

TITLE 11

DEPARTMENT OF INSURANCE

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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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

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.

Revocation of real estate license and assessment of penalties were appropriate. *New Jersey Real Estate Commission v. Sabia*, 94 N.J.A.R.2d (REC) 23.

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

Six-month suspension and imposition of penalty was justified. *New Jersey Real Estate Commission v. Donnon*, 94 N.J.A.R.2d (REC) 1.

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

Failure to file income tax return; broker/salesperson license revoked. *New Jersey Real Estate Commission v. McLeod*, 93 N.J.A.R.2d (REC) 9.

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.

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.

Salesperson's failure to file answer to order to show cause or to make appearance before New Jersey Real Estate Commission warranted license suspension. *New Jersey Real Estate Commission v. Grennor*. 92 N.J.A.R.2d (REC) 29.

Salesperson procured real estate license by fraud, misrepresentation and deceit by failing to reveal having pled guilty to charge one week before executing application and licensing form; suspension and fine. *New Jersey Real Estate Commission v. Cordaro*. 92 N.J.A.R.2d (REC) 17.

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.

False voter registration and tampering with public records convictions warranted suspension of real estate salesperson's license. *New Jersey Real Estate Commission v. Federico*. 92 N.J.A.R.2d (REC) 1.

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.

(c) An applicant must apply for and request the issuance of a salesperson's license not later than one year after the date of successful completion of the course prescribed at N.J.A.C. 11:5-1.27. Any person who fails to apply for the issuance of salesperson's license within the one year period shall be required to retake and successfully complete the prescribed course in real estate and the examination.

(d) All applications for salesperson shall be submitted with satisfactory evidence of a high school education or equivalency. Satisfactory evidence shall include, but not be limited to, a photocopy of a high school diploma or transcript.

(e) Every applicant shall present with his/her application for examination evidence of satisfactory completion of a course of education in real estate subjects prescribed under N.J.S.A. 45:15-10.1(a) and Sections 27 and 28 of this subchapter, unless waived by the Commission in accordance with the provisions of N.J.S.A. 45:15-10.2. Holders of a current school certificate which bears an issue date within one year as defined by (c) above, will be permitted to take the salesperson's examination and secure a license, provided said certificate is in compliance with (c) above.

(f) Subsection (e) of this regulation shall not apply to any applicant who has obtained a waiver of educational requirements pursuant to N.J.S.A. 45:15-10.2.

As amended, R.1973 d.214, effective August 2, 1973.

See: 5 N.J.R. 228(f), 5 N.J.R. 316(a).

As amended, R.1974 d.307, effective November 13, 1974.

See: 6 N.J.R. 246(c), 6 N.J.R. 478(e).

As amended, R.1981 d.261, effective July 9, 1981.

See: 13 N.J.R. 306(a), 13 N.J.R. 440(c).

(b) "On or after September 1, 1967" deleted; "for licensure as a salesman" added.

(d) added.

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

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

"Salesman" changed to "salesperson".

As amended, R.1984 d.218, effective June 4, 1984.

See: 16 N.J.R. 489(a), 16 N.J.R. 1352(a).

New subsections (d) through (f) added.

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

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

11:5-1.3 Qualifications for licensing; broker and broker-salesperson

(a) All references in this section to "brokers" shall include broker-salespersons. The experience requirement for licensure as a broker imposed by N.J.S.A. 45:15-9 is construed to require a demonstration by the applicant of their commitment to real estate brokerage as their primary voca-

tion, as evidenced by their involvement in the real estate brokerage business on a full-time basis.

1. With the exception of persons licensed as brokers in other states, all applicants for licensure as a broker must have been continuously licensed and employed on a full-time basis as a real estate salesperson during the three years immediately preceding their application. Such full-time employment shall be demonstrated by a showing that:

i. The applicant has worked as a salesperson under the authority of the broker(s) with whom they were licensed for at least 40 hours per week and during the hours of approximately 10:00 A.M. to 8:00 P.M.;

ii. Such work in (a)1i above was performed during any five days in each week of the three year period; and

iii. If the applicant was employed in any other occupation during the three year period, such other employment was on a part-time basis and did not exceed 25 hours per calendar week.

2. No applications for approval of an applicant's experience to qualify for licensure as a broker shall be made until an applicant:

i. Has been continuously licensed as a salesperson for at least the three years immediately preceding such application;

ii. Has completed the 90-hour general broker's precursory course and the two 30-hour courses referred to in N.J.A.C. 11:5-1.27(g).

(b) The Commission shall give due consideration to the following in reviewing the experience of an applicant:

1. Evidence of having been actively involved in the real estate brokerage business as a real estate salesperson on a full-time basis during each year of the three year period. Written statements by the brokers with whom the applicant was licensed during the three year period which certify the applicant's activity as a salesperson while licensed through those brokers must be submitted.

2. Applicants and/or brokers may also be required to submit supporting documentation relating to the closed transactions on which the applicant received compensation as a salesperson from the broker, or to supply other evidence of full-time activity, such as extensive involvement in a specialized field of real estate brokerage.

3. In no event will an applicant whose brokerage activity was limited to solely making referrals to other licensees be deemed to have fulfilled the full-time, active involvement in the brokerage business requirement for licensure.

(c) Broker-salespersons shall meet the same qualifications as brokers, including the qualifications as set forth in

(a) and (b) above. A person licensed as a broker-salesperson must be employed by and act under the supervision of a duly licensed real estate broker and shall not independently maintain an office or escrow account. A broker-salesperson may be authorized to serve as an office supervisor or a branch office in accordance with the provisions of N.J.S.A. 45:15-12.

(d) Every applicant for licensure as a broker or broker-salesperson shall present with his or her application for licensure examination a certificate of satisfactory completion of courses in real estate and related subjects at a school licensed by the Commission or offered by another approved provider pursuant to N.J.S.A. 45:15-10.1(b) and N.J.A.C. 11:5-1.27 and N.J.A.C. 11:5-1.28, unless waived by the Commission in accordance with the provisions of N.J.S.A. 45:15-10.2 and N.J.A.C. 11:5-1.27.

(e) An applicant must pass the State broker license examination and apply for and request the issuance of a license as a broker or broker-salesperson not later than one year after successful completion of the 150-hour broker preclicensure education requirements. Any person who fails to apply for the issuance of a license as a broker or broker-salesperson within the said one year time period shall be required to retake and successfully complete all prescribed courses and the examination and must submit evidence of having again fulfilled the experience requirement during the three years immediately preceding the new application.

As amended, R.1972 d.150, effective July 27, 1972.

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

As amended, R.1974 d.307, effective November 13, 1974.

See: 6 N.J.R. 246(c), 6 N.J.R. 478(e).

As amended, R.1981 d.261, effective July 9, 1981.

See: 13 N.J.R. 306(a), 13 N.J.R. 440(c).

Substantially amended.

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

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

Former subsections (a) and (f) deleted, recodified, "salesman" changed to "salesperson".

Amended by R.1987 d.68, effective January 20, 1987.

See: 18 N.J.R. 1782(a), 19 N.J.R. 232(a).

Deleted text in (a) "full-time during his apprenticeship as a salesperson" and added text "on a full . . . per calendar week."

Amended by R.1994 d.56, effective February 7, 1994 (operative July 1, 1994).

See: 25 N.J.R. 4849(b), 26 N.J.R. 798(a).

Case Notes

Real estate salesman was not authorized to sue to collect commission to which employer may have been entitled. *Harper-Lawrence, Inc. v. United Merchants and Mfrs., Inc.*, 261 N.J.Super. 554, 619 A.2d 623 (A.D.1993), certification denied 134 N.J. 478, 634 A.2d 525.

Real estate licensing law exemption for attorneys held only to authorize attorneys to sell or rent real estate incidental to their normal practice of law; denial of broker's license to attorney who did not meet statutory apprenticeship and testing requirements upheld. *Spirito v. State, New Jersey Real Estate Commission*, 180 N.J.Super. 180, 434 A.2d 623 (App.Div.1981).

11:5-1.4 Qualifications for corporate, limited partnership and general partnership licensing

(a) In interpreting N.J.S.A. 45:15-9, the following shall apply:

1. The Commission will hold responsible the individual broker or brokers licensed to transact business in the name and on behalf of a corporate or partnership broker licensee in accordance with the provisions of N.J.S.A. 45:15-9 for any actions of the corporate or partnership licensee or its agents in the pursuit of its real estate brokerage business, which violate any of the provisions of the real estate statutes or the regulations promulgated thereunder.

2. Every real estate transaction in which a corporate or partnership licensee participates as a broker shall be under the supervision of a broker or brokers licensed to transact business in the name and on behalf of the corporation or partnership.

3. The broker licensed to transact business in the name and on behalf of the corporate or partnership licensee, in addition to ascertaining that a separate account is maintained for the funds of others coming into the possession of the licensee, shall make certain that no such funds of others are disbursed or utilized without his or her express authorization and knowledge.

4. The provisions of this subsection do not apply to persons 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).

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

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

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

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

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

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

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

Subsections (d) through (h) recodified as (c) through (g).
Amended by R.1993 d.8, effective January 4, 1993.
See: 24 N.J.R. 3483(a), 25 N.J.R. 118(a).

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

Case Notes

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

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

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

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

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

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

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

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

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

11:5-1.9 Funds of others; safeguards

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

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

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

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

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

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Salesman" replaced by "salesperson".

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

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

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

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

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

Case Notes

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

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

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

11:5-1.11 Advance fees; accounting

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

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

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

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

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

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

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

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

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

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

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

6. Copies of all leases and property management agreements;

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

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

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

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

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

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

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

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

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

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

(e) The financial books and other records as described in (a), (b), (c) and (d) above shall be maintained in accordance with generally accepted accounting practice. They shall be located at the main New Jersey office of each broker or, in situations where separate general business and/or trust or escrow accounts are maintained at licensed branch offices, either at that branch office or at the main office of the broker. All such records shall be available for inspections, checks for compliance with this section and copying by a duly authorized representative of the New Jersey Real Estate Commission.

Amended by R.1989 d.425, effective August 21, 1989 (operative November 19, 1989).

See: 21 N.J.R. 1310(a), 21 N.J.R. 2520(a).

Clear specifications added regarding the type of business records brokers are required to maintain, new (a)1, new (b)1-10, and new (c)-(e).

Case Notes

Revocation of real estate broker's license was justified. *New Jersey Real Estate Commission v. Roth*, 94 N.J.A.R.2d (REC) 17.

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

Commingling 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.

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.

11:5-1.13 Inspection of records

(a) Every licensee shall make available for inspection by the Commission or its designated representatives all records of transactions, books of account, instruments, documents and forms utilized or maintained by such licensee in the conduct of the licensed business, which may be pertinent to the conduct of the investigation of any specific complaint.

(b) To accomplish the objectives and carry out the duties prescribed by this Act, especially the provisions of N.J.S.A. 45:15-17, the Commission, in addition to other powers conferred upon it by the Act, may issue subpoenas to any person, administer an oath or affirmation to any person, and conduct hearings in aid of any investigation or inquiry.

(c) All files on pending and closed sale, exchange or lease transactions, all files on listings for sales or rentals, and all property management files shall be maintained or stored at the offices of brokers licensed as employing brokers or corporate or partnership brokers. Upon terminating their employment with such a broker, and/or transferring to the

employment of another such broker, no salesperson or broker-salesperson shall remove or cause to be removed any of the contents of such files from the offices of the broker. The term "files" as used herein shall be construed to mean all transaction records required to be kept by brokers pursuant to N.J.A.C. 11:5-1.12.

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

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

Language citing statute deleted in subsection (a).

Amended by R.1988 d.410, effective September 6, 1988.

See: 20 N.J.R. 883(a), 20 N.J.R. 2295(a).

Added (c).

Petition for Rulemaking: Upon termination from employment with a broker, no salesperson or broker salesperson may remove files from the office pertaining to sale or rental listings.

See: 23 N.J.R. 1968(c).

Public Notice: Petition to amend subsection (c).

See: 23 N.J.R. 2191(b).

Amended by R.1992 d.107, effective March 2, 1992.

See: 23 N.J.R. 3428(a), 23 N.J.R. 3739(a), 24 N.J.R. 852(b).

Meaning of "files" specified at (c).

Case Notes

Real estate licensing law exemption for attorneys held only to authorize attorneys to sell or rent real estate incidental to their normal practice of law; denial of broker's license to attorney who did not meet statutory apprenticeship and testing requirements upheld. *Spirito v. State, New Jersey Real Estate Commission*, 180 N.J.Super. 180, 434 A.2d 623 (App.Div.1981).

11:5-1.14 Use of license for the benefit of others

(a) No arrangement, direct or indirect, shall be entered into by any licensee whereby an individual licensee lends his name or license for the benefit of another person, firm or corporation, or whereby the provisions of the real estate statute and rules relating to licensing are circumvented.

(b) Lending a broker's license for the benefit of another person, firm or corporation shall be construed as including any arrangement whereby a broker fails to personally oversee and direct the operations of the business of which he or she is licensed as broker of record or employing broker. For the purposes of this section, personal oversight and direction of the business shall be construed as requiring the broker to be physically present in the main office or branch office locations of the business at least one day each week (excluding vacations and emergencies). Communication via telephone and/or mail alone for an extended period of time may be considered by the Commission as evidence of prohibited license lending.

(c) Nothing in this section shall be construed to limit a broker's responsibility to insure the adequate supervision of all offices in accordance with the requirements of N.J.A.C. 11:5-1.18 and 1.19.

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

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

Deleted existing text of (b) and added new (b) through (b)2.

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

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

Amended by R.1989 d.426, effective August 21, 1989 (operative November 19, 1989).

See: 20 N.J.R. 2184(a), 20 N.J.R. 3019(a), 21 N.J.R. 1311(a), 21 N.J.R. 2522(a).

Established the minimum amount of personal contact which brokers must maintain with their offices and salespeople, deleted (b) and added new (b) and (c).

11:5-1.15 Advertising rules

(a) Unless otherwise set forth herein, subsection (b) through (n) below shall apply to all categories of advertising including all publications, radio or television broadcasts, business stationery, business cards, business and legal forms and documents, and signs and billboards.

1. Individuals operating as sole proprietors and licensed as employing brokers shall conspicuously display on the exterior of their maintained place of business their name and the words "Licensed Real Estate Broker".

2. Firms licensed as corporate or partnership brokers shall conspicuously display on the exterior of their maintained place of business their regular business name and the name of the individual licensed as their broker of record and the words "Licensed Real Estate Broker".

(b) All advertising of any licensed individual, partnership, firm, or corporate broker shall include their regular business name which, for the purposes of these rules, shall mean the name in which that individual, partnership, firm or corporation is on record with the Commission as doing business as a real estate broker. All advertising by a salesperson or broker-salesperson shall include the name in which they are licensed and the regular business name of the individual, partnership, firm or corporate broker through whom they are licensed. If such advertisements contain a reference to the licensed status of the person placing the ad, their status as a salesperson or broker-salesperson must be indicated through inclusion of a descriptive term as provided in (e) below. A salesperson may not indicate in any advertisement or otherwise that he or she is licensed as a broker-salesperson.

(c) All advertising, with the exception of lawn signs placed on residential properties containing four or fewer units, shall clearly indicate after the licensee's regular business name that the advertising licensee is engaged in the real estate brokerage business. Except as prescribed by N.J.S.A. 45:15-17(j), examples of permissible language shall include, but are not limited to, "Realtor," "Realtist," "real estate broker," "broker," or "real estate agency". Examples of prohibited language when used alone shall include, but are not limited to, "realty," "real estate," "land sales," and "land investments." This provision shall not apply when the word "agency" appears in the advertisement as part of the licensee's regular business name or when the licensee has legal or equitable ownership of the property.

(d) No advertising, with the exception of business cards, shall list home telephone numbers of any broker or salesperson, unless the advertising also contains language such as "evenings", "Sundays", or "holidays", limiting the use of the home telephone numbers to non-office hours. Business cards may list home telephone numbers without also containing such additional language.

(e) The business card of any licensed salesperson shall indicate that this licensee is a salesperson by the use of the words salesperson or sales representative, or sales associate, or where permitted by law, realtor-associate or realtist associate. The business card of any licensed broker-salesperson shall indicate that this licensee is a broker-salesperson by the use of any of the aforementioned words or by the use of the words broker-salesperson. The business card of any licensed broker shall indicate that this licensee is a broker by use of the word broker or, where permitted by law, Realtor or Realtist.

(f) Any advertising which refers to amounts of down payment, monthly payment, or carrying charges, or which indicates that a mortgage is obtainable (where the mortgage referred to is not already a lien against the premises advertised), shall contain the words "to a qualified buyer".

(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 without qualification, 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.

(h) With the exception of magazine or newspaper advertisements published under municipality headings, any advertisement for the sale, exchange or rental of real property, or any interest therein, shall designate the geographical area containing that property by specifying the municipality within which that property is located.

(i) No licensed individual, limited or general partnership, firm or corporation shall advertise or use any form of application or make any inquiry which expresses directly or indirectly any limitation, specification or discrimination as to race, religion, creed, color, sex, affectional or sexual orientation, marital status, national origin, ancestry or as to whether a person is handicapped as that term is defined in N.J.A.C. 11:5-1.23(h).

(j) Any use of an insignia, emblem, logo, trade name or other form of identification in any advertising or other public utterance, either by a single licensee or any group of licensees, which suggests or otherwise implies common ownership or common management among such licensees, shall be prohibited except in the case of branch offices controlled by a single broker or licensee and duly licensed as branch offices pursuant to the provision of N.J.S.A. 45:1-1 et seq. Nothing herein provided is intended to preclude or inhibit the use, advertising or display of any insignia, emblem, logo or trade name of any bona fide trade association by any licensee provided that such licensee is a member of such trade association.

1. Any franchised licensee using in any advertising the trade name of a franchisor shall include in such advertising in a manner reasonably calculated to attract the attention of the public the franchised licensee's regular business name.

2. Any licensee including the franchisor using the trade name of franchisor in any advertising shall also include in a manner reasonably calculated to attract the attention of the public the following legend or a substantially similar legend: "each office is independently owned and operated", except in the following categories of advertising:

i. "For sale" signs located on the premises of specific properties for sale;

ii. Small "spot" classified advertising by a licensee in newspapers, magazines or other publications advertising properties. A small spot classified advertisement is defined as an advertisement which is no more than one column wide and 20 lines long and which describes no more than two properties; a line is defined as a standard newspaper classified advertising line of the newspaper, magazine or other publication in which the advertisement is published;

iii. Business cards; and

iv. Advertising placed or distributed by offices which are wholly owned by the franchisor, which contains the office address and contains language which identifies the office as being wholly owned or the franchisor.

3. The intent of this subsection is to further promote the general purpose of the Real Estate License Act of ensuring that all individuals, firms or corporations are clearly identifiable to the public as the licensed brokers who are financially and otherwise responsible to the consuming public for their real estate brokerage activities. It is not the intent of this subsection to limit or otherwise inhibit the operation of branch offices as set forth in N.J.S.A. 45:15-12 and sections 18 and 19 of this subchapter, nor is it the intent of this subsection to prevent the franchising of any group of licensees provided such franchising or other association is not inconsistent with the purpose of the Real Estate License Act as expressed herein.

(k) Any advertising by any licensed individual, partnership, firm or corporation referring generally to membership in any real estate multiple listing service operation shall specify the complete name of the listing service in which membership is held, except in the following categories of advertising:

1. "For sale" signs and small "spot" classified advertising of any licensee as described in (j) above;

2. Business cards;

3. All business signs.

(l) Any home warranty offer contained in any advertisement shall comply with all Federal and State warranty legislation, including the New Home Warranty and Builder's Registration Act, c.467, L.1977, N.J.S.A. 46:3B-1 et seq., and the Magnuson-Moss Warranty Act, P.L. 93-637, 15 U.S.C. 2301 et seq. Such advertising shall specify clearly whether the warranty is by inspection or non-inspection of the premises, whether the warranty is mandatory, and whether the purchaser is responsible for payment for the warranty. No advertisement shall contain an offer for a warranty unless a warranty may be secured for the property being advertised.

(m) Except as herein provided, no free offering, including the offering of a free appraisal, shall be made in any advertisement or promotional material. "Appraisal" as used herein is given its technical meaning as a complete study and analysis by a specialist or expert to ascertain fair market value using a process in which all factors that would fix price in the market place must be considered.

1. Nothing herein shall be construed as prohibiting the use of such words as "included" or "included in the purchase price" in reference to items included by the owner in the sale of any real property or interest therein.

2. Free offerings ancillary to the real estate transaction process, including but not limited to offerings of market studies, seminars, or offerings in the nature of promotional items of token value, such as calendars or pens, are not prohibited. A market study is not an appraisal as herein defined.

(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.

As amended, R.1976 d.276, effective August 31, 1976.

See: 8 N.J.R. 387(a), 8 N.J.R. 482(a).

As amended, R.1977 d.84, effective March 10, 1977.

See: 9 N.J.R. 91(d), 9 N.J.R. 178(a).

As amended, R.1978 d.42, effective January 31, 1978.

See: 9 N.J.R. 534(c), 10 N.J.R. 116(c).

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.1980 d.52, effective January 31, 1980.

See: 12 N.J.R. 44(a), 12 N.J.R. 128(a).

As amended, R.1980 d.213, effective May 14, 1980.

See: 12 N.J.R. 44(a), 12 N.J.R. 343(a).

As amended, R.1980 d.279, effective June 26, 1980.

See: 12 N.J.R. 340(b), 12 N.J.R. 484(d).

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

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

Time limits on compliance deleted.

As amended, R.1986 d.91, effective April 7, 1986.

See: 17 N.J.R. 666(a), 18 N.J.R. 699(a).

(m)3.-5. deleted.

