3483(a), 25 N.J.R. 118(a).

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

#### Case Notes

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

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

Real estate salesperson loses license by demonstrating unworthiness and dishonesty through criminal conviction and using escrow monies for personal use. New Jersey Real Estate Commission v. Santoro and Miller, 97 N.J.A.R.2d (REC) 6.

Broker was subject to license revocation and monetary penalty for commingling business and personal funds and for failing to maintain separate account to hold real estate transaction funds. Real Estate Commission v. Potok and Island RMS, Inc., 96 N.J.A.R.2d (REC) 42.

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

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

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

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

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

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

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

#### 11:5-1.9 Funds of others; safeguards

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

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