Amended by R.1987 d.69, effective January 20, 1987.

See: 18 N.J.R. 1679(a), 19 N.J.R. 232(b).

Amended (d) and (e).

Petition: Notice of Action upon petition for Declaratory Ruling and/or Rulemaking limiting the scope of Advertising Rules.

See: 19 N.J.R. 664(a), 19 N.J.R. 570(d).

Amended by R.1988 d.237, effective June 6, 1988.

See: 20 N.J.R. 497(a), 20 N.J.R. 1205(a).

Substantially amended subsection (j).

Amended by R.1989 d.447, effective August 21, 1989.

See: 21 N.J.R. 1312(a), 21 N.J.R. 2552(b).

Exempted residential lawn sign advertisement for properties of four or fewer units, corrected spelling of realtor and added new (n) regarding consent of exclusive listing broker.

Amended by R.1993 d.9, effective January 4, 1993 (operative May 4, 1993).

See: 24 N.J.R. 3484(a), 25 N.J.R. 178(b).

Requirements for signs, cards, etc. amended to show name of broker, identified as such.

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

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

Case Notes

New Jersey Land Sales Full Disclosure Act discriminated in its plain effect against interstate commerce and violated dormant commerce clause. *Old Coach Development Corp., Inc. v. Tanzman*, C.A.3 (N.J.)1989, 881 F.2d 1227.

Barring real estate broker's merchandise coupon program pursuant to statute was not improper regulation of competition. *Coldwell Banker Residential Real Estate Services, Inc. v. New Jersey Real Estate Com'n*, 242 N.J.Super. 354, 576 A.2d 938 (A.D.1990).

Statute prohibiting real estate brokers from using promotions involving "prizes" did not deprive broker that wished to use merchandise coupon program of property without due process. *Coldwell Banker Residential Real Estate Services, Inc. v. New Jersey Real Estate Com'n*, 242 N.J.Super. 354, 576 A.2d 938 (A.D.1990).

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.

11:5-1.16 Contracts of sale, leases and listing agreements

(a) The following paragraphs specify licensees' obligations to obtain written confirmation of the intentions of, and to deliver copies of documents to, parties to a real estate transaction.

1. Where a licensee memorializes the terms of an offer or counter-offer on a writing which will itself become an "instrument" as defined in (a)3 below, the licensee shall deliver to the maker of such an offer or counter-offer a clear copy of the executed offer or counter-offer immediately upon its being signed, and initialled if necessary as provided in this section, by the maker of the offer or counter-offer. Any addition, deletion, or other change in any such offer or counter-offer shall be initialled by the party proposing such a revision and, if accepted, by the other party to the transaction.

2. Where a licensee records the terms of an offer or counter-offer on a writing which is not intended to be binding upon either party, and which so states on its face, in the event that the licensee secures the signature and/or initials of any party on such a writing, the licensee shall provide to the signing and/or initialling party a clear copy of the writing as signed and/or initialled by them.

3. As used in this subsection, the term "instrument" means any complete and fully executed written contract of sale, lease, option agreement, or other writing affecting an interest in real estate, or any complete and fully executed addendum or amendment to any such contract, lease, option agreement or writing. The term instrument as used in this subsection does not include listing agreements and buyer brokerage agreements.

4. Licensees shall immediately deliver to all parties to any fully executed instrument a clear copy with original signatures of any such fully executed instrument. Licensees shall provide their clients with a fully executed copy of any sale or exclusive sale or rental listing contract at the time of execution thereof.

5. Licensee-prepared revisions or additions reflected on the instrument itself shall be initialled by all parties to the transaction. Licensee-prepared revisions or additions to an instrument not memorialized by changes on the instrument itself shall be reflected on amendments or addenda to the instrument signed by all parties to the transaction.

i. Licensees shall immediately deliver to the party proposing a revision or addition to an instrument a clear copy of any proposed revised instrument initialled by that party and a clear copy of any proposed amendment or addendum signed by that party.

ii. All revisions, amendments and addenda to any fully executed instrument which are prepared by licensees must comply with New Jersey law as it pertains to the attorney review of contract and lease documents prepared by real estate licensees.

6. This rule is to ensure prompt communication of the executed evidence of a transaction to all interested parties.

(b) No listing agreement or contract for the sale of real property, or any interest therein, shall contain a prescribed or predetermined fee, commission rate, or commission amount; nor shall any such writing contain a commission clause or provision which suggests (such as with a small blank space and percent sign) to a seller that the commission is a prescribed rate or amount.

(c) The commission clause or provision in all listing agreements for the sale of one to four family dwelling units or interest therein, or in all contracts for such sale, if there is no listing agreement, shall contain in print larger than the predominant size print in the writing, the language: "As seller you have the right to individually reach an agreement on any fee, commission, or other valuable consideration with any broker. No fee, commission or other consideration has been fixed by any governmental authority or by any trade association or multiple listing service." Nothing herein is intended to prohibit an individual broker from independently establishing a policy regarding the amount of fee, commission or other value consideration to be charged in transaction by the broker.

(d) Upon request, the listing broker shall advise the seller of the rate or amount of any commission split or distribution.

(e) All listing agreements of any licensed individual, partnership, firm or corporation which provide for the listing of property with any real estate multiple listing service operation shall specify the complete name of that listing service.

(f) No licensed individual, partnership, firm or corporation shall enter into a "net listing" contract for the sale of real property, or any interest therein. A "net listing" is defined as an agency agreement in which a prospective seller lists real estate for sale with an authorization to a broker to sell at a specified net dollar return to the seller, and which provides that the broker may retain as commission the difference between the specified dollar return to the seller and the actual sales price.

(g) Licensees shall comply with the following provisions:

1. All contracts prepared by licensees for the sale of residential real estate containing one to four dwelling units and for the sale of vacant one-family lots in transactions in which the licensee has a commission or fee interest shall contain, at the top of the first page and in print larger than the predominant size print in the writing, the following language:

THIS IS A LEGALLY BINDING CONTRACT THAT WILL BECOME FINAL WITHIN THREE BUSINESS DAYS. DURING THIS PERIOD YOU MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND CANCEL THE CONTRACT. SEE SECTION ON ATTORNEY REVIEW FOR DETAILS.

2. The contract shall also contain the following language within the text of every such contract.

ATTORNEY REVIEW:

1. Study by Attorney

The Buyer or the Seller may choose to have an attorney study this contract. If an attorney is consulted, the attorney must complete his or her review of the contract within a three-day period. This contract will be legally binding at the end of this three-day period unless an attorney for the Buyer or Seller reviews and disapproves of the contract.

2. Counting the Time

You count the three days from the date of delivery of the signed contract to the Buyer and the Seller. You do not count Saturdays, Sundays or legal holidays. The Buyer and the Seller may agree in writing to extend the three-day period for attorney review.

3. Notice of Disapproval

If an attorney for the Buyer or the Seller reviews and disapproves of this contract, the attorney must notify the Broker(s) and the other party named in this contract within the three-day period. Otherwise this contract will be legally binding as written. The attorney must send the notice of disapproval to the Broker(s) by certified mail, by telegram, or by delivering it personal-

ly. The telegram or certified letter will be effective upon sending. The personal delivery will be effective upon delivery to the Broker's office. The attorney may but need not also inform the Broker(s) of any suggested revisions in the contract that would make it satisfactory.

3. The contract shall also contain the names and full addresses of all persons to whom a Notice of Disapproval must be sent in order to be effective as provided in item three of the Attorney Review Provision.

4. All leases prepared by licensees for a term of one year or more for residential dwelling units in transactions in which they have a commission or fee interest shall, at the top of the first page and in print larger than the predominant size print of the writing, contain the following language:

THIS IS A LEGALLY BINDING LEASE THAT WILL BECOME FINAL WITHIN THREE BUSINESS DAYS. DURING THIS PERIOD YOU MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND CANCEL THE LEASE. SEE SECTION ON ATTORNEY REVIEW FOR DETAILS.

5. The lease shall also contain the following language within the text of every such lease.

ATTORNEY REVIEW:

1. Study by Attorney

The Tenant or the Landlord may choose to have an attorney study this lease. If an attorney is consulted, the attorney must complete his or her review of the lease within a three-day period. This lease will be legally binding at the end of this three-day period unless an attorney for the Tenant or the Landlord reviews and disapproves of the lease.

2. Counting the Time

You count the three days from the date of delivery of the signed lease to the Tenant and the Landlord. You do not count Saturdays, Sundays or legal holidays. The Tenant and the Landlord may agree in writing to extend the three-day period for attorney review.

3. Notice of Disapproval

If an attorney for the Tenant or the Landlord reviews and disapproves of this lease, the attorney must notify the Broker(s) and the other party named in the lease within the three-day period. Otherwise this lease will be legally binding as written. The attorney must send the notice of disapproval to the Broker(s) by certified mail, by telegram, or by delivering it personally. The telegram or certified letter will be effective upon sending. The personal delivery will be effective upon delivery to the Broker's office. The attorney may but need not also inform the Broker(s) of any suggested revisions in the lease that would make it satisfactory.

6. The lease shall also contain the names and full addresses of all persons to whom a Notice of Disapproval must be sent in order to be effective, as provided in item three of the Attorney Review Provision.

7. The failure of any licensee to include such language in any such contract of sale or lease agreement prepared by the licensee shall be construed by the Commission as engaging in the unauthorized practice of law and shall be considered by the Commission as conduct which demonstrates the licensee's unworthiness and incompetency, thereby subjecting the licensee to sanctions pursuant to N.J.S.A. 45:15-17(e).

Amended by R.1977 d.84, effective March 10, 1977.

See: 9 N.J.R. 91(d), 9 N.J.R. 178(a).

Amended by R.1977 d.391, effective October 19, 1977.

See: 9 N.J.R. 344(a), 9 N.J.R. 536(a).

Amended by R.1979 d.461, effective November 26, 1979.

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

Amended by R.1980 d.51, effective January 31, 1980.

See: 12 N.J.R. 127(e).

Amended by R.1980 d.214, effective May 14, 1980.

See: 12 N.J.R. 342(d).

Amended by R.1980 d.274, effective June 19, 1980.

See: 12 N.J.R. 423(d).

Amended by R.1980 d.408, effective September 23, 1980.

See: 12 N.J.R. 340(b), 12 N.J.R. 665(c).

(c) substantially amended.

Amended by R.1980 d.409, effective September 24, 1980.

See: 12 N.J.R. 665(d).

(c) compliance date amended from November 1, 1981 to January 2, 1981.

Amended by R.1983 d.471, effective November 7, 1983.

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

Time limits on compliance deleted.

Amended by R.1987 d.159, effective April 6, 1987.

See: 18 N.J.R. 1677(a), 18 N.J.R. 2112(a), 19 N.J.R. 551(a).

Added (g).

Amended by R.1987 d.359, effective September 8, 1987.

See: 19 N.J.R. 503(b), 19 N.J.R. 1646(a).

Added (h) "Agreement to Honor".

Invalidity Annotation

N.J.A.C. 11:5-1.16(h) held invalid as an intrusion upon the State Supreme Court's constitutional authority to regulate the practice of law. *Carmagnola v. Hann*, 233 N.J.Super. 547 (App. Div. June 12, 1989), 559 A.2d 478.

Amended by R.1989 d.539, effective October 16, 1989.

See: 21 N.J.R. 2438(b), 21 N.J.R. 3299(a).

Subsection (h) deleted due to Appellate Court decision — N.J.Super. —, Dkt. No. A-2211-88T2F (App.Div.1989).

Amended by R.1993 d.10, effective January 4, 1993.

See: 24 N.J.R. 3485(a), 25 N.J.R. 179(a).

Text at (a) substantially amended to specify licensees' obligations to parties in a real estate transaction involving offers or counter-offers. Petition for Rulemaking.

See: 25 N.J.R. 4523(c), 26 N.J.R. 505(b).

Case Notes

Statute giving terminated agents full commission rights if they continued to service policies would prevail over strict terms of contract settlement between insurance company and terminated agents. *Matter of Terminated Aetna Agents*, 248 N.J.Super. 255, 590 A.2d 1189 (A.D.1990), certification denied 126 N.J. 319, 598 A.2d 880.

Regulation requiring that all real estate contracts subject to attorney review contain an "agreement to honor," was void. *Carmagnola v. Hann*, 233 N.J.Super. 547, 559 A.2d 478 (A.D.1989).

11:5-1.17 Participation in trade associations or listing services

(a) No licensed individual, partnership, firm or corporation shall become a member of or otherwise participate in the activities or operation of any trade association or organization or of any multiple listing service operation which engages in the following policies and practices:

1. Places requirements, obligations, or standards upon licensed members or participants which conflict with the Real Estate Licensed Act, N.J.S.A. 45:15-1 et seq., the Land Sales Disclosure Act, N.J.S.A. 45:15-16.3 et seq., the New Jersey Antitrust Act, N.J.S.A. 56:9-1 et seq., or the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., or which otherwise relate to the comprehensive scheme of regulation already preempted by the State of New Jersey;

2. Interferes with the licensee's obligation of fidelity to his client's interests, his obligation of dealing fairly with all other parties in a transaction, or his obligation of fully cooperating with any other New Jersey licensee, as more fully set forth in N.J.A.C. 11:5-1.23;

3. Directly or indirectly imposes or attempts to impose prescribed or predetermined fees or commission rates or commission amounts, or prescribed or predetermined commission splits, between the listing broker and the selling broker.

(b) Except as specifically provided in (a) above, nothing herein is intended to prohibit any trade association or organization or any multiple listing service operation from imposing rules, practices and standards upon licensed members or participants which reasonably relate to the conduct of that association or service and which will not otherwise require the association or service to be licensed as a real estate broker.

Amended by R.1979 d.461, effective November 26, 1979.

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

11:5-1.18 Maintained offices

(a) Every resident real estate broker not licensed as a broker-salesperson shall maintain a main office for the transaction of business in the State of New Jersey, which shall be open to the public during usual business hours. This main office and the activities of the licensees working from it shall be under the direct supervision of either the broker himself or herself, or of a person licensed as a broker-salesperson. Such supervision shall be maintained on a full time basis. Maintaining full time supervision shall not be construed as requiring the person performing the supervisory functions to be present at the office location continuously during usual business hours. However, the person performing the supervisory functions shall provide sufficient information so as to allow the personnel at the main office to make communication with that person at all times. Further, the licensee supervising the main office shall be so employed on a full time basis and, when not required to be away from the office for reasons related to the business of the office, shall be physically present at that office during usual business hours at least five days per calendar week (excluding vacations and emergencies) and shall not be otherwise employed during such time.

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

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

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

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

"Salesman" replaced by "salesperson".

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

See: 20 N.J.R. 1160(a), 21 N.J.R. 1312(b), 21 N.J.R. 2523(a).

Clarification obligation of brokers of record to supervise their main office on a full time basis and unusual business hours, added to (a) and new (a)1.

Case Notes

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

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

11:5-1.18 (Maintained offices)

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

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

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

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

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

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

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

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

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

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

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

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

(f): Substantially amended.

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

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

Required that branch offices be supervised by broker-salespersons.

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

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

Case Notes

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

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

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

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

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

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

11:5-1.21 Employment of salesperson sponsored by broker

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

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

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

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

"Salesman" replaced by "salesperson".

11:5-1.22 Broker insurance placement provision

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

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

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

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

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

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

WAIVER OF BROKER COOPERATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Statutory cite added.

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

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

Amended to clearly define full cooperation.

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

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

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

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

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

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

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

Case Notes

Builder-developer of residential real estate or broker representing it may be liable for nondisclosure of off-site physical conditions known to it and unknown and not readily observable by purchaser if the existence of those conditions is of sufficient materiality to affect the habitability, use, or enjoyment of the property. *Strawn v. Canuso*, 140 N.J. 43, 657 A.2d 420 (1995).

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

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

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

Real estate agent held not liable for damages for any tortious interference with vendors' existing or prospective contracts where agent transmitted to vendor each bidder's offer on property as they were submitted to her, and secured for vendors a purchaser at the highest price obtainable through competitive bidding. *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.

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

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

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

3. All salespersons' commissions are paid to date;

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

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

6. All signs and advertisements have been changed to reflect the broker now authorized to transact business in the name of the firm;

7. All records required to be maintained pursuant to N.J.A.C. 11:5-1.12 have been turned over to the new broker, and the new broker acknowledges responsibility to maintain such records for a period of six years;

8. The new broker acknowledges that he or she will be responsible to transact business in the name and on behalf of the firm.

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

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

"Salesman" changed to "salesperson", language simplified.

Amended by R.1985 d.186, effective April 15, 1985.

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

11:5-1.25 (Reserved)

As amended, R.1974 d.71, effective March 20, 1974.

See: 6 N.J.R. 68(d), 6 N.J.R. 151(b).

As amended, R.1976 d.129, effective April 30, 1976.

See: 8 N.J.R. 124(c), 8 N.J.R. 301(a).

As amended, R.1976 d.275, effective August 31, 1976.

See: 8 N.J.R. 387(b), 8 N.J.R. 516(d).

As amended, R.1977 d.35, effective February 10, 1977.

See: 9 N.J.R. 24(a), 9 N.J.R. 127(b).

As amended, R.1977 d.292, effective August 10, 1977.

See: 9 N.J.R. 281(b), 9 N.J.R. 438(c).

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

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

Language simplified; (b)5i deleted.

Amended by R.1986 d.91, effective April 7, 1986.

See: 17 N.J.R. 666(a), 18 N.J.R. 699(a).

Substantially amended.

Amended by R.1987 d.199, effective April 20, 1987.

See: 18 N.J.R. 2416(a), 19 N.J.R. 647(a).

Substantially amended.

Repealed by R.1990 d.455, September 17, 1990.

See: 22 N.J.R. 1421(a), 22 N.J.R. 2969(d).

Land Sales Full Disclosure Act found unconstitutional; see new rules at N.J.A.C. 11:5-6 interpreting P.L. 1989 c.239.

11:5-1.26 Blockbusting; solicitation

(a) No broker or salesman shall affirmatively solicit the sale, lease or the listing for sale or lease of residential property on the grounds of alleged change of value due to the presence or prospective entry into the neighborhood of a person or persons of another race, religion or ethnic origin, nor shall distribute, or cause to be distributed, material, or make statements designed to include a residential property owner to sell or lease his property due to such change in the neighborhood.

(b) Every real estate broker soliciting the sale, lease or the listing for sale or lease of three or more residential properties fronting on either side of any street between intersecting or cross streets or between a cul-de-sac or other like termination point and an intersecting or cross street within the same month, whether directly or through his salesman, shall maintain a permanent record for at least one year from the date of said solicitation, which shall be available for inspection by the Commission or any representative thereof upon request, setting forth the name and

address of each person so solicited, the address of the property involved, the name of the licensee actually making such solicitation, and the date upon which the solicitation took place. At the request of the Commission or any representative thereof, any such broker shall file with the Commission a copy of the permanent record, or a statement containing the same information as set forth in the permanent record. Such filing shall be made with the Commission no later than ten days following the request therefor.

(c) For the purpose of this rule, "soliciting" includes solicitation by telephone, mail, personal visitation, materials distributed by hand or any other media.

As amended, R.1972 d.127, effective June 28, 1972.

See: 4 N.J.R. 71(a).

11:5-1.27 Educational requirements for salespersons and brokers in making application for licensure examination

(a) All applicants for a salesperson's or broker's license shall present with their license application evidence of their satisfactory completion of a course of education in real estate subjects taught in accordance with N.J.S.A. 45:15-10.1 and as required by this section.

1. This requirement shall also apply to disabled veterans making application for licensure pursuant to N.J.S.A. 45:15-11. However, the Commission shall approve a program of studies in real estate completed by such a veteran offered by a provider other than a licensed school if the program consisted of at least 75 hours in the case of an applicant for a salesperson's license, or 225 hours in the case of an applicant for a broker's license and the program was offered by an accredited college or university for credit.

2. No person shall receive credit toward the fulfillment of the salesperson prelicensure education requirement for attendance at a broker's prelicensure course and no person shall receive credit toward the fulfillment of the broker's prelicensure education requirements for attendance at a salesperson's prelicensure course.

(b) To qualify to challenge the real estate salesperson license examination, a candidate must first successfully complete a course of study in real estate at a school licensed by the Commission pursuant to N.J.S.A. 45:15-10.4 consisting of a minimum of 75 hours as specified in (f) below. To qualify to challenge the real estate broker's license exam, a candidate must first successfully complete courses of study in real estate consisting of a minimum of 150 hours as specified in (g) below, offered by a licensed school or, with respect to those certain courses specified in (g)5 below, offered by some other Commission-approved provider.

(c) No person with the exception of qualified disabled veterans shall receive credit for satisfactory completion of the prescribed 150 hours of broker's courses unless that

person was the holder of a salesperson's license at the time of enrollment in said course.

(d) The time allotted by any school for a final examination covering real estate subjects shall be applicable toward the minimum hours of course study. No more than five minutes of each course hour may be utilized for breaks in the actual classroom instruction being conducted at any given session of a pre-licensure course. During the time in which actual classroom instruction is conducted, in addition to covering the substantive material mandated by (f) and (g) below, instructors are to provide thorough instruction on the State license examination and license issuance procedures for salesperson and broker license candidates, as applicable, and to perform all reasonably required administrative functions such as taking attendance and making announcements of general interest.

(e) The requirements that broker license candidates complete the general 90 hour broker prelicensure education course and that salesperson license candidates complete the 75 hour salesperson prelicensure education course shall not apply to:

1. Applicants for licensure as a broker or salesperson who have held a real estate broker's license issued by another state and who were actively engaged in the real estate brokerage business for three years or more immediately preceding the date of application;

2. Applicants for licensure as a broker who are attorneys at law admitted to the practice in the State of New Jersey and applicants for licensure as a salesperson who are attorneys at law admitted to practice in New Jersey or in any other state at the time of making application;

3. Applicants for licensure as a salesperson who have earned a college degree from any accredited institution of higher education, provided that:

i. The total number of college level classroom hours devoted to real estate and related subjects was 75 or more, and such courses were completed within three years of making application;

ii. The applicant received a bachelor or associate degree in real estate regardless of how long prior to their application for a waiver they received that degree; or

iii. The applicant satisfactorily completed 75 or more classroom hours of course work in real estate or related subjects, at least 45 hours of which consisted of instruction on real estate conducted as part of a post-graduate program and that such post-graduate studies were completed within three years of making application.

4. Applicants for licensure as a salesperson who hold or held a real estate license issued by another state, provided that:

i. The applicant has satisfactorily completed a prelicensure course of real estate education at a proprietary school, college or university in that other state;

ii. The prelicensure course was sanctioned by the real estate licensing authority of that state;

iii. The total number of classroom hours included in the course was 75 or more;

iv. The applicant qualified for licensure in that state by examination; and

v. The applicant was actively licensed in that state within three years of applying for the waiver.

5. Applicants for licensure as a salesperson who previously held a license as a New Jersey real estate broker and whose last license expired more than two but less than five years prior to making application.

(f) The salesperson's course of 75 hours shall include:

1. Property rights (9 hours);

2. Contracts and other property instruments (12 hours);

3. Leases and landlord-tenant relations (6 hours);

4. Mortgages and other liens (12 hours);

5. Business opportunity sales (2 hours);

6. The laws of agency (12 hours);

7. Appraising (2 hours);

8. License Act and regulations (9 hours);

9. Other states, Federal and municipal laws and regulations (5 hours);

10. Salesperson duties and pitfalls in the real estate business (3 hours);

11. Quizzes and final examination (3 hours).

(g) The 150 hours of prelicensure education required of candidates for licensure as a broker or broker-salesperson by N.J.S.A. 45:15-10 shall be acquired as provided in this subsection. A 90 hour general broker's prelicensure course shall first be completed in accordance with the following syllabus and directives. Thereafter, two 30 hour broker courses as described in (g)5, 6 and 7 below shall be completed. All three courses, totalling 150 hours of instruction, must be successfully completed within a period of two years. Where the three courses are not so completed, a candidate must again successfully complete any previously taken course and all courses not previously taken within the two year time frame, and again fulfill the experience requirement established at N.J.S.A. 45:15-9 and N.J.A.C. 11:5-1.3 in order to qualify to challenge the broker license examination.

1. The 90 hour general broker's prelicensure course may be taught in blocks or modules of material. The maximum number of modules into which the course may be divided is 23, with their content corresponding to the 23 subject matter areas identified in the syllabus below. Schools offering courses in modules may include more than one subject matter area in a given module. No student may commence a course which is offered in modules on a date other than the starting date of any module. No student shall be given credit for the successful completion of a 90 hour general broker's prelicensure course unless and until they have received instruction in all of the subject matter areas identified below for approximately the number of hours indicated, and passed a comprehensive final examination. The 90 hour general broker's prelicensure course shall be conducted in accordance with the following syllabus and directives. Substantive instruction shall be provided on the following topics for approximately the number of hours indicated:

i. Review license laws and regulations including provisions of the Land Sales Full Disclosure Act and N.J.A.C. 11:5-1.25 (six hours);

ii. Listing contracts—sales and rentals (three hours);

iii. Sale contracts (three hours);

iv. Deeds and real property rights and interests including nature of ownership, legal description, chain of title, restrictions, consideration, various types, acknowledgments and recording, land and land elements, water rights (including riparian rights), state claims regarding tidelands estates and other interests, methods of ownership, dower and curtesy, wills and descent, adverse possession and fixtures (three hours);

v. Advanced financing techniques including qualification formulae, various types, typical prerequisites (insurance, flood insurance, if applicable, certificate of occupancy, etc.) and income tax ramifications (six hours);

vi. Liens, foreclosures and redemptions (one hour);

vii. Easements, restrictions, etc. (one hour);

viii. Condemnation (one hour);

ix. Zoning, including non-conforming uses, variances, subdivisions, planning, zoning issues raised by condominium construction or conversion and other types of real estate development (five hours);

x. Surveys (non-government type) and legal descriptions (one hour);

xi. Property taxes, assessment, re-valuations, assessment appeals and special appeals (three hours);

xii. Real estate valuation including techniques and distinctions between comparative market analyses and formal appraisals (three hours);

xiii. Settlement/closing procedures, RESPA forms (six hours);

xiv. Mathematics relative to real estate (six hours);

xv. Laws: Federal Fair Housing and New Jersey "Mount Laurel" requirements, the New Jersey Law Against Discrimination, RESPA, Truth in Lending, rent control and New Jersey Land Use Law (total three hours);

xvi. Business and management practices (total of six hours for (g)1xvi(1) through (6) below), including:

(1) Company structure including single ownership, partnership, corporate, requirements to establish, employees vs. independent contractors;

(2) Office management including bookkeeping and accounting relative to real estate, escrow responsibilities, company dollars, ledgers, records and computers;

(3) Personnel management including recruiting, hiring, training, supervising, compensation and termination;

(4) Advertising and promotions;

(5) Community involvement by the company, broker and salespersons; and

(6) Insurance including errors and omissions, etc.

xvii. Principles of agency including ethics and legal liability, disclosure requirements and case studies (six hours);

xviii. Commercial and industrial real estate including small scale, large scale, leasing, financing, site analysis, advertising, remuneration, bulk sales, U.C.C., considerations in franchise transactions, E.C.R.A., BOCA Code, construction financing and other commercial construction concerns (three hours);

xix. Property management including responsibilities and information regarding repairs and maintenance, public relations, collection of rents, government regulations, business trends, personnel, recordkeeping, advertising, etc. (three hours);

xx. Residential real estate development including requirements of New Jersey's Planned Real Estate Development Act including time-sharing, the Home Owner's Warranty program and other concerns regarding single-family and condo/co-op development, conversion, marketing and financing (two hours);

xxi. Leases and landlord/tenant laws including Truth in Renting Law (four hours);

xxii. Real estate investments, syndications, REIT's, limited partnerships and S.E.C. licensing requirements (two hours); and

xxiii. Income tax considerations and ramifications of various real estate transactions (three hours).

2. Within the 90 hour general broker prelicensure course instruction will also be provided on the following topics for the hours indicated. These topics shall be taught in such a manner as to familiarize students with the basic elements of the listed topics and to impart to students an awareness of their scope and effect. The coverage on these topics will also inform students of the sources which can be contacted in order to obtain additional general information and/or specific data concerning the topics' applicability to or impact upon particular locations, and to educate students on their obligations and responsibilities as licensees to ascertain and disclose such information. The topics to be taught are:

- i. Radon contamination, which instruction shall also include testing techniques, remediation techniques and the New Jersey DEP confidentiality statute (one hour);
- ii. Ground water contamination, which instruction shall also include testing and remediation techniques (one hour);
- iii. Problems posed by a property's proximity to solid waste disposal and/or toxic waste sites (one hour);
- iv. Ground water percolation and private sewage disposal systems, which instruction shall also include testing methods (one hour);
- v. Problems posed by lands officially designed as Wetlands, Pinelands, or within any other special classifications (one hour); and
- vi. New Jersey's Coastal Areas Facilities Review Act (one hour).

3. Instructors conducting 90 hour general broker prelicensure courses shall provide general information to their students concerning the procedures through which students can arrange to sit for the State license examination and through which licenses are issued by the Commission, and shall give at least two spot quizzes and a comprehensive final exam on the material covered in the course (four hours).

4. In addition to classroom instruction and assigned reading from a general textbook, in the 90 hour broker course students shall also be assigned additional outside reading on various topics which shall include, but not be limited to, informational publications of the New Jersey Department of Environmental Protection on the various environmental topics covered, those sections of the New Jersey Law Against Discrimination which directly relate to the activities of real estate professionals, and other topics as directed by the New Jersey Real Estate Commission.

5. After having successfully completed the 90 hour broker course, all candidates for licensure as a broker or broker-salesperson must successfully complete a 30 hour prelicensure course on brokers' ethics and agency law and relationships, and a second 30 hour prelicensure course on office management and related topics.

i. All such agency/ethics and office management courses shall be taught by licensed instructors at licensed schools.

ii. All such agency/ethics courses shall be taught utilizing methods which maximize the use of case studies of recent Commission decisions in disciplinary actions, demonstration models and other non-lecture techniques.

iii. A final examination of not less than one hour shall be administered in all such courses on which students must receive a passing grade in order to be deemed to have successfully completed such courses.

iv. No school shall allow students to commence any 30 hour agency/ethics course or office management course at a time other than the starting date of such courses.

6. The 30 hours of instruction in the ethics/agency course shall be devoted to:

i. The fiduciary duties owed by agents to their principals;

ii. Disclosed and undisclosed dual agency;

iii. Conflicts of interest and self-dealing;

iv. The risks and benefits of sub-agency to the principal and the agent;

v. Restrictions on and disclosure requirements regarding acting for more than one party to a transaction, including those pertaining to licensees providing mortgage services;

vi. Disclosure requirements to non-principals;

vii. Issues raised by licensees involved in transactions as non-agents; and

viii. The obligations to properly qualify or pre-qualify prospective purchasers and related issues.

7. The 30 hours of instruction in the office management and related topics course shall be devoted to:

i. Office management requirements imposed upon supervising brokers of main and branch offices;

ii. Recordkeeping requirements, with particular emphasis upon and extensive coverage of escrow account records;

iii. The importance of adequate supervision and training of other licensees to assure their compliance with the license law and the rules of the Commission;

iv. Instruction on proper qualification and pre-qualification techniques, including requiring demonstrations by the students, and with emphasis upon the significance of training and oversight of other licensees;

v. Statutory and rule requirements pertaining to contracts, leases and listing agreements and to broker advertising;

vi. Closings;

vii. Environmental concerns; and

viii. Instruction on licensure requirements and procedures applicable to license applications, transfers, changes of broker address, branch offices, etc., and office closing requirements.

(h) A complete syllabus for the salesperson and broker courses shall be maintained at the offices of the Real Estate Commission and be open to the public for inspection.

(i) All course hours are suggested and may be modified at the discretion of the director of the approved school subject to written notice to and written approval by the Real Estate Commission.

(j) For purposes of the Real Estate Commission, the salesperson's course shall be equivalent to five credits and the broker's course shall be equivalent to six credits.

As amended, R.1974 d.307, effective November 13, 1974.

See: 6 N.J.R. 246(c), 6 N.J.R. 478(e).

As amended, R.1978 d.135, effective April 27, 1978.

See: 10 N.J.R. 163(b), 10 N.J.R. 256(d).

As amended, R.1978 d.271, effective August 2, 1978.

See: 10 N.J.R. 256(b), 10 N.J.R. 399(b).

As amended, R.1979 d.52, effective February 8, 1979.

See: 10 N.J.R. 498(c), 11 N.J.R. 142(b).

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"; subsection (k) deleted.

As amended, R.1984 d.218, effective June 4, 1984.

See: 16 N.J.R. 489(a), 16 N.J.R. 1352(a).

Section substantially amended.

Amended by R.1988 d.411, effective September 6, 1988.

See: 20 N.J.R. 725(b), 20 N.J.R. 2296(a).

Subsections (d) and (e) substantially amended.

Amended by R.1988 d.254, effective June 6, 1988 (operative December 1, 1989).

See: 19 N.J.R. 1051(a), 20 N.J.R. 1205(b).

At (g) old text deleted, new (g) added; brokers pre-licensure syllabus revised.

Notice of Correction, effective May 4, 1992.

See: 24 N.J.R. 1799(a).

Amended by R.1994 d.58, effective February 7, 1994 (operative July 1, 1994).

See: 25 N.J.R. 4852(a), 26 N.J.R. 799(b).

Notice of Correction, effective August 15, 1994.

See: 26 N.J.R. 3442(a).

Case Notes

Real Estate Commission did not deny real estate sales person due process by failing to notify her that her real estate license had expired. *Coyle v. New Jersey Real Estate Com'n*, 280 N.J.Super. 93, 654 A.2d 986 (A.D.1994).

Applicants (real estate salespersons) who were denied relicensure upon their failure to apply for renewal within a two-year period after expiration of their last licenses were not deprived of vested property right in violation of due process by statutory amendment which required school and test for relicensure following a 90-day grace period. *Graham v. N.J. Real Estate Commission*, 217 N.J.Super. 130, 524 A.2d 1321 (App.Div.1987).

Real estate licensing law exemption for attorneys held only to authorize attorneys to sell or rent real estate incidental to their normal practice of law; denial of broker's license to attorney who did not meet statutory apprenticeship and testing requirements upheld. *Spirito v. State, New Jersey Real Estate Commission*, 180 N.J.Super. 180, 434 A.2d 623 (App.Div.1981).

11:5-1.28 Licensed schools and instructors; requirements

(a) The following regulations are applicable to schools and instructors licensed to conduct courses of education in real estate subjects pursuant to N.J.S.A. 45:15-10.4 and 10.5 and to applicants for such licenses.

1. The original license term for pre-licensure course instructors and schools shall begin on July 1, 1994 and terminate on February 28, 1997. Thereafter, each two-year license term for school and instructor licenses shall run from March 1 to the last day of February of the second following year.

(b) The Commission shall require any school or instructor in making application for licensure to submit certain documents, statements and forms, which shall form the basis for the Commission's judgment whether to grant a license. Where the Commission initially denies an application for a school or instructor license, it shall provide to the applicant notification in writing with reasons for such action. The school may appeal such a decision to the full Commission. N.J.A.C. 11:5-5.1 shall be applicable to all such appeals.

(c) Public adult education programs conducted under the auspices of a board of education in this State and any college or university accredited as such by the State Department of Higher Education shall be presumed to be qualified providers of real estate courses, so long as their real estate prelicensure education program is under the direction of a licensed instructor or other qualified individual who has affirmatively demonstrated to the Commission his or her good moral character and has met the other requirements of N.J.S.A. 45:15-10.9.

(d) Except as provided in (c) above, all other applicants for a license to operate a real estate prelicensure school, and in the case of a corporation, or limited or general partnership, the members, officers, directors and owners of a controlling interest thereof, shall demonstrate their good moral character, including the absence of any conviction for the crimes or other offenses specified under the provisions of N.J.S.A. 45:15-12.1. The Commission may make such further investigation and require such proof as it deems proper as to the honesty, trustworthiness, character and integrity of an applicant.

(e) When a school is to be conducted in the name of a corporation, a certified copy of its certificate of incorporation shall accompany the application for licensure. When a school is to be conducted under a trade name, whether a sole proprietorship, firm, general partnership, or limited partnership, a true copy of the certificate of trade name or articles of the general or limited partnership as filed in the office of the county clerk shall accompany the application. A school shall not use the designation of "College" or "University," as part of its name or in any other manner, unless it, in fact, meets the standards and qualifications of the State agency having jurisdiction and has been approved by that agency.

(f) Every school licensed by the Commission shall maintain a bona fide office open to the public during normal business hours for the purpose of assisting former and current students. Schools shall provide adequate space, seating, equipment and instructional materials for their students. The premises, equipment and facilities of the school shall comply with all local, city, county and State regulations, such as fire codes, building and sanitation codes. A certificate from proper authority covering these requirements shall accompany an application for school licensure. The Commission may require proof of ownership or a copy of the lease if the facility is rented. Public adult education programs conducted under the auspices of a board of education in this State and any college or university accredited as such by the State Department of Higher Education, the facilities of which have been approved by a State agency, shall be presumed to have met the requirements of this paragraph, so long as the real estate courses offered are held at the approved facility.

1. Any additional teaching locations must be licensed by the Commission and must comply with all the requirements applicable to licensed schools, their directors and instructors as set forth in the Act and this rule. School directors shall have oversight responsibility for these locations. All courses conducted at such locations must be taught by licensed instructors or guest lecturers, pursuant to N.J.S.A. 45:15-10.5 and this rule.

(g) All schools shall furnish to the Commission at the time of application for initial licensure the school policy and regulations pertaining to standards for satisfactory completion of the courses offered at the school and the issuance of a Certificate, conditions for dismissal of a student and conditions for reinstatement.

1. Any changes in school policy and regulations, as set forth in paragraph (g) above, from the information submitted with the original application for school licensure or as otherwise previously supplied, shall be promptly disclosed to the Commission in writing, or on a form which the Commission prescribes.

(h) When a school fulfills all of the requirements for licensure, then a license shall be executed by the President of the Commission as attested by the Executive Director. School licensure shall be limited to the specific ownership and school locations identified on the license document(s).

(i) An individual seeking approval as a director of a licensed real estate school administered by a public adult education program or an accredited college or university who is not licensed as a real estate instructor may nevertheless qualify as the director of such a school, so long as he or she is at least 18 years of age; has a background of good moral character, including the absence of any conviction for the crimes or other offenses specified under the provisions of N.J.S.A. 45:15-12.1; and has fulfilled all of the education requirements imposed upon candidates for licensure as real estate instructors within two years of applying to the Commission for approval to be the director of such a school.

(j) In order to enable the Commission to confirm that courses offered by real estate schools include the required number of hours of instruction as prescribed in N.J.S.A. 45:15-10.1(a) and (b) and N.J.A.C. 11:5-1.27, every six months, each school director shall submit data on courses to be offered by their school in the forthcoming six month period, the starting and ending dates of the courses, the days and hours of class sessions and teaching locations. Such course information shall be provided on forms prescribed by the Commission and shall be retained as permanent records for not less than three years after submission.

(k) No person, other than a guest lecturer, shall teach real estate education courses, the attendance and successful completion of which shall constitute the fulfillment of the educational prerequisites for licensure established under N.J.S.A. 45:15-10.1, unless that person is licensed as an instructor pursuant to N.J.S.A. 45:15-10.5 and this section.

1. Each applicant for licensure as a real estate instructor shall be 18 years of age or older and shall have a background of good moral character, including the absence of any conviction for those certain crimes or other like offenses referred to in N.J.S.A. 45:15-12.1, subject to the applicant's ability to affirmatively demonstrate his or her rehabilitation from such conviction. In order to confirm the absence of any such conviction, the Commission shall require all non-attorney applicants to submit with their application for instructor licensure a New Jersey State Police Request for Criminal History Record Information Form and a certified check or money order in the amount established by the New Jersey State Police as the processing fee for such forms.

2. Each applicant for licensure must hold a bachelor's degree from an accredited college or university, except for the following applicants:

i. New Jersey licensed brokers who have been continuously licensed as such for the two years immediately preceding their application; and

ii. Licensed brokers from other states who have been continuously licensed as such for the three years immediately preceding their application.

3. Except as provided in (l)3i and ii below, all instructor license applicants must successfully complete all of the education requirements for licensure as a New Jersey broker established at N.J.A.C. 11:5-1.27, totalling 150 hours, not more than one year prior to passing the instructor license examination and applying for an instructor license.

i. New Jersey broker licensees who have been licensed as such for at least the two years immediately preceding the application and who have completed the full 150 hours of broker prelicensure courses established at N.J.A.C. 11:5-1.27 shall be deemed to have fulfilled the education requirements for licensure as an instructor.

ii. The following individuals will not be required to take the 90-hour general broker course but must successfully complete the two 30-hour broker prelicensure courses referred to in N.J.A.C. 11:5-1.27 in order to fulfill the instructor prelicensure education requirements:

(1) New Jersey broker licensees who have been licensed as such for the two years preceding their application for an instructor license but who have not previously completed those two courses; and

(2) Licensed brokers from other states who have been licensed as such for the three years immediately preceding application.

4. All instructor license applicants shall successfully complete an instructor license examination as established by the Commission. The examination shall extensively test the applicant's general real estate knowledge and shall include questions on teaching methods. Applicants are advised to engage in independent study and/or to take courses offered by independent providers on teaching methods.

5. Subsequent to passing the instructor license examination, as a prerequisite to being issued an instructor license, all applicants must attend a seminar conducted by or under the direction of the Commission staff covering Commission and licensing procedures. Such seminars shall not exceed one day in length.

(l) Regulations applicable to the renewal of school and instructor licenses are as follows:

1. Pursuant to N.J.S.A. 45:15-10.7, the fee for the renewal of a real estate instructor license for an additional two-year license term shall be \$50.00. The fee for the renewal of a real estate school license shall be \$200.00 for the first teaching location licensed and \$100.00 for each additional licensed location to be renewed.

2. As a prerequisite for the renewal of an instructor license, an instructor must attend a Commission-sponsored seminar updating them on recent developments affecting the real estate brokerage business in New Jersey. Such seminars shall be offered on a minimum of two dates, each in a different location throughout the state, during the second year of each two-year license term. Persons initially licensed as instructors in the last six months of the two-year license term are exempt from this seminar attendance requirement for the first renewal of their instructor license.

3. In the event that any person to whom an instructor's license has been or shall have been issued shall fail to renew such license or obtain a new license for a period of two consecutive years or more after the expiration of the last license held, the Commission shall require such person to again fulfill all the qualifications for initial licensure as an instructor prior to issuance of a further instructor's license. This requirement shall not apply to a person reapplying for an instructor's license who was a licensed instructor and who allowed their license to expire due to subsequent employment in a public agency in this State with responsibility for dealing with matters relating to real estate if the person reapplying does so within one year of termination of that employment.

(m) The maximum teaching load per instructor or guest lecturer shall not exceed the ratio of one instructor or guest lecturer to 60 students per class. Each prelicensure course offered by a licensed school shall be under the supervision of an instructor licensed pursuant to N.J.S.A. 45:15-10.5 and N.J.A.C. 11:5-1.28(k), below. At least one licensed instructor shall be present in the classroom at all sessions. However, additional instructors or guest lecturers may be utilized for instruction so long as not more than 25 percent of the required instruction is done by guest lecturers. Broker prelicensure courses may be taught by up to three instructors, provided that one licensed instructor is designated as having the responsibility for the quality of instruction in that course. School directors shall maintain as a business record the names of any persons teaching as guest lecturers or as a group of instructors, with an indication of the designated supervising instructor.

(n) All tuition charged by a school shall be specified separately. If additional fees are to be charged for supplies, materials or books needed in course of work, they shall be itemized by the school and such items shall become the property of the student upon payment.

(o) The tuition and fees shall be specifically set forth in a student contract. The contract shall expressly state the school's policy regarding the return of unearned tuition when a student is dismissed or withdraws voluntarily or because of hardship.

(p) Any person who has a permanent disability or physical handicap which precludes that person from attending

regular scheduled classes at a licensed school may request Commission approval to receive special instruction through a licensed school provided this request is supported by sworn statements of doctors or other persons having knowledge of the facts and provided a licensed school is willing to undertake such an agreement.

(q) No school shall, without the approval of the Commission, accept for enrollment as a transfer student any person concurrently enrolled with any other licensed school, unless upon the showing of good cause by said student to the Commission in writing.

(r) Every school shall permanently establish and maintain for each student, complete, accurate and detailed records for a period of not less than three years after student matriculation. Such records shall be available for inspection during regular school hours by the Commission and shall contain the following information:

1. The total number of hours of instruction undertaken by the student;
2. Completed areas of study in real estate subjects prescribed by the Act and these regulations;
3. The student's attendance record; and
4. The names of all supervising instructors and guest lecturers.

(s) To satisfactorily complete any prelicensure course, a student must receive a passing grade and attend at least 80 percent of the class session hours required for that course by N.J.A.C. 11:5-1.27.

(t) Upon a student's satisfactory completion of a course in real estate, the school shall issue to the student a Certificate.

(u) The director of a real estate school shall be responsible for properly closing the school in compliance with this subsection.

1. No later than 10 days after the date on which the school ceases operations, the director shall return the school license, stamp, and all education certificates to the Commission and shall advise the Commission in writing of the date on which the school closed.

2. Within 30 days of the date on which the school ceases operations, the director shall submit an affidavit to the Commission certifying the following:

- i. The location where student records are to be kept in compliance with (r) above and the name of the person who is to act as custodian of the records. The Commission shall be notified immediately of any change in such information. Records shall be kept for a period of not less than three years;

- ii. The name of the owner or authorized representative of the school and the address where he or she may be contacted by the Commission;

- iii. That the school license and school stamp have been returned to the Commission;

- iv. That all students have been timely notified of the school closing, and any tuition received by the school for future courses or courses which were not completed has been returned to the students;

- v. That all signs have been removed, and all advertisements and trade materials which refer to the school have been recalled;

- vi. That the appropriate telephone services have been advised that the school is closed and that future telephone directories should not contain the name of the school; and

- vii. That there are no outstanding fees, fines or penalties due and owing the Commission.

(v) No school shall use any name other than the name in which it is licensed for advertising or publicity purposes; nor shall any school advertise or imply that it is "recommended," "endorsed," "accredited," or "approved" by the Commission, but a licensed school may indicate that it has been "licensed" to conduct courses of education in real estate subjects to qualify applicants for licensure examination. No school shall make any warranties or guarantees that a student will pass the State license examination as a result of taking its course.

(w) (Reserved)

(x) The purpose of this subsection is to assure that there is a total separation between instructional activity conducted by licensed schools and any solicitation of students, which, as defined in (x)2ii below, means any recruiting efforts or brokerage activity directed at students. These provisions will be construed in a manner consistent with that regulatory objective. A violation of any of these provisions will be considered by the Commission as conduct demonstrating unworthiness for licensure, thereby subjecting the offending licensee to sanctions pursuant to N.J.S.A. 45:15-17(e) and (t). The Commission may also impose sanctions for a violation of these provisions pursuant to N.J.S.A. 45:15-10.11. Requirements regulating the involvement of licensed schools in soliciting students to become salespersons for particular real estate brokers are as follows:

1. At the beginning of the first class session of all salesperson prelicensure courses, all licensed schools shall distribute to all students in writing the following:

NOTICE

TO: ALL SALESPERSON COURSE STUDENTS
FROM: NEW JERSEY REAL ESTATE COMMISSION

RE: SOLICITATION OF SALESPERSON LICENSE CANDIDATES AT PRELICENSURE SCHOOLS:

It is the policy of the New Jersey Real Estate Commission that there be a complete and total separation between the instruction you receive in your prelicensure education course and any efforts by brokers to recruit you to join the firm and/or to secure listings or offers on listed properties from you. This policy is reflected in Commission rule N.J.A.C. 11:5-1.28(x), which is reproduced in its entirety below.

If you are subjected to any recruitment efforts or are solicited for listings or offers during class time you should immediately notify your instructor, the Director of your school, and the New Jersey Real Estate Commission by writing to:

New Jersey Real Estate Commission
20 West State Street, CN 328
Trenton, New Jersey 08625
Attn: Director, Real Estate Education

You are free to negotiate the terms of your employment with any broker. It is in your own best interest to talk to several prospective employing brokers before deciding which offers the best compensation plan, including post-termination payment provisions, and support package for you. You should also consider a prospective employer's professionalism and reputation for honesty and integrity when deciding which broker to work for.

In the event an enrolled student does not attend the first session of a salespersons course, a copy of the foregoing notice shall be delivered to that student at the commencement of the first class session which that student does attend.

2. For the purposes of this subsection, the following definitions shall apply:

i. The phrase "brokerage activity" means any activity which, pursuant to N.J.S.A. 45:15-1 and 15-3 would require the person engaging in such activity to hold a license as a real estate broker or real estate salesperson;

ii. The term "solicit" means to recruit, invite or urge a student to seek employment with a particular broker, or to list, purchase or lease through, or to make referrals of listing, purchaser or lessee prospects to a particular broker; and

iii. The phrase "successful completion" means the receipt by the student of a Real Estate Commission school certificate form, duly signed by the instructor and the school director and stamped by the licensed school, certifying to the student's having completed and passed a prelicensure course conducted by that school.

3. With the exception of posting, distributing written materials as provided in (x)5 below, no school director, instructor, guest lecturer or staff member shall, prior to, nor within seven days following, a student's successful completion of a course, solicit a student to become a salesperson for any particular real estate broker, nor shall any such person at any time accept any fee or other compensation for soliciting or recruiting students attending their school to apply for employment with a particular real estate broker.

4. No in-person or electronic solicitation of students to apply for employment as salespersons with a particular real estate broker or any referral program shall be permitted at a licensed school location during the prescribed class hours, nor in the breaks between such class hours. Such soliciting may be scheduled and held at licensed schools before, after or separate from the prescribed class hours, for example as a "career night" for students, provided that students are notified in writing in advance that their attendance at such recruitment functions is completely voluntary. However, no school director, instructor, guest lecturer or staff member shall engage in such activity at any time prior to, nor within seven days following, a student's successful completion of a course. Licensed instructors who are also licensed brokers or salespersons may conduct prelicensure courses, and licensees who are not licensed instructors may appear as guest lecturers in such courses, so long as their presentations do not include the solicitation of students.

5. Any licensed school which posts, distributes or displays written material which solicits students to inquire about employment as a salesperson with a particular broker must similarly post, distribute or display comparable written material from any real estate broker who requests the school to do so. However, no written material soliciting students to apply for employment with a particular real estate broker or any referral program shall be distributed during the prescribed class hours.

6. No licensed school may offer a reduced tuition rate to students where eligibility for the lower tuition is contingent upon a student making a commitment to becoming licensed through a particular broker subsequent to their qualifying for licensure and no licensed school may otherwise make or imply any promise or guarantee of employment to any student.

7. No oral statements or written text referring to a licensed school may be included or contained in any advertisement by a real estate licensee, and no advertisement of a licensed school may refer to the brokerage operation or include the telephone number of any licensee except that a school which is owned by a real estate licensee or franchisor may use that name in its school name.

i. Any advertisement by a school whose name includes the name of an affiliated licensed real estate

broker or franchisor shall include the following disclosure legend:

Attending this school will not obligate you to become employed with our affiliated real estate broker(s), nor guarantee you an interview or a job with our affiliated real estate broker(s).

ii. No advertisement referring to a licensed school may be placed in the Help Wanted classified section of any newspaper or periodical.

8. No licensed school shall conduct prelicensure course sessions in any area which is part of a location which is licensed as a main or branch office of a real estate broker. For the purposes of this paragraph, an area will be considered as part of a licensed office location if any brokerage activity is conducted in that area at any time.

i. Where space on two or more floors in a multi-story building is licensed as a main or branch office location, it is permissible for prelicensure courses to be conducted in such a building, provided that the primary means of access to and egress from the floor where the courses are conducted does not require the students to walk through any area of the licensed office location wherein brokerage activity occurs.

ii. Where only one floor in a building is licensed as a main or branch office, it is permissible for prelicensure courses to be conducted in another area on that floor, provided that there is a separate entrance to that area either from the exterior of the building or from a common foyer or lobby and provided that the primary means of access to and egress from the area wherein the courses will be conducted does not require students to walk through a portion of the licensed premises wherein brokerage activity takes place.

iii. In all situations where prelicensure courses are conducted in the same building in which brokerage activity occurs under the authority of a broker in any way affiliated with the licensed school conducting such courses, the broker shall post signs either on the exterior of the building or in any common foyer or lobby, directing students either to the separate exterior entrance to the school location or to the primary route of access to the school location from such foyer or lobby.

9. No licensed school shall allow any person to, solicit students enrolled in, or considering enrolling in, a prelicensure course to list, purchase or lease any property; or for referrals of prospective sellers, purchasers or lessees at any time while such students are on school premises.

R.1972 d.127, effective June 28, 1972.

See: 4 N.J.R. 71(a).

Amended by R.1972 d.150, effective July 27, 1972.

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

Amended by R.1980 d.441, effective October 10, 1980.

See: 12 N.J.R. 341(a), 12 N.J.R. 665(e).

(e) and (f): New text.

Amended by R.1983, d.471, effective November 7, 1983.

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

Language simplified.

Amended by R.1984, d.218, effective June 4, 1984.

See: 16 N.J.R. 489(a), 16 N.J.R. 1352(a).

Section substantially amended.

Amended by R.1986 d.63, effective March 17, 1986.

See: 17 N.J.R. 376(a), 18 N.J.R. 566(b).

(o)-(p) deleted; old (q) recodified to (p) with text added "instructor(s) name and . . . after student matriculation."; (r)-(w) recodified to (q)-(v).

Amended by R.1988 d.409, effective September 6, 1988.

See: 20 N.J.R. 1161(a), 20 N.J.R. 2298(a).

Substantially amended (j) and (k); added new (l) and recodified (l)-(v) as (m)-(w).

Amended by R.1990 d.378, effective August 6, 1990.

See: 22 N.J.R. 777(a), 22 N.J.R. 2323(a).

Added new x.

Amended by R.1993 d.11, effective January 4, 1993.

See: 24 N.J.R. 3488(a), 25 N.J.R. 180(a).

Subsection (e) deleted and reserved.

Amended by R.1994 d.59, effective February 7, 1994 (operative July 1, 1994).

See: 25 N.J.R. 4855(a), 26 N.J.R. 801(a).

Amended by R.1994 d.267, effective June 20, 1994 (operative July 1, 1994).

See: 26 N.J.R. 730(a), 26 N.J.R. 1194(b), 26 N.J.R. 1222(a), 26 N.J.R. 2581(c).

11:5-1.29 Criminal history record check

(a) The applicant, if a natural person, shall submit with his or her application for salesperson's or broker's license a New Jersey State Police Request for Criminal History Record Information and a certified check or money order to pay for its processing.

(b) The applicant, if a corporation or partnership, shall submit with its application for license New Jersey State Police Requests for Criminal History Record Information, and certified checks or money orders to pay for their processing, for each officer, director, partner, or owner of a controlling interest.

(c) The Commission may require an individual licensee or any officer, director, partner or owner of a controlling interest of a licensed corporation or partnership to complete and submit to the Commission a New Jersey State Police fingerprint card, and submit a certified check or money order in payment of the processing fee for the card.

R.1971 d.83, effective May 27, 1971.

See: 2 N.J.R. 42(e), 3 N.J.R. 110(d).

Amended by R.1976 d.19, effective January 13, 1976.

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

Amended by R.1983 d.471, effective November 7, 1983.

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

Subsections (c) and (e) deleted, recodification.

New Rule, R.1985 d.601, effective November 18, 1985.

See: 17 N.J.R. 2230(a), 17 N.J.R. 2779(a).

Repeated this section dealing with "Fingerprinting" and adopted New Rule.

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

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

11:5-1.30 Sponsoring of license applications or transfers of license

(a) The New Jersey Real Estate Commission, Department of Insurance, hereby grants to brokers of record or employing brokers the right to have initial applications for licenses of salespersons or broker-salespersons who will be in their employ sponsored by one other person, other than the authorized broker of record or employing broker. This other person must be the holder of a broker's license and an officer of the broker of record's corporation or a member of his or her partnership, as the case may be. In the event the employing broker is a sole proprietor, such a designee shall be licensed as a broker-salesperson in the employ of the employing broker. The broker of record or employing broker, as applicable, shall file with the New Jersey Real Estate Commission a power of attorney granting this authority to the designated person at least 10 days prior to delegating performance of the function of that person.

(b) Any employing broker or broker of record may authorize one individual in their employ to sign and surrender to the Real Estate Commission, in accordance with the requirements of N.J.S.A. 45:15-14, the real estate salesperson or broker-salesperson license of any licensee whose employment relationship with that employing broker or broker of record is terminated. The employing broker or broker of record shall, on a form to be provided by the Commission, notify the Commission in writing of the designation of the employee so authorized, which person need not be the holder of a real estate license. The form designating the authorized person shall be filed with the Real Estate Commission at least 10 days prior to delegating performance of the function of that person. The employing broker or broker of record shall immediately notify the Real Estate Commission in writing in the event that, for any reason, the authority of the person so designated to perform that function is revoked, and shall indicate whether a new designee is to be named. Only the employing broker or broker of record and one other person duly designated and identified to the Real Estate Commission as provided in this section may perform the said license transfer functions at any one time.

R.1972 d.127, effective June 28, 1972.

See: 4 N.J.R. 71(a).

Amended by 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.1987 d.119, effective March 2, 1987.

See: 18 N.J.R. 2418(a), 19 N.J.R. 409(b).

Substantially amended.

11:5-1.31 Expediting of license issuance and transfer procedures

(a) For the purpose of expediting the right of licensees to engage in real estate activities, where license certificates cannot be issued without delay after all conditions have been fulfilled, the Commission directs that a certificate of

authority in the form of a letter to the licensee be sent to serve as a temporary license for a limited period of time.

(b) In cases where a licensee who is transferring from one broker to another requests that their current broker deliver their license to them, rather than return it to the Commission, so as to expedite the transfer process, the license shall be so delivered, provided that:

1. The rear of the license certificate is signed and dated by the terminating broker in the appropriate location prior to the delivery of the license to the departing licensee;

2. At the time of the delivery of the license to the departing licensee, the termination confirmation section of the license, reflecting the effective date of the licensee's separation from that broker, has been completed, signed and retained by the terminating broker; and

3. Within five business days of the delivery of the license to the departing licensee, the terminating broker shall mail to the Commission the completed and signed termination confirmation section of the license and send a copy of it to the departing licensee at their last known residence address.

(c) A transferring licensee who receives their license from the terminating broker after that broker has signed the license and entered the date of termination on it may then take that license to their new employing broker. Prior to the transferring person commencing work as a licensee for the new employing broker, that broker shall:

1. Enter on the license in the appropriate location the effective date of the individual's employment with that broker and sign the license as the new employing broker;

2. Detach the temporary license stub portion from the main license document and place it with the licenses of the other persons licensed with that broker; and

3. Mail to the Commission the dated and signed license of the transferring individual with the required transfer fee (see N.J.S.A. 45:15-14) in the form of a certified or cashiers check or money order or broker's business account check. See N.J.A.C. 11:5-1.20.

R.1972 d.127, effective June 28, 1972.

See: 4 N.J.R. 17(a).

Amended by R.1983 d.471, effective November 7, 1983.

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

Reference to a letter and its contents was deleted.

Amended by R.1994 d.60, effective February 7, 1994 (operative July 1, 1994).

See: 25 N.J.R. 4858(a), 26 N.J.R. 803(a).

11:5-1.32 Residential rental referral agencies

(a) Every person engaged in the business of referring, for a fee, prospective residential tenants to possible rental units shall be licensed in accordance with the New Jersey Real Estate License Act, N.J.S.A. 45:15-1 et seq., and shall comply with the provisions of this section in addition to the

obligations imposed by the Act, and other rules contained in this chapter.

(b) Every licensee subject to this section shall enter into a written contract with the prospective tenant and give such person a copy of the contract. The contract shall accurately state:

1. The services to be performed by the agency;
2. The fee charged;
3. The date and duration of the contract;
4. The affirmative actions required of the prospective tenant to utilize the service;
5. The refund policy; and
6. A statement that the business is licensed by the New Jersey Real Estate Commission, 201 East State Street, Trenton, New Jersey 08625.

(c) No licensee shall advertise or refer to a prospective residential tenant to:

1. A non-existent address;
2. A property not verified as available as provided in (e) below;
3. A possible rental unit or location for which the licensee does not have the lessor's, or the duly authorized agent of the lessor's, oral or written consent to refer prospective tenants.

(d) Oral consent of the lessor or his duly authorized agent to refer prospective tenants to a possible rental unit or location shall be confirmed by the licensee in writing within 24 hours of the licensee's receipt of such consent.

(e) Every licensee subject to this section shall verify the continuing availability of the rental unit with the lessor or agent as follows:

1. All units advertised in media shall be verified each day the advertisement appears; and
2. All units to which prospective tenants are referred shall be verified as available every three working days.

(f) In the event a diligent effort by the licensee to verify availability of the rental unit is unsuccessful because of a failure of a lessor or agent to respond, the prospective tenant shall be specifically advised of the date and time the unit was last verified as available.

1. Every prospective tenant shall upon request be advised of the date and time any particular unit was last verified as available.
2. No licensee subject to this section shall refer a prospective tenant to any rental unit not verified as available within the previous seven calendar days.

(g) Every licensee subject to this section shall maintain sufficient telephone lines and staff to receive and answer inquiries from contract consumers.

(h) Prior to the prospective tenant obtaining rental property through the services of the licensee, no licensee shall charge or accept a fee in excess of \$25.00 unless:

1. Any fee charged, collected or received in excess of \$25.00 is deposited promptly in the broker's escrow account until the services described by the contract are fully performed; or
2. The licensee posts with an approved escrow agent cash security in an amount approved by the Commission, based upon the following criteria:
 - i. The rental referral fees;
 - ii. The volume of rental referral business of the licensee;
 - iii. The duration of the rental referral contract; and
 - iv. The prior performance of the licensee or its principals in the rental referral business.

(i) Any licensee subject to this section shall maintain for one year the following records:

1. Written consent or written confirmation of oral consent of a lessor or agent to refer prospective tenants;
2. Records of the verification of availability of rental units as set forth in (e) above; and
3. Copies of contracts with prospective tenants.

(j) Every licensee subject to this section shall prominently post a copy of this regulation in its office for the information of its customers, and provide customers a copy upon request.

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

Section was "Rental location and operations".
New Rule, R.1985 d.93, effective March 4, 1985.
See: 16 N.J.R. 2952(a), 17 N.J.R. 600(a).

Case Notes

Rule governing rental location licenses held valid against challenges of unlawful rate-making by the Commission, arbitrary nature and confiscatory effect (citing former rule). In re N.J.A.C. 11:5-1.32, 179 N.J.Super. 294, 431 A.2d 855 (App.Div.1981).

11:5-1.33 Proscription of price-fixing and agreements in regard to methods of arriving at commission

(a) No licensee shall combine, conspire, suggest, or recommend to, or with any other licensee(s) that any rate, commission or fee to be charged by them, or any division of such commission by them be fixed, established, maintained, suggested or stabilized. Nothing in this section shall prohibit any intra-office communications with regard to the establishment of commissions or division of commissions.

(b) No licensee shall directly or indirectly recommend or suggest to any other licensee(s) that such person(s) adhere to any schedule or recommendation of another concerning the rates, commissions or fees to be charged or the methodology or approach by which a commission, rate or fee is arrived at, or division of fees to be made, in the conduct of business. Nothing in this section shall prohibit any intra-office communications with regard to the establishment of commissions or division of commissions. Information imparted solely for the purposes of instruction, and not for the purpose of recommending guidelines or a preferred method of pricing, at any bona fide trade association seminar or educational courses shall be excepted from the proscription set forth in this section.

New Rule, R.1981 d.261, effective July 9, 1981.
See: 13 N.J.R. 306(a), 13 N.J.R. 440(c).

11:5-1.34 Proscription of certain discriminatory commission splits

No licensee shall directly or indirectly take any punitive or retaliatory action against any other licensee(s) where such action is based upon the failure or refusal to adhere or to adopt any commission. No licensee shall adopt a discriminatory commission split against another broker because of such other broker's failure or refusal to adhere to or adopt any commission; if a listing broker varies his commission split policy with any selling broker on a cooperative sale, the listing broker shall maintain a file at his place of business which shall contain in writing an explanation for the variation and which reflects who made the decision and why it was made. Nothing in this section shall prohibit a listing broker from varying his commission split policy with respect to any one or more selling brokers in order to achieve equality of commission splits with such other selling broker or brokers in connection with their commission split policy with such listing broker.

New Rule, R.1981 d.261, effective July 9, 1981.
See: 13 N.J.R. 306(a), 13 N.J.R. 440(c).

11:5-1.35 Proscription on pressuring media

No licensee shall agree, combine or conspire with another to boycott, or threaten to boycott, or refuse to do business with any promotional medium where such refusal or boycott is based on the acceptance by any medium of advertising of price or commissions of a competitive or discount nature.

New Rule, R.1981 d.261, effective July 9, 1981.
See: 13 N.J.R. 306(a), 13 N.J.R. 440(c).

11:5-1.36 Real estate guaranty fund

(a) Every licensed real estate broker and licensed broker-salesperson shall pay an additional amount as specified in N.J.S.A. 45:15-35 and every licensed real estate salesperson shall pay an additional amount as specified in N.J.S.A.

45:15-35 with their application for license renewal next following January 1, 1993.

1. Said fees shall be paid into the real estate guaranty fund and be utilized in accordance with N.J.S.A. 45:15-34 et seq.

(b) Before making a request for the entry of a court order directing payment from the real estate guaranty fund, a judgment creditor shall have a writ of execution issued and prior to its return shall make a bona fide effort to examine the judgment debtor under oath and make any and all other reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment in whole or in part. Information regarding any personal or real property or other assets liable to be sold or applied in satisfaction of the judgment which are discovered must be reported in writing to the officer to whom the writ of execution is directed.

New Rule, R.1981 d.252, effective July 9, 1981.
See: 13 N.J.R. 306(a), 13 N.J.R. 441(a).
Amended by R.1991 d.114, effective March 4, 1991.
See: 22 N.J.R. 3688(a), 23 N.J.R. 701(a).

Imposed special assessment on license renewals after January 1, 1991.
Amended by R.1993 d.153, effective April 5, 1993.
See: 25 N.J.R. 56(b), 25 N.J.R. 1548(a).

In (a), specified assessment amounts established by N.J.S.A. 45:15-35.

11:5-1.37 (Reserved)

11:5-1.38 Prohibition against licensees receiving dual compensation for dual representation in the sale or rental transaction

(a) Real estate licensees are prohibited from receiving compensation from both a seller and a buyer for representing both seller and buyer in the same real estate sales transaction. This prohibition applies even when the dual agency has been fully disclosed by the licensee to both parties.

(b) Real estate licensees are prohibited from receiving compensation from both a landlord and a tenant for representing both the landlord and the tenant in the same rental transaction. This prohibition applies even when the dual agency has been fully disclosed by the licensee to both parties.

(c) Within the meaning of this section, the phrases "sales transaction" and "rental transaction" do not include any related transactions whether or not they are contingencies in the contract or lease. For example, where there is a mortgage contingency in a contract of sale, the mortgage loan is a related transaction between the buyer and lender; it is not the same transaction as the sale.

(d) A licensee who represents only one party to a sale or rental transaction may receive the entire compensation for such representation from either party or a portion of that compensation from both parties to the transaction, provided that where a licensee prepares a contract or lease full written disclosure of the agency relationship and of the compensation arrangement is made to both parties to the transaction in the contract or lease. Where a licensee does not prepare the contract or lease, but seeks compensation from a party whom he or she does not represent, that licensee's agency relationship and proposed compensation arrangement shall be disclosed to all parties in a separate writing prior to execution of the contract or lease.

(e) A licensee who represents any party to a sale or rental transaction may receive compensation from either party for providing actual services in related transactions, provided that the licensee discloses the related services, sources and amounts of compensation in writing to the parties to the sale or rental transaction. Where the related services to be provided by the licensee are mortgage financing services provided to the buyer for compensation or reimbursement, the written disclosures must comply with N.J.A.C. 11:5-1.40. The broker shall maintain records of such related transactions including all required written disclosures, which records shall be available to the Commission for inspection pursuant to N.J.A.C. 11:5-1.13.

(f) Except as provided in (g) below, when providing mortgage financing services related to the purchase or sale of a one to six family residential dwelling, a portion of which may be used for non-residential purposes, located in New Jersey:

1. A real estate broker shall not solicit or receive compensation or reimbursement pursuant to (e) above greater than the expense amount permitted at closing by N.J.A.C. 3:38-5.2(a)4 unless licensed as a mortgage broker or mortgage banker by the Department of Banking pursuant to the Mortgage Bankers and Brokers Act, N.J.S.A. 17:11B-1 et seq.; and

2. A real estate salesperson or broker-salesperson shall not solicit or receive any compensation or reimbursement pursuant to (e) above from any person other than his or her employing real estate broker unless licensed as a mortgage broker or mortgage banker by the Department of Banking pursuant to the Mortgage Bankers and Brokers Act, N.J.S.A. 17:11B-1 et seq.

(g) Any real estate licensee who is individually employed as a mortgage solicitor by a licensed mortgage banker or mortgage broker and registered in compliance with N.J.A.C. 3:38-5.3 may solicit and accept compensation from his or her licensed mortgage employer for providing mortgage services in residential mortgage transactions.

New Rule, R.1992 d.232, effective June 1, 1992.
See: 23 N.J.R. 3424(b), 24 N.J.R. 2058(b).

Amended by R.1992 d.468, effective November 16, 1992.
See: 24 N.J.R. 1957(a), 24 N.J.R. 2129(a), 24 N.J.R. 4268(a).

Added (f), limiting solicitation and receipt of compensation for mortgage financing services to \$250.00; and (g), permitting solicitation of mortgage banker or broker by real estate licensee who is also employed as a mortgage solicitor by said banker or broker.

11:5-1.39 Prohibition against kickbacks for related business referrals

(a) Any real estate licensee who solicits or accepts any fee, kickback, compensation or thing of value merely for referring a customer or client to a lender, mortgage broker, or other provider of related services, shall be subject to sanction by the Commission for engaging in conduct demonstrating unworthiness, bad faith and dishonesty. Any compensation received by a real estate licensee, pursuant to N.J.A.C. 11:5-1.38(e), for services in related transactions must be for services actually performed by the licensee beyond mere referral. Compliance with the anti-kickback provisions of the Federal Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2607, the regulations thereunder, or any opinion regarding RESPA issued by the Federal Department of Housing and Urban Development will be considered to be compliance with this subsection.

(b) Real estate brokers are prohibited from offering incentives to the salespersons or broker-salespersons licensed under them for merely referring clients or customers to a particular lender, mortgage broker or other provider of related services. Any compensation paid by a real estate broker to a salesperson for services in transactions related to a sale or rental transaction must be for services actually performed by the salesperson beyond mere referral. For example, a real estate broker who provides in-house mortgage services may compensate a salesperson licensed with that broker who performs actual mortgage services. However, the broker is prohibited from offering bonuses or any extra consideration of any kind to salespersons for merely referring buyers to the in-house mortgage service or any particular lender or mortgage broker. For example, a real estate broker shall not offer or pay a salesperson a higher commission rate on a real estate transaction because the mortgage is placed through the in-house mortgage service or affiliated lender. A broker shall not award prizes or bonuses to salespersons based upon the number of customer referrals made to the in-house mortgage service or to a particular lender.

New Rule, R.1992 d.232, effective June 1, 1992.
See: 23 N.J.R. 3424(b), 24 N.J.R. 2058(b).

Case Notes

Requiring real estate brokerage offices to be Mortgage Bankers and Brokers Act licensee branches was arbitrary. *Mortgage Bankers Ass'n of New Jersey v. New Jersey Real Estate Com'n*, 283 N.J.Super. 233, 661 A.2d 832 (A.D.1995).

11:5-1.40 Disclosures by licensees providing mortgage financing services to buyers for a fee

(a) Every real estate licensee who provides mortgage financing services to buyers must provide written disclosure to the buyer/borrower and to the seller as required in this rule as a condition to receiving, in addition to a share of the brokerage commission on the sale, any compensation, reimbursement or thing of value from the buyer, or any other source. These disclosures are required whenever the real estate brokerage agency, any division therein, or any individual licensed or employed by the agency will receive compensation or reimbursement for providing mortgage financing services related to the sales transaction, even if that particular division or individual will not share in the sales commission. Copies of all written disclosures required by this rule must be retained by the broker as business records pursuant to N.J.A.C. 11:5-1.12. The broker shall maintain records of such related mortgage transactions which shall be available to the Commission for inspection pursuant to N.J.A.C. 11:5-1.13.

(b) The licensee must provide written disclosure as required by (a) above to the buyer/borrower before charging or accepting or contracting for any fees for mortgage financing services and providing such services other than prequalification. The written disclosure to the buyer must include the following information:

1. The amount of all fees which the buyer will be expected to pay to the licensee for mortgage services, and whether and under what circumstances such fees are refundable;
2. The amount and source of any compensation or reimbursement which the licensee will receive for providing mortgage financing services to the buyer;
3. Where the licensee takes applications for or places loans exclusively with any three or fewer lenders, or is affiliated with any lender or mortgage broker as defined in N.J.A.C. 11:5-1.41, the disclosure must advise the buyer of that fact, give the names of such lenders and state (indent, single space and all capital letters):

YOU ARE UNDER NO OBLIGATION TO USE THE MORTGAGE SERVICES OFFERED BY THIS REAL ESTATE LICENSEE. YOU MAY OBTAIN YOUR MORTGAGE LOAN FROM ANOTHER SOURCE.

4. Where the licensee or agency is also representing the seller in the sales transaction, the disclosure to the buyer/borrower must include the statement set forth in (e) below.

(c) Real estate licensees who are dually licensed as mortgage bankers or brokers may combine the disclosures to buyers required in this rule with the written disclosure to borrowers required by the Department of Banking pursuant to N.J.A.C. 3:1-16.3 or N.J.A.C. 3:1-16.11.

(d) A listing broker who represents only the seller and who offers to provide mortgage financing services to buyers for compensation or reimbursement shall provide written disclosure to the seller by including the following statement in the listing agreement. A selling broker who represents only the seller as subagent of the listing broker, and who offers to provide mortgage financing services to buyers for compensation or reimbursement, shall provide the following disclosure statement (indent, single space and all capital letters) to the seller, with a copy to the listing broker, at the time any written offer is presented.

THIS REAL ESTATE AGENCY MAY OFFER TO PROVIDE MORTGAGE FINANCING SERVICES TO THE BUYER FOR A FEE IN ADDITION TO THE SALES COMMISSION. AS AGENT OF THE SELLER, THIS REAL ESTATE AGENCY HAS A FIDUCIARY DUTY TO YOU, THE SELLER, WHICH WILL NOT CHANGE SHOULD MORTGAGE FINANCING SERVICES BE PROVIDED. IN THE EVENT THAT MORTGAGE FINANCING SERVICES ARE PROVIDED TO THE BUYER, THIS AGENCY SHALL NOT UNDERTAKE REPRESENTATION OF THE BUYER IN THIS REAL ESTATE SALE.

(e) Where the licensee or agency does provide mortgage financing services to the buyer for compensation or reimbursement and also represents only the seller in the sales transaction, the following statement must be included in the written disclosure to the buyer required by (b) or (c) above. The licensee or agency must also promptly send or deliver the following written disclosure statement (indent, single space and all capital letters) to the seller, with a copy to the listing broker, at the time a mortgage application is submitted on behalf of the buyer/borrower.

(name of licensee and brokerage agency)

REPRESENTS THE SELLER IN THIS REAL ESTATE SALES TRANSACTION. UPON CLOSING OF TITLE, THIS REAL ESTATE AGENCY WILL RECEIVE A SALES COMMISSION FOR REPRESENTING THE SELLER. THIS REAL ESTATE AGENCY ALSO PROVIDES MORTGAGE FINANCING SERVICES TO THE BUYER FOR A FEE IN THE AMOUNT OF _____. AS AGENT OF THE SELLER, THIS REAL ESTATE AGENCY HAS A FIDUCIARY DUTY TO THE SELLER WHICH IS NOT CHANGED BY PROVIDING MORTGAGE SERVICES TO THE BUYER. THIS AGENCY DOES NOT REPRESENT THE BUYER IN THIS REAL ESTATE SALE.

Where the precise amount of the compensation to the licensee or agency for providing mortgage services has not yet been established, the maximum estimated amount of compensation should be included in this disclosure. The compensation received by the licensee may not be increased

above the amount disclosed here without written notice to both parties, with a copy to the listing broker.

New Rule, R.1992 d.232, effective June 1, 1992.
See: 23 N.J.R. 3424(b), 24 N.J.R. 2058(b).

Case Notes

Requiring real estate brokers give vendors and purchasers notice and disclosure and accept no more than \$250 for providing mortgage related services was consistent with statute. Mortgage Bankers Ass'n of New Jersey v. New Jersey Real Estate Com'n, 283 N.J.Super. 233, 661 A.2d 832 (A.D.1995).

11:5-1.41 Disclosure of licensee's affiliation with a mortgage lender or mortgage broker to whom the licensee refers buyers

(a) Whenever a real estate licensee refers a buyer/borrower to a mortgage lender or mortgage broker with whom the licensee is affiliated, the licensee must provide written disclosure of the affiliation to the buyer. This disclosure must be made even though the licensee will receive no fees or compensation for the referral, see N.J.A.C. 11:5-1.39, and even though the licensee also refers the buyer to other, unaffiliated sources of mortgage financing. The disclosure must include the following statement (indent, single space and all capital letters):

YOU ARE UNDER NO OBLIGATION TO USE THE MORTGAGE SERVICES OF _____ WHO/WHICH IS AFFILIATED WITH THIS REAL ESTATE LICENSEE. YOU MAY OBTAIN YOUR MORTGAGE LOAN FROM ANOTHER SOURCE.

(b) For the purposes of this rule, a real estate licensee is considered to be affiliated with a mortgage lender or mortgage broker when:

1. The licensee, or the licensee's spouse, parent or child, is an officer, director or employee of the lender or mortgage broker, or works as a solicitor for the lender or mortgage broker;
2. The licensee, either alone or with spouse, parent or child, owns more than one percent of the lender or mortgage broker; the licensee is more than one percent owned by the lender or mortgage broker; or the licensee owns more than one percent or is more than one percent owned by a corporate parent, holding company or other business entity which is a majority shareholder in the lender or mortgage broker;
3. The licensee is a franchisee of a franchiser which owns more than one percent of the lender or mortgage broker or the licensee itself is the franchiser or franchisee of a mortgage lending franchise; or
4. The licensee shares office space or other facilities, or staff, with the lender or mortgage broker.

(c) Where an employing broker or broker of record of a real estate agency has an individual or corporate affiliation with a lender or mortgage broker, all licensees licensed with that real estate broker must provide the required disclosures to buyers referred to the affiliate.

1. Where an office manager has such an individual affiliation, the manager and all licensees working under his or her supervision must provide the disclosure to all buyers referred to the affiliate by that office.
2. Where a salesperson or broker-salesperson has such an individual affiliation, he or she must provide the disclosure to all buyers he or she refers to the affiliate.

(d) The disclosure required by this section may be combined with the disclosure of affiliation required under RES-PA, 12 U.S.C. § 2601 et seq. Copies of all written disclosures required by this rule must be retained by the broker as business records available for inspection pursuant to N.J.A.C. 11:5-1.12 and 1.13.

New Rule, R.1992 d.232, effective June 1, 1992.
See: 23 N.J.R. 3424(b), 24 N.J.R. 2058(b).

Case Notes

Requiring real estate brokers give vendors and purchasers notice and disclosure and accept no more than \$250 for providing mortgage related services was consistent with statute. Mortgage Bankers Ass'n of New Jersey v. New Jersey Real Estate Com'n, 283 N.J.Super. 233, 661 A.2d 832 (A.D.1995).

11:5-1.42 Licensees with in-house mortgage services prohibited from excluding all outside mortgage solicitors

Real estate brokers who provide mortgage financing services to buyer/borrowers in-house, whether through computerized loan origination systems, or affiliated lenders or affiliated mortgage brokers, etc., are prohibited from limiting buyer's choices by denying outside lenders reasonable access to solicit mortgage loans in their real estate offices. Reasonable access will be presumed where three or more outside, non-affiliated lenders are permitted to send solicitors into the real estate office during business hours to contact salespersons. The reasonableness of the broker's overall office policy concerning rate sheets, and access by outside lenders, other visitors and solicitors, will also be considered. In no event shall this rule be interpreted to require any real estate broker to permit any one specific lender to solicit loans inside the real estate office or to require the real estate broker to set aside any particular space or facilities inside the real estate office for the use of outside mortgage solicitors.

New Rule, R.1992 d.232, effective June 1, 1992.
See: 23 N.J.R. 3424(b), 24 N.J.R. 2058(b).

11:5-1.43 Consumer Information Statement

(a) When applied to rental transactions which are not exempt from this rule, references to sellers and buyers, and to the various types of brokerage agreements and business relationships mentioned throughout this rule should be construed as indicating their appropriate counterparts in rental transactions. For example, references to sellers should be read as lessors or owners and references to buyers should be read as lessees or tenants, etc. As used in this rule, the following terms or phrases shall have the following meanings:

1. "Brokerage agreement" means a written agreement between a brokerage firm and a party describing the terms under which that firm will perform brokerage services as specified in N.J.S.A. 45:15-3. Brokerage agreements include, but are not limited to, sale and rental listing agreements, buyer-broker, lessee-broker, transaction broker, and dual agency agreements.

2. "Brokerage firm" means a licensed corporate, partnership or sole proprietor broker, and all individuals licensed with that broker.

3. "Consumer Information Statement" means the Consumer Information Statement on New Jersey Real Estate Relationships as prescribed in (h) below.

4. "Informed consent to dual agency" means the written authorization by a party for the brokerage firm which represents them as their agent in a real estate transaction to also represent the other party to that transaction as an agent. Informed consent can only be obtained after the brokerage firm has disclosed to the consenting party all material facts which might reasonably impact on that party's decision to authorize dual agency, including the extent of the conflicts of interests involved and the specific ways in which each consenting party will receive less than full agency representation from the dual agent. In order to obtain informed consent it is also necessary for the licensee to first advise the consenting party of the other business relationships offered by that licensee and of those not offered by that licensee, and of that party's right to consult an attorney.

5. "Party" shall mean actual or prospective sellers, lessors, buyers or lessees of an interest in real estate.

6. "Short term rental" shall mean the rental of a residential property for not more than 90 consecutive days, under the terms of an oral rental agreement or written lease which contains a specific termination date. Month-to-month tenancies are not considered short term rentals.

7. "Transaction broker" shall mean a brokerage firm which works with both parties in an effort to arrive at an agreement on the sale or rental of real estate and facilitates the closing of a transaction, but does not represent either party, and has no agency relationship with either party to the transaction. The New Jersey Real Estate

License Law, N.J.S.A. 45:15-1 et seq., and the administrative rules promulgated thereunder do not mandate that licensees must act as agents when rendering real estate brokerage services.

8. "Business relationship(s)" means real estate licensees working as a seller's agent; a buyer's agent; a disclosed dual agent; or a transaction broker.

(b) Prior to acting as a dual agent, a brokerage firm must have the written informed consent of the parties to the transaction. Informed consent is not acquired through distribution of the Consumer Information Statement on New Jersey Real Estate Relationships as required by (e) and (k) below alone. At a minimum, licensees must also secure the signature of the party on a separate writing which confirms the party's informed consent to the licensee acting as a Disclosed Dual Agent for that party. Such a writing may be part of, or an attachment to a brokerage agreement.

(c) Licensees shall supply information with regard to their working relationship with parties to real estate transactions as provided in this section.

(d) Licensees shall comply with all requirements of this section when involved in:

1. Transactions which involve the sale of residential real estate containing one to four dwelling units or the sale of vacant one-family lots;

2. Residential lease transactions other than short term rentals. However, in short-term rental transactions, licensees shall include in all leases prepared by them a statement indicating that they are acting in the transaction either as an agent of the landlord, an agent of the tenant, a disclosed dual agent or a transaction broker; and

3. The securing of brokerage agreements on residential properties, including rental listing agreements on residential properties to be offered for short term rentals.

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

1. With respect to buyers:

i. All licensees shall verbally inform buyers of the four business relationships described in this section prior to the first discussion at which a buyer's motivation or financial ability to buy is discussed.

ii. If the first such discussion occurs during a business meeting on the buyer's real estate needs, licensees shall deliver the written Consumer Information Statement to the buyers prior to such a discussion. If the first such discussion is telephonic or in a social setting, licensees shall, after having verbally informed the buyer of the four business relationships, deliver the written Consumer Information Statement to the buyer at their next meeting. However, if prior to their first business

meeting after such a discussion, any material is mailed, faxed or delivered by the licensee to the buyer, the Consumer Information Statement shall be included with such material.

iii. In cases where there have been no discussions on motivation or financial ability to buy prior to the first showing, licensees shall deliver the statement no later than the first showing.

iv. Those licensees who intend to enter into a buyer-brokerage relationship with such persons shall deliver the Consumer Information Statement no later than the commencement of their buyer-brokerage agreement presentation.

2. With respect to sellers:

i. All licensees shall verbally inform sellers of the four business relationships described in this section prior to the first discussion at which the seller's motivation or desired selling price is discussed.

ii. If the first such discussion occurs during a business meeting on the seller's real estate needs, licensees shall deliver the written Consumer Information Statement to the sellers prior to such a discussion. If the first such discussion is telephonic or in a social setting, licensees shall, after having verbally informed the seller of the four business relationships, deliver the written Consumer Information Statement to the seller at their next meeting. However, if prior to their first business meeting after such a discussion, any material is mailed, faxed or delivered by the licensee to the seller, the Consumer Information Statement shall be included with such material.

iii. On unlisted properties, absent any discussions prior to their first showing of the property, all licensees shall deliver the statement no later than their first showing of the property.

(f) The purpose of (e) above and (h) below is to require licensees to provide basic and introductory information to the public in a convenient and consistent manner, rather than a comprehensive explanation of agency law.

(g) The statement as supplied by the Commission shall be reproduced and delivered by licensees as required in this section as a separate item, with no deletions or additions, other than the optional additional text referred to in (g)1 and 2 below, and recited in (h) below.

1. Brokerage firms may acknowledge delivery of the Statement by procuring the signature of the party to whom it was delivered and the date of delivery in the appropriate place at the bottom of the Statement.

i. On transactions which result in fully executed contracts of sale or consummated rental transactions, copies of Consumer Information Statements on which receipt has been acknowledged as set forth in (g)1 above, shall be maintained as business records for six years in accordance with N.J.A.C. 11:5-1.12(c).

2. Brokerage firms may also indicate on the Statement the capacity in which they intend to work with the party to whom they deliver the Statement.

3. Regardless of whether brokerage firms choose to include on the Statement the additional information referred to in (g)1 and 2 above, all brokerage firms, as is required by (i) and (j) below, shall:

i. Indicate in all brokerage agreements the business relationship they intend to have with the other party to the agreement; and

ii. Indicate in all offers, contracts, or leases prepared by licensees the business relationship the firm has with respect to the parties named in those documents.

(h) The mandatory text of the Consumer Information Statement to be delivered by licensees as provided in (e) above is as follows:

CONSUMER INFORMATION STATEMENT ON NEW JERSEY REAL ESTATE RELATIONSHIPS

In New Jersey, real estate licensees are required to disclose how they intend to work with buyers and sellers in a real estate transaction. (In rental transactions, the terms "buyers" and "sellers" should be read as "tenants" and "landlords," respectively.)

1. AS A SELLER'S AGENT OR SUBAGENT, I, AS A LICENSEE, REPRESENT THE SELLER AND ALL MATERIAL INFORMATION SUPPLIED TO ME BY THE BUYER WILL BE TOLD TO THE SELLER.

2. AS A BUYER'S AGENT, I, AS A LICENSEE, REPRESENT THE BUYER AND ALL MATERIAL INFORMATION SUPPLIED TO ME BY THE SELLER WILL BE TOLD TO THE BUYER.

3. AS A DISCLOSED DUAL AGENT, I, AS A LICENSEE, REPRESENT BOTH PARTIES. HOWEVER, I MAY NOT, WITHOUT EXPRESS PERMISSION, DISCLOSE THAT THE SELLER WILL ACCEPT A PRICE LESS THAN THE LISTING PRICE OR THAT THE BUYER WILL PAY A PRICE GREATER THAN THE OFFERED PRICE.

4. AS A TRANSACTION BROKER, I, AS A LICENSEE, DO NOT REPRESENT EITHER THE BUYER OR THE SELLER. ALL INFORMATION I ACQUIRE FROM ONE PARTY MAY BE TOLD TO THE OTHER PARTY.

Before you disclose confidential information to a real estate licensee regarding a real estate transaction, you should understand what type of business relationship you have with that licensee.

There are four business relationships: (1) seller's agent; (2) buyer's agent; (3) disclosed dual agent; and (4) transaction broker. Each of these relationships imposes certain legal duties and responsibilities on the licensee as well as on the seller or buyer represented. These four relationships are defined in greater detail below. Please read carefully before making your choice.

SELLER'S AGENT

A seller's agent **WORKS ONLY FOR THE SELLER** and has legal obligations, called fiduciary duties, to the seller. These include reasonable care, undivided loyalty, confidentiality and full disclosure. Seller's agents often work with buyers, but do not represent the buyers. However, in working with buyers a seller's agent must act honestly. In dealing with both parties, a seller's agent may not make any misrepresentations to either party on matters material to the transaction, such as the buyer's financial ability to pay, and must disclose defects of a material nature affecting the physical condition of the property which a reasonable inspection by the licensee would disclose.

Seller's agents include all persons licensed with the brokerage firm which has been authorized through a listing agreement to work as the seller's agent. In addition, other brokerage firms may accept an offer to work with the listing broker's firm as the seller's agents. In such cases, those firms and all persons licensed with such firms, are called "subagents". Sellers who do not desire to have their property marketed through sub-agents should so inform the seller's agent.

BUYER'S AGENT

A buyer's agent **WORKS ONLY FOR THE BUYER**. A buyer's agent has fiduciary duties to the buyer which include reasonable care, undivided loyalty, confidentiality and full disclosure. However, in dealing with sellers a buyer's agent must act honestly. In dealing with both parties, a buyer's agent may not make any misrepresentations on matters material to the transaction, such as the buyer's financial ability to pay, and must disclose defects of a material nature affecting the physical condition of the property which a reasonable inspection by the licensee would disclose.

A buyer wishing to be represented by a buyer's agent is advised to enter into a separate written buyer agency contract with the brokerage firm which is to work as their agent.

DISCLOSED DUAL AGENT

A disclosed dual agent **WORKS FOR BOTH THE BUYER AND THE SELLER**. To work as a dual agent, a firm

must first obtain the informed written consent of the buyer and the seller. Therefore, before acting as a disclosed dual agent, brokerage firms must make written disclosure to both parties. Disclosed dual agency is most likely to occur when a licensee with a real estate firm working as a buyer's agent shows the buyer properties owned by sellers for whom that firm is also working as a seller's agent or subagent.

A real estate licensee working as a disclosed dual agent must carefully explain to each party that, in addition to working as their agent, their firm will also work as the agent for the other party. They must also explain what effect their working as a disclosed dual agent will have on the fiduciary duties their firm owes to the buyer and to the seller. When working as a disclosed dual agent, a brokerage firm must have the express permission of a party prior to disclosing confidential information to the other party. Such information includes the highest price a buyer can afford to pay and the lowest price a seller will accept and the parties' motivation to buy or sell. Remember, a brokerage firm acting as a disclosed dual agent will not be able to put one party's interests ahead of those of the other party and cannot advise or counsel either party on how to gain an advantage at the expense of the other party on the basis of confidential information obtained from or about the other party.

If you decide to enter into an agency relationship with a firm which is to work as a disclosed dual agent, you are advised to sign a written agreement with that firm.

TRANSACTION BROKER

The New Jersey Real Estate Licensing Law does not require licensees to work in the capacity of an "agent" when providing brokerage services. A transaction broker works with a buyer or a seller or both in the sales transaction without representing anyone. A **TRANSACTION BROKER DOES NOT PROMOTE THE INTERESTS OF ONE PARTY OVER THOSE OF THE OTHER PARTY TO THE TRANSACTION**. Licensees with such a firm would be required to treat all parties honestly and to act in a competent manner, but they would not be required to keep confidential any information. A transaction broker can locate qualified buyers for a seller or suitable properties for a buyer. They can then work with both parties in an effort to arrive at an agreement on the sale or rental of real estate and perform tasks to facilitate the closing of a transaction. A transaction broker primarily serves as a manager of the transaction, communicating information between the parties to assist them in arriving at a mutually acceptable agreement and in closing the transaction, but cannot advise or counsel either party on how to gain an advantage at the expense of the other party. Owners considering working with transaction brokers are advised to sign a written agreement with that firm which clearly states what services that firm will perform and how it will be paid. In addition, any transaction brokerage agreement with a seller or landlord should specifically state whether a notice

on the property to be rented or sold will or will not be circulated in any or all Multiple Listing System(s) of which that firm is a member.

YOU MAY OBTAIN LEGAL ADVICE ABOUT THESE BUSINESS RELATIONSHIPS FROM YOUR OWN LAWYER.

THIS STATEMENT IS NOT A CONTRACT AND IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

(END OF MANDATORY CONSUMER INFORMATION STATEMENT TEXT)

(OPTIONAL ACKNOWLEDGEMENT OF RECEIPT AFTER TEXT OF CONSUMER INFORMATION STATEMENT:

FOR SELLERS AND LANDLORDS

“By signing this Consumer Information Statement, I acknowledge that I received this Statement from (Name of Brokerage Firm) prior to discussing my motivation to sell or lease or my desired selling or leasing price with one of its representatives.”

FOR BUYERS AND TENANTS

“By signing this Consumer Information Statement, I acknowledge that I received this Statement from (Name of Brokerage Firm) prior to discussing my motivation or financial ability to buy or lease with one of its representatives.”

(OPTIONAL INDICATION OF IN WHAT CAPACITY FIRM INTENDS TO WORK WITH RECIPIENT OF CONSUMER INFORMATION STATEMENT AS PERMITTED BY (g)2 ABOVE:)

I, _____, as an authorized representative of
 (Name of licensee)
 _____, intend, as of this time, to work
 (Name of brokerage firm)
 with you as a _____.

(indicate one of the following):

- seller’s agent only
- buyer’s agent only
- seller’s agent and disclosed dual agent if the opportunity arises
- buyer’s agent and disclosed dual agent if the opportunity arises
- transaction broker

(i) In all brokerage agreements, brokerage firms must include the following:

1. A statement acknowledging receipt of the Consumer Information Statement; and
2. A declaration of business relationship indicating the regular business name of the broker and in what capacity the licensee servicing the agreement and their firm will operate as real estate licensees with respect to the other party to the brokerage agreement. The declaration of business relationship in all brokerage agreements shall contain, in print larger than the predominant size print in the writing, the following language:

I, _____, as an authorized representative of
 (Name of licensee)
 _____, intend, as of this time, to work with you as
 (Name of firm)
 _____.

(indicate one of the following):

- seller’s agent only
- buyer’s agent only
- seller’s agent and disclosed dual agent if the opportunity arises
- buyer’s agent and disclosed dual agent if the opportunity arises
- transaction broker

3. Where brokerage firms secure a written acknowledgement of receipt of the Consumer Information Statement on the Statement itself as provided in (g)1 above and include on the Consumer Information Statement a declaration of the business relationship they intend to have with the other party to the brokerage agreement as provided in (g)2 above, the attachment of a copy of the Consumer Information Statement to the brokerage agreement and the inclusion of a reference to the receipt of the Consumer Information Statement in the brokerage agreement shall constitute compliance with this section.

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

1. Buyer-brokers shall verbally disclose to sellers that they are acting on behalf of a buyer prior to their first communication with the seller during which the seller’s motivation to sell or desired price is discussed.
2. All offers, contracts or leases not exempt by this rule which are prepared by licensees shall include the following statements:

“By signing below the sellers (or landlords as applicable) and purchasers (or tenants as applicable) acknowledge they received the Consumer Information Statement on New Jersey Real Estate Relationships from the brokerage firms involved in this transaction prior to the first showing of the property.”

3. In all offers, contracts, or leases, including leases for short-term rentals, prepared by licensees as permitted by N.J.A.C. 11:5-1.16(g), licensees shall include the regular business name of the broker with whom they are licensed and a declaration of business relationship indicating in what capacity they and their firm are operating as real estate licensees in that real estate transaction. The declaration of business relationship in all offers to purchase or to lease property, including those made on contracts of sale or lease documents prepared by licensees, shall contain, in print as large as the predominant size print in the writing, the following language:

I, _____, as an authorized representative of
(Name of licensee)
_____, am working in this transaction as
(Name of firm)

(indicate one of the following):

- seller’s agent only
- buyer’s agent only
- disclosed dual agent
- transaction broker

i. In transactions in which more than one firm is involved, all licensee-prepared offers, contracts and leases, including leases on short-term rentals, shall contain, in the same size type and immediately following the declaration of business relationship set forth above, the following clause:

Information supplied by

(Name of firm)
has indicated that it is operating in this transaction as a

(indicate one of the following):

- seller’s agent only
- buyer’s agent only
- transaction broker

ii. The requirement to include the clause cited in (j)3i above in licensee-prepared offers, contracts and leases shall not apply with respect to firms whose involvement in a transaction was limited to merely referring a party to another firm.

(k) Licensees shall disclose to other licensees what type of business relationship they have with the party with whom they have a brokerage agreement, and with any other parties with whom they may be working, in the following manner:

1. In all written or computer generated notices directed to other brokerage firms through a Multiple Listing Service or otherwise, the listing broker shall indicate whether they are working as a seller’s agent or as a transaction broker. On listings where the listing broker is operating as a seller’s agent, such notices shall also state:

- i. Whether subagency is offered;
- ii. Whether the seller has authorized the sharing of the listing broker’s compensation with cooperating sub-agents and/or transaction brokers and/or buyer brokers; and
- iii. The amount of compensation offered to cooperating subagents and/or transaction brokers and/or buyer brokers.

2. When a licensee with a listing broker receives an inquiry about a particular property from any other licensee, the licensee with the broker shall, before providing any information to the inquiring licensee beyond general information previously circulated about the listing, verbally ascertain from the inquiring licensee the capacity in which that licensee is operating or intends to operate (buyer-broker, subagent, disclosed dual agent or transaction broker). Inquiries from other licensees in the listing broker’s firm shall also be responded to as set forth in this subsection.

(l) In transactions where brokers seek compensation for their brokerage services from a party to the transaction whom they are not representing or working with, the business relationship with the party they are representing or working with and the compensation arrangement shall also be disclosed to both parties as required by N.J.A.C. 11:5-1.38.

New Rule, R.1995 d.110, effective February 21, 1995 (operative July 1, 1995).
See: 26 N.J.R. 3113(a), 27 N.J.R. 697(a).
Administrative corrections.
See: 27 N.J.R. 1191(a); 27 N.J.R. 1618(b).
Public Notice: Petition for rulemaking; Agency disclosure.
See: 27 N.J.R. 5058(b).

Case Notes

Builder-developer of residential real estate or broker representing it may be liable for nondisclosure of off-site physical conditions known to it and unknown and not readily observable by purchaser if the existence of those conditions is of sufficient materiality to affect the habitability, use, or enjoyment of the property. *Strawn v. Canuso*, 140 N.J. 43, 657 A.2d 420 (1995).

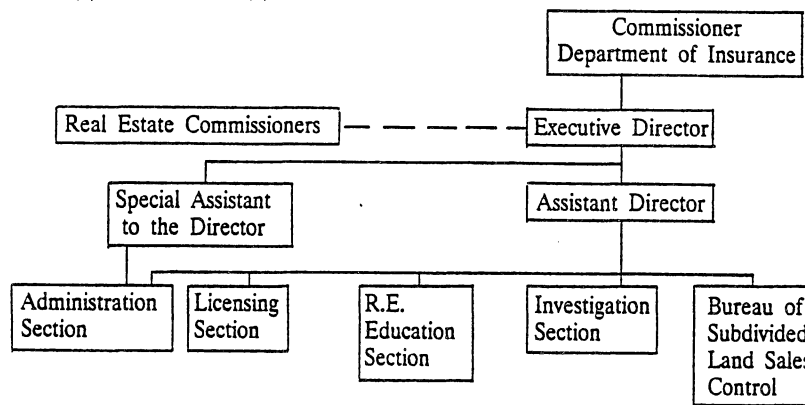
11:5-1.44 Collection of Social Security numbers of licensees

(a) All application forms for licensure or relicensure, including the forms utilized to register for a license exami-

nation, shall include a request that each applicant voluntarily submit his or her Social Security number to the Commission. The Commission shall include on all forms containing that request the following information:

1. That disclosure of the Social Security number is voluntary, not mandatory;
2. That the Social Security number will be used as an internal identifier so as to enhance the Commission's ability to correctly identify applicants for licenses and current licensees; and
3. A specific reference to this rule as the legal authority on the basis of which the Commission is making the request.

New Rule, R.1994 d.268, effective June 20, 1994 (operative July 1, 1994).
See: 26 N.J.R. 735(a), 26 N.J.R. 1222(a), 26 N.J.R. 2585(a).



Amended by R.1989 d.324, effective May 24, 1989.
See: 21 N.J.R. 1364(a), 21 N.J.R. 1709(a).

11:5-2.3 Functions of the Commission

(a) The Commission is comprised of five sections whose functions are as follows:

1. The Licensing Section is responsible for processing license applications, transfers, terminations, renewals and upgrades, and for providing licensing information to the public and to licensees.
2. The Investigations Section is responsible for investigating the qualifications of applicants for licensure, and for investigating complaints against licensed brokers or salespersons or individuals who have allegedly engaged in the business of a real estate broker or a salesperson without being licensed to do so.
3. The Real Estate Education Section is responsible for reviewing the qualifications of real estate school and instructor applicants and for regulating their activities as such through the Education Subsection.
4. The Bureau of Subdivided Land Sales Control within the Investigations Section is responsible for enforcing the provisions of the Land Sales Full Disclosure Act. Its duties include, but are not limited to reviewing applications for the registration of new projects, conducting inspections of conditionally registered projects, and reviewing applications for the renewal of projects.

SUBCHAPTER 2. ORGANIZATIONAL RULES

11:5-2.1 Commission responsibilities

The Real Estate Commission is responsible for the supervision and regulation of the education, examination and licensing of real estate brokers and salespersons, the regulation of the sale or lease of out-of-state properties to New Jersey residents through promotional activities in New Jersey, the investigation and adjudication of disciplinary actions against licensees, and the administration of the Real Estate Guaranty Fund.

11:5-2.2 Organization of the Commission

The organization chart of the Real Estate Commission is as follows:

5. The Administration Section is responsible for the budget and accounting functions and also for ensuring that personnel operate in a manner which will accomplish their designated duties in conjunction with the staff of the Department of Insurance. It is also responsible for processing the rulemaking activity of the Commission, the scheduling and processing of contested matters and other functions including administration of the Real Estate Guaranty Fund.

Amended by R.1989 d.324, effective May 24, 1989.
See: 21 N.J.R. 1709(a).

At (a)3, reference to Education Subsection added to end of sentence.

11:5-2.4 Information available to the public

The public may obtain complete information or make submissions or requests concerning any commission programs by contacting the Real Estate Commission, Department of Insurance, CN 328, Trenton, New Jersey 08625.

11:5-2.5 Commission records open to public inspection; investigative files not open to the public

- (a) The New Jersey Real Estate Commission makes, maintains and keeps records as listed in (b) through (g) below.

(b) Current and computerized public licensing records are available at the Commission's office for inspection and copying during normal business hours upon sufficient notice to the Commission staff. The Commission staff may require several weeks notice to locate records other than computerized records. Except as otherwise noted in this section, records are maintained for a minimum of three years. Older records may be unavailable. Copies of records can be purchased from the Commission at the fees established in the Right to Know Law, N.J.S.A. 47:1A-2.

(c) Requests for certified copies of the Commission's public licensing records (or for a certificate of the absence of a public record) shall be submitted in writing and must specify which records are requested and the time period covered by the request. The Commission staff requires at least 10 working days to provide certified copies of public records.

(d) The following records are maintained pursuant to the Real Estate Licensing Act:

1. Certifications of license history and status based upon computerized licensing records;
2. Real estate broker, broker-salesperson, salesperson, school and instructor license applications, and materials submitted therewith to obtain, transfer, reinstate or renew such licenses, and the final disposition of such applications. However, criminal history information obtained by the Commission pursuant to N.J.A.C. 11:5-1.29 and personal data on a licensee such as home address, home telephone number and date of birth are considered confidential;
3. Real Estate Commission meeting minutes;
4. Orders to Show Cause and complaints issued by the Attorney General's office charging that a licensee or an unlicensed person has violated provisions of the Real Estate License Act or the Commission's administrative rules; documents accepted into the agency record in any such proceeding; and the final disposition of such proceedings including settlements; and
5. Notices, proposals and other records concerning rulemaking required to be kept or distributed to the public by the Commission pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:30-3 and 4 et seq. Complete records of unadopted proposals are available for one year after publication of the proposal. Complete records of adopted rules are available for three years after each rule's effective date.

(e) The following records are maintained by the Bureau of Subdivided Land Sales Control, pursuant to the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq.:

1. Statements of record and additions or corrections thereto filed with the Bureau pursuant to N.J.S.A. 45:15-16.33, 16.36, 16.39 and 16.41(a);
2. Annual reports submitted by a subdivider pursuant to N.J.S.A. 45:15-16.40;
3. Public offering statements and amended public offering statements prepared pursuant to N.J.S.A. 45:15-16.38;
4. Orders to Show Cause and other pleadings charging violations of N.J.S.A. 45:15-16.27 et seq. and the final disposition of such orders, including Orders to Cease and Desist and/or imposing penalties or sanctions; documents accepted into the agency record in any such proceedings; and
5. Applications for exemption of a subdivision filed with the Bureau pursuant to N.J.S.A. 45:15-16.32(c) and N.J.A.C. 11:5-6.19 and the final disposition of any such exemption application.

(f) The following records are maintained pursuant to the Real Estate Guaranty Fund Act, N.J.S.A. 45:15-34 et seq.:

1. Court orders for payment from the Real Estate Guaranty Fund; and
2. Pleadings served upon the Commissioner of Insurance or any duly authorized agent or employee of the Department of Insurance pursuant to N.J.S.A. 45:15-39.

(g) The following licensee records are nonpublic in accordance with N.J.S.A. 47:1A-1 et seq.:

1. Criminal complaints, indictments, judgments of conviction and other separate documents submitted in connection with a license application concerning whether an applicant is disqualified by reason of indictment for or conviction of a crime;
2. Criminal history records obtained as the result of any criminal history check;
3. Petitions or discharges in bankruptcy, complaints, orders or other pleadings in actions for assignment to creditors and other separate documents submitted in connection with a license application concerning whether the applicant is disqualified by reason of unworthiness;
4. Copies of orders of suspension or revocation issued by professional or occupational licensing authorities, and other separate documents submitted in connection with a license application concerning whether the applicant is disqualified from licensure;
5. Records concerning the medical disability of any licensee;
6. Investigative files in any matter pending investigation, or in any completed investigation in which no formal disciplinary action was taken;

7. Personal data on a licensee such as home address, home telephone number and date of birth; and

8. The Social Security numbers of any applicants or licensees which were submitted to the Commission on a license application or otherwise obtained by the Commission.

New Rule, R.1994 d.269, effective June 20, 1994 (operative July 1, 1994).
See: 26 N.J.R. 736(a), 26 N.J.R. 1222(a), 26 N.J.R. 2585(b).

SUBCHAPTER 3. PETITIONS FOR RULEMAKING

11:5-3.1 Petitions for rulemaking—scope

This subchapter shall apply to all petitions made by interested persons for the promulgation, amendments or repeal of any rule by the New Jersey Real Estate Commission, as required by N.J.S.A. 52:14B-4(f).

11:5-3.2 Procedure for the submission of petitions for rulemaking

(a) Any interested person may petition the Real Estate Commission to promulgate, amend or repeal a rule. Such petition shall state clearly and concisely:

1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request;
4. The petitioner's interest in the request, including, without limitation, any relevant organizational affiliation or economic interest; and
5. References to the Commission's authority to take the requested action.

(b) Petitions should be sent to the following address:

New Jersey Real Estate Commission
CN 328
Trenton, New Jersey 08625

(c) Filing a petition shall be made by forwarding an original and two copies to the Commission at the address indicated in (b) above.

(d) Any document submitted to the Real Estate Commission which is not in substantial compliance with (a) above shall not be deemed to be a petition for a rule requiring further Commission action pursuant to N.J.S.A. 52:14B(f).

(e) Within 30 days of its receipt of a petition for rulemaking, the Commission shall review the same to ascertain if the submission complies with the requirements of (a) above and, in the event that the Commission determines that the submission is not in substantial compliance with (a) above, the Commission shall notify the petitioner of such noncompliance and of the particular deficiency or deficiencies in the submission on which the decision of the Commission was based. The Commission shall also advise the petitioner that any deficiencies may be corrected and the petition may be re-submitted for further consideration.

11:5-3.3 Procedure for the consideration and disposition of rulemaking petitions

(a) Upon receipt of a petition in compliance with N.J.A.C. 11:5-3.2, the Commission will file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register. The notice will include:

1. The name of the petitioner;
2. The substance or nature of the rulemaking action which is requested;
3. The problem or purpose which is the subject of the request; and
4. The date the petition was received.

(b) Within 30 days of receiving the petition, the Commission will consider the petition and decide upon an action on the petition. The petitioner may be requested to attend a Commission meeting and answer questions concerning the petition. The Commission will mail to the petitioner, and file with the Office of Administrative Law for publication in the New Jersey Register, a notice of action on the petition which will include:

1. The name of the petitioner;
2. The New Jersey Register citation for the notice of petition, if that notice appeared in a previous Register;
3. Certification by the Commission that the petition was duly considered pursuant to law;
4. The nature or substance of the Commission's action upon the petition; and
5. A brief statement of reasons for the Commission's action.

(c) Commission action on a petition may include:

1. Denying the petition;
2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or

3. Referring the matter for further deliberations, the nature of which will be specified and which will conclude upon a specified date. The results of these further deliberations will be mailed to the petitioner and submitted to the OAL for publication in the New Jersey Register.

11:5-3.4 Public hearings for promulgation, amending or repealing rules

(a) The Commission may hold a public hearing to gather information concerning any proposed rule, amendment, or repeal.

(b) The Commission shall publish a notice of the place, date and time of the hearing at least 15 business days before the date of the hearing.

SUBCHAPTER 4. PROCEEDINGS BEFORE THE COMMISSION

11:5-4.1 Pleadings enumerated and defined

(a) Pleadings before the Commission shall be orders to show cause, complaints, answers, petitions, and motions, which for purposes of these rules are defined as follows:

1. "Orders to show cause" means orders issued by the Director on behalf of the New Jersey Real Estate Commission compelling the persons to whom the order is directed to appear and show cause before the Commission why certain actions, including but not limited to the imposition of sanctions, should not be taken by the Commission pursuant to the Real Estate Licensing Act, N.J.S.A. 45:15-1 et seq. and the rules promulgated thereunder.

2. "Complaint" means a filing by the Office of the Attorney General of New Jersey alleging violations of one or more of the provisions of N.J.S.A. 45:15-1 et seq. and/or of the Commission's rules.

3. "Answer" means the pleading filed by a licensee or other party against whom an order to show cause or complaint is directed which sets forth the respondent's position with the respect to each factual and legal allegation in the order or complaint and specifies all affirmative defenses raised by the respondent.

4. "Petition" means the pleading filed by an interested person to request a rulemaking action or declaratory ruling by the Commission or the pleading filed by an interested person seeking to intervene in any rulemaking or declaratory ruling proceeding.

5. "Motion" means the application filed incidental to an action before the Commission for the purpose of obtaining a ruling or order directing that some action be taken in favor of the movant.

(b) Documents, affidavits or other evidentiary matter submitted with or attached to a pleading other than a motion shall not be deemed evidentiary. Such materials must be offered into evidence at a hearing and admitted as such in order to be considered as part of the evidentiary record.

11:5-4.2 Answers

(a) Any party against whom an order to show cause or complaint is directed and who desires to contest the same or make any representation to the Commission in connection therewith shall file an answer in writing with the Commission.

(b) The answer shall apprise the Commission fully and completely of the nature of all defenses and shall admit or deny specifically and in detail all material allegations of the order to show cause or complaint.

(c) Matters alleged by way of affirmative defense shall be separately stated and numbered in the answer.

(d) An answer must be filed within 20 days after service of the order to show cause or complaint unless the deputy attorney general who represents the complainant consents, or the Commission orders an extension of the time, to answer.

(e) Filing of an answer shall be made by forwarding an original and two copies to the Director of the Commission and a copy to the deputy attorney general who represents the Commission.

11:5-4.3 Adversary hearing determination by the Commission

(a) Promptly after the answer is filed, the Commission will review the pleadings at a Commission meeting and decide whether any material fact or issue of law is contested. If the Commission determines that a matter is contested, a hearing will be scheduled. On its own motion or at the request of either party, the Commission may, in its discretion, transmit the case to the Office of Administrative Law for hearing and initial decision.

(b) If, upon review of the pleadings, the Commission determines that no material facts or issues of law are contested, the Commission shall afford the respondent an opportunity to be heard and to present witnesses and documentary evidence, which presentation shall be limited to the issue of the severity of any sanction or penalty to be imposed. By stipulation or other means, the deputy attorney general representing the complainant shall present evidence sufficient to establish the factual basis for all alleged violations and may present documentary evidence or witnesses in rebuttal of any mitigation testimony or evidence presented by the respondent.

11:5-4.4 Motions

(a) In all matters heard by the Commission, motions and replies shall be made in the manner and form prescribed by the rules which establish the procedures for motion practice before the Office of Administrative Law, N.J.A.C. 1:5-1.12. In construing those rules, the terms "Executive Director" and "Commission" are substituted for the terms "Clerk" and "Judge", respectively.

(b) Filing of a motion or reply shall be made by forwarding an original and 15 copies to the Director of the Commission and a copy to all other attorneys and pro se parties, if any, in the matter.

(c) A motion shall be considered by the Commission at a regularly scheduled meeting pursuant to the requirements of N.J.A.C. 1:1-12.

(d) Oral argument on a motion when permitted or directed by the Commission shall be presented to the Commission by the parties or their representatives in person at a Commission meeting; motions will not be heard by telephone conference.

(e) Motions for the reconsideration of sanctions imposed by the Commission must be filed within 30 days of the date upon which notice of the decision imposing sanctions was provided to the movant. Such motions must be accompanied by a recitation of the particular facts and legal basis which purportedly support the application.

11:5-4.5 Conference hearing procedure

(a) The Director may, on behalf of the Commission, issue an order to show cause requiring a licensee or other person to appear before the Commission for a conference hearing as defined in N.J.A.C. 1:1-2.1 in circumstances where violations of N.J.S.A. 45:15-17d, 17o and/or 19.1 are alleged to have occurred or where there is a danger of imminent harm to the public.

(b) The order to show cause shall be served upon the respondent at least 10 days prior to the hearing.

(c) The respondent shall not be required to file a written answer, but shall be required to appear on the return date of the order to show cause and admit or deny the allegations in the order to show cause and present all defenses to the alleged violations.

(d) The respondent may notify the Commission by telephone or letter of any witnesses to be subpoenaed on the respondent's behalf and shall provide to the Commission the addresses at which such witnesses can be served.

(e) Discovery and motions in conference hearings shall be limited in accordance with N.J.A.C. 1:1-10.6 and 1:1-12.1, respectively.

11:5-4.6 Sanctions: failure to answer or appear; default

(a) In all matters heard by the Commission, the imposition of sanctions for the failure to appear and/or to comply with any order of the Commission or the requirements of these procedural rules shall be governed by the procedures established for the imposition of sanctions in matters heard by the Office of Administrative Law at N.J.A.C. 1:1-14.4.

(b) The Commission shall have the discretionary authority to grant extensions of the time to file an answer or appear.

11:5-4.7 Settlements

(a) The parties to a proposed settlement shall present the settlement to the Commission pursuant to the requirements of N.J.A.C. 1:1-19.1.

(b) Such a settlement shall be presented to the Commission during the public session of a Commission meeting. Should a proposed settlement be rejected by the Commission, the proposal shall not be considered or used for any purpose in any subsequent hearing. Any settlement approved by the Commission shall be a public record.

11:5-4.8 Decisions in enforcement actions

All final decisions of the Real Estate Commission on contested and uncontested matters shall be reduced to writing, in the form of an order of the Commission, which shall be served upon all parties to the matter either personally or by registered or certified mail sent to the last known business address of all parties.

11:5-4.9 Applications for temporary suspension

(a) The Commission may on its own motion, and upon the terms and conditions as set forth in N.J.S.A. 45:15-17.1 and as the Commission deems appropriate, enter an order temporarily suspending the license of any licensee upon making a finding that prima facie evidence exists that:

1. The licensee has failed to account for or to pay over any moneys belonging to others that have come into the possession of the licensee, in violation of N.J.S.A. 45:15-17(d); or

2. The licensee has commingled his or her personal money or property with the money or property of others or has failed to maintain and deposit such moneys in a special account, separate and apart from personal or other business accounts, when acting in the capacity of a real estate broker, or escrow agent, or as the temporary custodian of the funds of others, in a real estate transaction, in violation of N.J.S.A. 45:15-17(o).

(b) At least 24 hours prior to ordering a temporary suspension, the Commission shall give notice to the licensee of the application for the order and provide the licensee an opportunity to appear before the Commission to show cause why the license should not be suspended pending a full hearing of the matter. Such notice shall be given in writing or telephonically.

1. Written notice shall be served personally or sent by certified mail to the last known business address of the licensee.

2. Telephonic notice shall be confirmed in a writing sent to the licensee's last known business address as soon as practicable after the delivery of the telephonic notice.

3. The person who personally or telephonically delivers notice of an application for a temporary suspension shall execute a certification confirming that he or she has provided the notice, which certification shall be submitted into the record of the proceeding on the application for the temporary suspension.

(c) At the hearing on the application for the temporary suspension, the Commission shall consider evidence presented by the licensee to explain, disprove or rebut the prima facie evidence upon which the application for the temporary suspension is based. Unless otherwise provided in N.J.S.A. 45:15-17.1, the provisions of N.J.A.C. 1:1-12.6(f) shall apply to proceedings on applications for temporary suspensions.

(d) Prior to entering any order imposing a temporary suspension as provided in (a) above, the Commission shall also make findings that:

1. An adequate good faith effort to provide notice to the licensee was made and that the licensee was afforded an opportunity to be heard. Submission of the certification referred to in (b) above shall be sufficient to establish that an adequate good faith effort was made to provide notice of the proceeding;

2. Based on the evidence presented, there is a substantial likelihood that the charging party will prevail on the merits when the matter is fully argued before the Commission; and

3. Immediate and irreparable harm will probably result before the licensee can be fully heard. Prima facie evidence of a violation of N.J.S.A. 45:15-17(d) or (o) shall be considered sufficient to satisfy this criterion.

(e) All orders imposing temporary suspensions shall advise the suspended licensee of the date upon which the Commission shall hold a full evidentiary hearing on the violations upon which the temporary suspension is based, which date shall be no more than 30 days following the effective date of the temporary suspension. Such a hearing shall be a plenary hearing, conducted in accordance with N.J.A.C. 1:1-14.1 through 14.7.

(f) The temporary suspension shall become effective upon issuance by the Commission, and the licensee and his or her broker shall promptly be notified of its issuance, whereupon the license of the suspended person shall immediately be returned to the Commission. The Commission shall confirm the suspension in a written order which shall be served upon the licensee and his or her broker via personal service or by certified mail, return receipt requested at the licensee's last known business address.

(g) In order to entertain applications for temporary suspensions made during time periods when the Commission is not scheduled to meet, or when a quorum cannot be

obtained, the Commission may delegate to three commissioners, at least one of whom shall be either the President or Vice-President of the Commission and at least one of whom shall be a public member, the authority to temporarily suspend a license as provided in (a) through (f) above. In such circumstances, all references in these rules to the Commission shall be construed as referring to the three commissioners so designated by the Commission.

New Rule, R.1994 d.270, effective June 20, 1994 (operative July 1, 1994).
See: 26 N.J.R. 737(a), 26 N.J.R. 1222(a), 26 N.J.R. 2586(a).

SUBCHAPTER 5. APPEALS OF INITIAL DENIALS OF LICENSING APPLICATIONS

11:5-5.1 Procedures applicable to appeals of initial denials of licensing applications

(a) Initial denials of the following applications may be appealed to the full Real Estate Commission through compliance with all of the requirements established in (b) below:

1. License applications, with the exception of reinstatement applications submitted beyond the statutorily established time limitations upon such reinstatements;

2. Applications from disabled veterans for education waivers and/or apprenticeship waivers;

3. Applications for the issuance of education waivers by persons other than disabled veterans;

4. Applications for the issuance of apprenticeship waivers by broker licensees of other states; and

5. Applications by broker license candidates for the Commission's approval of their apprenticeship.

(b) All appeals to the full Real Estate Commission provided for in (a) above shall be filed by the appealing applicant submitting to the Commission within 45 days of the date of the notice of denial an original and 15 copies of all of the documentation noted below:

1. A covering letter stating the factual and legal basis of the appeal, to which shall be attached a copy of the application and the denial letter which forms the basis of the appeal. The said covering letter shall also state whether the applicant desires to appear and present oral argument and/or testimony when the appeal is considered by the Commission;

2. Where the denial was based upon an applicant's prior criminal history and/or their loss of a professional license, all judgments of conviction on the convictions which form the basis of the denial and a letter from their probation or parole officer, if within one year of making the application they were under such supervision, which letter shall state the extent of the applicant's compliance with the terms and conditions of his or her probationary sentence or parole supervision, and/or a copy of the order or memorandum of settlement evidencing the loss of the professional license;

3. On all applications as described in (b)2 above, a letter from the broker with whom the applicant intends to be licensed, evidencing that person's full knowledge of the factors which formed the basis of the initial denial;

4. Any other relevant documentation which the applicant desires the Commission to consider when hearing the appeal; and

5. Any other documentation which the Commission determines is required in order to allow it to make a fully informed decision on the appeal.

(c) Upon the proper filing of an appeal as described in (b) above, the appeal package shall be reviewed and the applicant advised of the following:

1. The date, time and place at which the appeal will be considered by the full Real Estate Commission; or

2. That based upon the content of the appeal documents a determination has been made to approve the application; or

3. The appeal package is deficient in certain respects, which shall be specified to the applicant, with an indication that upon receipt of the missing documentation the appeal will be given further consideration.

(d) All applicants have the opportunity to be represented by counsel when submitting an appeal and/or appearing before the Real Estate Commission and to call witnesses to testify on their behalf at the time of its consideration of their appeal.

(e) Upon the conclusion of a hearing on an appeal, the Commission shall either render a decision or take the matter under advisement and render a decision at a future date. The ruling of the Commission shall be communicated to the applicant in written form promptly upon the decision being rendered.

SUBCHAPTER 6. RULES INTERPRETING AND IMPLEMENTING THE REAL ESTATE SALES FULL DISCLOSURE ACT, N.J.S.A. 45:15-16.27 ET SEQ.

11:5-6.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the New Jersey Real Estate Commission (hereinafter, the Commission) to implement the provisions of the Real Estate Sales Full Disclosure Act (hereinafter, the Act), N.J.S.A. 45:15-16.27 et seq. These rules are applicable to all applications and matters pertaining to and/or effected by the provisions of this Act.

(b) All registration and exemption applications and all correspondence and inquiries should be directed to: New Jersey Real Estate Commission, Bureau of Subdivided Land Sales Control, 20 West State Street, CN-328, Trenton, New Jersey 08625.

11:5-6.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Advertising" means the publication, or causing to be published, of any information offering for sale, or for the purpose of causing or inducing any other person to purchase or acquire, an interest in the title to subdivided lands, including the land sales contract to be used and any photographs or drawings or artist's representation of physical conditions or facilities on the property existing or to exist by means of any:

1. Newspaper or periodical;
2. Radio or television broadcast;
3. Written or printed or photographic matter produced by any duplicating process producing 10 copies or more;
4. Billboards or signs;
5. Display of model homes or units;
6. Material used in connection with the disposition or offer of subdivided lands by radio, television, telephone or any other electronic means; or
7. Material used by subdividers or their agents to induce prospective purchasers to visit the subdivision; particularly vacation certificates which require the holders of those certificates to attend or submit to a sales presentation by a subdivider or its agents.

"Advertising" does not mean: stockholder communications such as annual reports and interim financial reports, proxy materials, registration statements, securities prospectuses, applications for listing securities on stock exchanges, or similar documents, prospectuses, property reports, offering statements or other documents required to be delivered to a prospective purchaser by an agency of any other state or the Federal Government; all communications addressed to and relating to the account of any person who has previously executed a contract for the purchase of the subdivider's lands except when directed to the sale of additional lands.

"Applicant" means a person who or entity which has applied for the registration of real property of interests therein with the Commission pursuant to the Act or for a total or limited exemption from those registration requirements.

“Blanket encumbrance” means a trust deed, mortgage, judgment, or any other lien or encumbrance, including an option or contract to sell, or a trust agreement affecting a subdivision or affecting more than one lot offered within a subdivision, except that term shall not include any lien or other encumbrance arising as the result of the imposition of any tax assessment by any public authority.

“Broker” or “salesperson” means any person who performs within this State as an agent or employee of a subdivider any one or more of the services or acts as set forth in this Act, and includes any real estate broker or salesperson licensed pursuant to N.J.S.A. 45:15-1 et seq. or any person who purports to act in any such capacity.

“Broker’s Release” means the document issued by the Commission affirming that the broker to whom it is issued has been approved by the Commission as the designated New Jersey broker of record or as a supplemental broker of a registrant, and has been authorized by the Commission to commence solicitation and sales efforts on behalf of that registrant in New Jersey.

“Commission” means the New Jersey Real Estate Commission.

“Common promotional plan” means any offer for the disposition of lots, parcels, units or interests of real property by a single person or group of persons acting in concert, where those lots, parcels, units or interests are contiguous, or are known, designated or advertised as a common entity or by a common name regardless of the number of lots, parcels, units or interests covered by each individual offering.

“Deed in trust” means a written instrument, in recordable form and conforming to all applicable laws of the situs state, under the terms of which title to a property passes to a trustee who is independent of and unaffiliated with the applicant/registrant, and which title is to be held by that trustee on behalf of the purchaser pursuant to a trust agreement or equivalent instrument between the registrant and the trustee obligating the trustee to convey title to the purchaser promptly upon the purchaser’s fulfillment of their obligations under an installment contract for the purchase of such property by the purchaser from the registrant.

“Disposition” means the sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision if undertaken for gain or profit.

“Notice” means a communication by mail from the Commission executed by its secretary or other duly authorized officer. Notice to subdividers shall be deemed complete when mailed to the subdivider’s address currently on file with the Commission.

“Offer” means every inducement, solicitation or attempt to encourage a person to acquire an interest in a subdivision if undertaken for gain or profit.

“Person” means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

“Principal” means all individual applicants or subdividers; all general partners of applicants or subdividers that are partnerships; all officers, directors and shareholders of corporate applicants or subdividers who are actively involved in the planning, management or promotion of the offering; and all other individuals who either own or control an interest of 10 percent or more in an applicant or subdivider, or who will actively participate in the planning, management or promotion of the offering, regardless of the form of organization of the applicant or subdivider.

“Purchaser” means a person who acquires or attempts to acquire or succeeds to an interest in a subdivision.

“Situs state” means the state, province, territory, protectorate, country or other jurisdiction situated outside of the State of New Jersey within which a subdivision is located.

“Time-share estates” includes both “fee simple” and “right to use” time-share interests and means:

1. An “interval estate” meaning a combination of an estate for years in a lot, parcel or unit, during the term of which title rotates among the time-share owners, coupled with a vested undivided fee simple interest in the remainder in that unit as established by the declaration or deed creating the interval estate; or
2. A “time-span estate” meaning a combination of an undivided interest in a present estate in fee simple in a lot, parcel or unit established by the declaration or deed creating the time-span estate, coupled with the exclusive right to possession and occupancy of the parcel or unit during a regularly recurring period; or
3. A “vacation license” meaning the exclusive right to possession and occupancy of a lot, unit or parcel during a regularly recurring period established by club membership, lease or license.

“Subdivider” or “developer” means any owner of subdivided lands or the agent of that owner who offers the subdivided lands for disposition.

“Subdivision” and “subdivided lands” mean any land situated outside the State of New Jersey whether contiguous or not, if one or more lots, parcels, units or interests are offered as part of a common promotional plan of advertising and sale and expressly means and includes such units or interests commonly referred to as a “condominium” defined in the “Condominium Act” P.L. 1969, c.257 (N.J.S.A.

46:8B-1 et seq.). In addition to condominiums, this definition shall also specifically include, but shall not be limited to, any form of homeowners association, any housing cooperative, any community trust or other trust device and any form of time-sharing.

11:5-6.3 Forms of documents

(a) Rules concerning documents with respect to the registration of subdivisions with the Commission and to the sale of interests in out-of-State subdivisions pursuant to the Act are as follows:

1. All statements of record submitted to the Commission shall be bound, referenced and properly indexed with the exception of those received from the Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development.

2. All documents submitted to the Commission for filing shall, wherever possible, be typewritten on one side of the paper only. One copy of each exhibit or document shall be submitted, unless the Commission requests more than one copy. All documents submitted to the Commission shall not exceed 8½ x 14 inches. The Commission will make exceptions for documents which an applicant for registration cannot reasonably reduce, such as topographical maps, plat maps and surveys, if such documents can be folded to 8½ x 14 inches. Where the Commission requires certified documents and the applicant cannot obtain reduced certified documents, the applicant may reduce such documents and submit therewith an affidavit verifying such document. All documents submitted pursuant to these rules shall become part of the Commission's public records.

3. An applicant may submit photographs as part of the application for registration. Photographs shall not be used in lieu of the legal description of the registered property or any other required written documents.

4. An applicant may submit verified copies of original documents.

5. An affidavit or affirmation as prescribed in the Commission's forms shall be executed for each of the following documents:

- i. Statement of record, partial statement of record;
- ii. Application for consolidated registration;
- iii. Application for amendment to Order of Registration;
- iv. Annual report of registered properties;
- v. Partner, officer, director or principal disclosure;
- vi. Consent(s) to service of process; and

vii. Broker's Affidavit and application for release.

6. A certified property report and statement of record of the Office of Interstate Land Sales Registration, Department of Housing and Urban Development, may be filed as a statement of record conforming to the requirements of the Act, provided the following documentation shall also be submitted:

- i. Consent(s) to service of process;
- ii. Audited financial statement(s) as provided in N.J.A.C. 11:5-6.4(a)15;
- iii. A statement detailing any bonding or security agreements entered into;
- iv. Copies of all plats pertinent to the subdivision;
- v. A copy of each contract to be used in the sale of property in the development to New Jersey purchasers;
- vi. A list of the officers of the corporation;
- vii. A copy of the articles or certificate of incorporation;
- viii. Application/Affidavit of developer;
- ix. A proposed New Jersey Public Offering Statement which conforms to the requirements of N.J.S.A. 45:15-16.38 and N.J.A.C. 11:5-6.5; and
- x. Such other additional documents or proofs that may be requested.

7. The acceptance of the certified report and statement of record of the Office of Interstate Land Sales Registration may be conditioned upon an acceptable on-site inspection by the Commission or its designee. No marketing or sales activity will be permitted in New Jersey until all the proper authorizations have been received by the applicant and broker from the Commission.

8. Any applicant who wishes to register a subdivision which has been similarly registered in this State or any other state where the requirements of that registration are substantially similar to those imposed by this subchapter, may submit a certified copy of the approved application for registration filed in such other jurisdictions. In the event the Commission finds upon review that such an application substantially conforms to the standards and requirements imposed by the Act and this subchapter, the Commission may register such property; provided, however, that prior to such registration, the Commission may require submission of such supplemental documents and information as it may deem necessary.

9. Nothing herein, or in the Act, shall be construed to require an applicant to whom an Order of Registration has previously been issued to file any additional documents or affidavits with the Commission other than notices of amendments or requests for approval of material change(s) and annual reports prior to the expiration of that Order of Registration.

11:5-6.4 Contents of applications for registration

(a) All applications for registration shall contain the following documents and information:

1. A form application provided by the Commission in which the applicant identifies the specific lots, parcels, units or interests to be registered. The application shall be accompanied by an affidavit, on a form provided by the Commission, signed by the applicant which affirms and attests that the applicant is familiar with the project being registered, the nature and content of the application for registration, the Act and the rules promulgated thereunder, and that the contents of the application are true and correct and conform with those requirements. A second affidavit to be completed by the designated New Jersey broker of record shall accompany the application. The broker's affidavit shall state that he is familiar with the registration and its contents or has physically inspected the property, or both, that he is familiar with the Act and the rules promulgated thereunder, and with the Real Estate Brokers and Salesmen Act, and that he is not aware of any information that would lead him to believe that the information in the registration application does not provide full and fair disclosure of the offering;

2. One copy of the proposed New Jersey Public Offering Statement;

3. A statement by the applicant confirming that all monies paid by New Jersey residents prior to their closing on a purchase or lease of an interest in the registered subdivision, including the purchase of a fee simple interest in a timeshare project, will be held in an escrow account or in trust by an attorney licensed to practice law in this State or the state or country where the property is located, or will be guaranteed by some means acceptable to the Commission. The statement shall specify the name and location of the institution where the escrow account is maintained, as well as the name and address of any trustee or escrow agent. The statement shall also confirm that the applicant and broker will hold all funds in escrow or in trust until the closing and delivery of the deed or until the applicant posts a bond or some other guarantee acceptable to the Commission to ensure New Jersey purchaser deposits, which bond shall be separate from and in addition to any bond or assurance for the completion of infrastructure and promised improvements. In the event that interests in the subdivision, including fee simple interests in timeshare projects, are offered through installment sale contracts where closing and delivery of a deed or deed in trust are postponed until three or more installment payments, including, but not limited to, monthly payments for licenses, memberships or other non-fee interests in the subdivision, have been paid, the statement shall confirm that all monies paid by New Jersey purchasers will be escrowed until:

i. The statutory seven-day rescission period has expired; and

ii. A deed or deed in trust memorializing the transaction has been offered to the purchaser, which offer shall be made within 180 days of the date on which the first installment payment was made, presuming that all payments are current as of that time, and which deed or deed in trust will, presuming that the purchaser has performed all acts required to enable the subdivider to do so, be recorded within the said 180 day period with the appropriate recording authority in the situs state; and

iii. All statutory and other rescission periods have passed; and

iv. All contingencies other than the completion of secured promised improvements have been fulfilled. In the alternative, the statement shall confirm that evidence acceptable to the Commission that a bond, irrevocable bank letter of credit, or other financial assurances acceptable to the Commission, but in no event bonds issued by the applicant or any affiliated company, in an amount sufficient to ensure all monies paid by New Jersey purchasers prior to the delivery of a deed or deed in trust has been posted by an acceptable third party surety or entity on behalf of the applicant. In order for a surety or entity to be deemed acceptable, it must be authorized to do business in the situs state and engaged in the general business of providing financial assurances on the open market. The identity of the insured and amount of the instrument shall be as required by N.J.A.C. 11:5-6.5(e)17;

4. An irrevocable appointment of the Commission to accept, on behalf of the applicant, service of any lawful process in any proceeding arising under the Act against the applicant or his agents;

5. A statement as to the states or other jurisdictions, including the Federal government, in which an application for registration, or similar documents, have been filed, and copies of any adverse orders, judgments or decrees by any regulatory agency, court, or administrative body, with the exception of orders approving advertising, entered against the applicant, any parent or subsidiary of the applicant, or any company related to or affiliated with the applicant with respect to the property for which the application for registration is being filed;

6. The name, address and principal occupation for the past five years of every principal officer and director of the applicant, and of every partner who owns a 10 percent or greater interest in the applicant, and of every shareholder who owns 10 percent or more of the stock of the applicant as of 30 days prior to the filing of the application for registration, with an indication of the nature and extent of their interest in the applicant;

7. Copies of the certificate or articles of incorporation, with all amendments thereto, if the applicant is a corporation; copies of all instruments by which the trust is created or declared, if the developer is a trust; copies of the articles of partnership or association and all other organization papers if the applicant is organized under another form. In the event the applicant is not the legal title holder to the property being registered, the above documents shall be submitted for both the applicant and the legal title holder;

8. A legal description by metes and bounds or by lot and block numbers, section, township and range designation, or other acceptable means of the lands to be registered, together with a map showing the proposed or actual subdivision and showing the dimensions of the lots, parcels, units or interests, as available, and the relation of such lands to existing streets, roads and other improvements. The aforesaid map or plat shall be drawn to scale, signed and sealed by a licensed professional engineer or land surveyor;

9. Copies of the deed or other instruments establishing title in the developer or other record owner and any escrow agreement required pursuant to (a)3 above, and a current title search, title report, title insurance policy, title opinion from an independent attorney, or certificate or binder issued by a licensed title insurance company. The Commission may also require a copy of any agreement which grants the applicant the rights to dispose of the property interest on behalf of the title holder;

10. A statement or listing of any pending litigation, court orders, judgments or decrees which materially affect the sale or development of the offering or the financial stability of the applicant;

11. A statement that the lots, parcels, units or interests in the development will be offered to the public and sold or alienated without regard to marital status, sex, race, handicap, religion, familial status, color, ancestry, creed or national origin;

12. A statement of the present condition of access to the development and of the existence of any adverse conditions that affect the development, or unusual conditions relating to noise or safety which affect the development that are known to the applicant, or should reasonably be known, or are readily ascertainable;

13. Copies of all contracts, agreements and acknowledgements which a purchaser or lessee may be required to execute in connection with this offering;

14. In the event there is, or will be, a blanket encumbrance affecting the development or a portion thereof, a copy of the document creating it and a statement of the consequences to a purchaser of a failure of the person bound to fulfill the obligations under the instrument, and of the manner in which the interest of the purchaser is to be protected in the event of such eventuality;

15. The audited financial statements of the applicant for the fiscal year. The term "financial statements" includes, but is not limited to, the following statements: auditor's report, balance sheet, statement of income, statement of changes in retained earnings, statement of changes in financial position, statement of changes in owner's equity, notes to financial statements and current profit and loss statement. The filing of the audited consolidated financial statements of a parent company of an applicant may be permitted if the parent company is the registrant, applicant, co-registrant or guarantor. In the discretion of the Commission, it may accept or require alternative information evidencing the applicant's ability to complete the promised improvements to the development in lieu of the audited financial statements;

16. A statement concerning any filing for or adjudication of bankruptcy during the last five years by or with regard to the applicant, its predecessor, parent or subsidiary company and any principal owning more than a 10 percent interest in the subdivision at the time of the filing of the application for registration. These requirements shall not extend to limited partners or those whose interests are solely those of passive investors;

17. Copies of all easements and restrictions of record and any easements or restrictions not of record which are within the applicant's knowledge;

18. A statement as to the status of all applications for permits and/or compliance with any permits required or issued by any Federal, state, or local agencies or similar organizations which have the authority to regulate development or issue permits, approvals or licenses which may be material to the development, sale or other disposition of the lots, units, parcels or interests to be registered and the existing or proposed facilities, common areas or improvements thereof;

19. A statement indicating whether the applicant, or a parent or subsidiary of the applicant, or any of their current officers or principals have, during the past 10 years, or any of their former officers or principals have during the last two years been convicted of a crime involving any aspect of the real estate sales or real estate securities business in this State, the United States or any other state or foreign jurisdiction and whether the applicant has been subject to any permanent injunction or final administrative order restraining a false or misleading promotional plan involving real property disposition, or any final administrative order or judgement by any court finding that the applicant or any such persons have engaged in any unfair acts and/or fraudulent or deceptive practices involving the disposition of real property or of other products or services;

20. A copy of the proposed budget for the operation and maintenance of the common elements and facilities based upon full occupancy together with the estimated annual assessment and monthly charges to be assessed to each type of unit. If the proposed offering is a condominium, time-share or homeowners association, or involves any common ownership interest, the budget shall specifically state the amount set aside as reserves for the replacement of the common elements and facilities, as certified by an independent public accountant, or property manager or other independent expert. The budget should also indicate whether the applicant is subsidizing the maintenance fee or plans to subsidize the maintenance fee during sales prior to transfer of control to any association, and if so, the amount of the subsidy and the probable effect of the applicant's discontinuing the making of such payments upon the maintenance fee payable by each owner. The budget shall be accompanied by a letter of adequacy issued by an independent public accountant, or certified property manager, attesting that the budget was prepared in good faith and a letter from an independent insurance agent or broker confirming that the insurance coverage meets any standards required in the project documents and as required by situs state law;

21. A covering letter specifying the following information with regard to the project:

- i. The nature of the project (that is, number of lots in each subdivision or number of condominium units in mid-rise, etc.);
- ii. Certifying that the filing fee and other fees are correct as required by N.J.S.A. 45:15-16.27 et seq.;
- iii. Identifying to whom all correspondence should be directed, with an address; and
- iv. Identifying to whom Annual Report Notices and forms should be sent, with an address and telephone number; and

22. Such other additional information as the Commission may require, after review of an application for registration, to assure full and fair disclosure.

Case Notes

New Jersey Land Sales Full Disclosure Act discriminated in its plain effect against interstate commerce and violated dormant commerce clause. *Old Coach Development Corp., Inc. v. Tanzman, C.A.3 (N.J.)1989, 881 F.2d 1227.*

11:5-6.5 Public Offering Statements

(a) No registrant may dispose of any lot, parcel, unit or interest in a registered subdivision unless said registrant delivers to the purchaser a current New Jersey Public Offering Statement or approved equivalent, and affords the purchaser a reasonable opportunity to read the same before the purchaser signs the contract or purchase agreement.

(b) The Public Offering Statement shall disclose fully and accurately the characteristics of the subdivision and the lots, parcels, units or interests offered and shall make known to prospective purchasers all unusual and material circumstances and features affecting the subdivision. The Public Offering Statement shall be in clear and concise language and combine simplicity and accuracy in order to fully advise purchasers of their rights, privileges, obligations and restrictions.

1. The Public Offering Statement shall be in a form designated by the Commission. No change in form may be made without the consent of the Commission.

(c) The Commission may require an applicant to alter or amend the proposed Public Offering Statement in order to assure full and fair disclosure to prospective purchasers and may require the revision of a Public Offering Statement which it finds to be unnecessarily complex, confusing, illegible or incomplete.

(d) A Public Offering Statement shall not be deemed current unless it contains all amendments approved by the Commission.

(e) The Public Offering Statement shall contain the following information:

1. The name and address of the subdivision being offered, the name and principal address of the applicant and the name and address of the New Jersey broker of record;

2. A narrative description of the interest to be offered including; but not limited to; the rights and obligations of purchasers in their lots, parcels, units or interests and in the common elements;

3. A narrative description of the subdivision including, but not limited to, specific designation of the total number of lots, parcels, units or interests contained in the offering, the total number of lots, parcels, units or interests which will or may be constructed in the entire project, the present and proposed access to the development and the promised completion date of the present offering for sale and the estimated completion date of the entire development;

4. Relevant community information including, but not limited to, the existence and location of hospitals, health and recreational facilities, schools, fire and police protection, places of worship, streets, water supplies, levees, drainage control systems, irrigation systems, customary utilities, etc.;

5. A statement of the nature, type and capacity of improvements to be installed by the developer and the proposed dates of completion for sections offered for sale and estimated dates of completion for sections not yet offered for sale. The developer may indicate that the estimated dates of completion of improvements in sec-

tions not yet offered for sale are subject to market conditions and other variables, or similar qualifying language. (Note: The Public Offering Statement shall be amended to reflect proposed dates of completion when sections which were not previously offered for sale are offered for sale). Also, a statement of any approvals not yet obtained, the acquisition of which is a precondition to the completion of such improvements, and whether the identified improvements will be dedicated to public use;

6. A statement of the proposed method of operation and management of the common elements and facilities, and of all fixed, estimated or proposed fees, assessments, and reserves for future replacement and repair of common elements. If there are no provisions for reserves, a statement indicating same shall be included. If the proposed offering is a condominium, time-share or homeowners association, or involves any common ownership interest, in addition to the amount set aside as reserves for the replacement or repair of the common elements and facilities, the risk to purchasers if the applicant fails to sell out shall also be stated. A statement indicating whether the applicant is subsidizing the maintenance fee or plans to subsidize the maintenance fee during sales prior to transfer of control to any association, and if so, the amount of the subsidy and the probable effect of the cessation of the payment of the subsidy upon the maintenance fee payable by each owner shall also be included;

7. A description of any management or service contract, lease or other contract or agreement affecting the use, maintenance or access from and to any and all of the common elements or community facilities, together with a statement as to the effect of each upon the purchaser;

8. A statement of the relationship, if any, between the applicant and any management or servicing agent or firm;

9. A statement explaining any restrictions on occupancy, on the right of alienation and on the right of alteration of the lot, parcel, unit or interest, and on the use of any common facilities or amenities;

10. The significant terms of any encumbrances, easements, liens and restrictions including, but not limited to, zoning regulations affecting such lands and each lot, parcel, unit or interest, as well as the uses on and the zoning classification of adjoining lands at the time of registration, consolidation or the last filed annual report;

11. A statement as to whether the property or any portion thereof is regularly or periodically subject to natural forces that would tend to adversely affect the use or enjoyment of the property and whether the property or any portion thereof is located in a Federally designated flood hazard area;

12. A statement as to whether the property or any portion thereof is subject to man-made forces that would tend to adversely affect the use or enjoyment of the property such as, but not limited to, the property's proximity to airports or flight paths, railroads, noisy or polluting industrial use, landfills, dumps, nuclear or toxic waste facilities or other similar forces;

13. A statement of all current or estimated taxes;

14. A statement of all existing or proposed special taxes and proposed assessments or assessments of record and identifying who shall be responsible for payment thereof;

15. A statement of all of the estimated title closing or settlement costs to be paid by the purchaser, including, but not limited to, all costs that are charged by the applicant and its agents and any person or entity controlled by the applicant;

16. A statement explaining the warranty or guarantee given by the applicant, if any, and the rights and remedies of the purchaser;

17. A statement by the applicant confirming that all monies paid by New Jersey residents to the applicant or his agents prior to closing will be held in an escrow account, or in trust by an attorney licensed to practice law in this State or the state or country where the property is located, or be guaranteed by some means acceptable to the Commission. The statement shall specify the name and location of the institution where the escrow account is maintained as well as the name and address of any trustee or escrow agent. The statement shall include the applicant's acknowledgement that he shall hold all funds in escrow or in trust until the closing and delivery of the deed or until the applicant posts a bond or some other guarantee acceptable to the Commission to ensure New Jersey purchaser deposits, which bond shall be separate from and in addition to any bond or assurance for the completion of infrastructure and promised improvements. In the event that interests in the subdivision, including fee simple interests in timeshare projects, are offered through installment sale contracts where closing and delivery of deed or deed in trust are postponed until three or more installment payments, including, but not limited to, monthly payments for licenses, memberships or other non-fee interests in the subdivision, have been paid, the statement shall confirm that all monies paid by New Jersey purchasers will be escrowed until:

i. The statutory seven-day rescission period has expired; and

ii. A deed in trust memorializing the transaction has been offered to the purchaser, which offer shall be made within 180 days of the date on which the first installment payment was made, presuming that all payments are current as of that time, and which deed in trust will, presuming that the purchaser has performed all acts required to enable the subdivider to do so, be recorded within the said 180 day period with the appropriate recording authority in the situs state; and

iii. All statutory and other rescission periods have passed; and

iv. All contingencies other than the completion of secured promised improvements have been fulfilled. In the alternative, the statement shall confirm that evidence acceptable to the Commission that a bond, irrevocable bank letter of credit, or other financial assurances acceptable to the Commission, but in no event bonds issued by the applicant or any affiliated company, in an amount sufficient to ensure all monies paid by New Jersey purchasers prior to the delivery of a deed or deed in trust has been posted by an acceptable third party surety or entity on behalf of the applicant. In order for a surety or entity to be deemed acceptable, it must be authorized to do business in the situs state and engaged in the general business of providing financial assurances on the open market. Such a bond or other financial assurance must provide that the New Jersey Real Estate Commission on behalf of all New Jersey purchasers, or the appropriate regulatory agency of the situs state on behalf of all purchasers, is the insured and shall ensure all purchasers' deposits paid and/or all installment payments made prior to the delivery of a deed in recordable form to the purchaser or trustee. Whether the amount of such instruments is acceptable shall be determined based upon past and projected sales, purchase price and other contract terms and shall be reviewed annually by the Commission if it is a named insured;

18. A statement printed in 10-point boldface type or larger, conspicuously located, which states that the purchaser has the right to cancel any contract or agreement for the purchase of any lot, parcel, unit or interest in the development, without cause, by sending or delivering written notice of cancellation to the developer or his agent by midnight of the seventh calendar day following the day on which such contract or agreement was executed and that all monies paid will be promptly refunded, and further stating that the purchaser should read the Public Offering Statement in its entirety before signing any contracts or paying any monies;

19. A statement indicating that, regardless of whether the registrant offers or recommends financing the purchase of an interest in the subdivision through a particular lender or lenders, alternate sources of financing are available;

20. Where applicable, a statement explaining the nature, type and amount of hazard and liability insurance supplied or to be supplied by the applicant or association and what the insurance covers and an explanation of the nature and type of hazard and liability insurance available to the owner, and the necessity of flood or hazard insurance; and

21. Any additional information required by the Commission to assure full and fair disclosure to prospective purchasers.

(f) Applicants and registrants shall immediately report to the Commission any material change, as defined in N.J.A.C. 11:5-6.7(c) and 6.10(b), in the information contained in any proposed or approved Public Offering Statement and shall simultaneously submit a request for approval of the appropriate amendment.

1. Subsequent to the Commission having approved a Public Offering Statement, no revised Public Offering Statement shall be given to prospective purchasers without having first been filed with and approved by the Commission.

2. Applications for approval of an amended or corrected Public Offering Statement shall be made by filing a red-lined copy of the proposed Revised Public Offering Statement with the Commission and an application update.

(g) The Commission shall process and review requests for amendments to Public Offering Statements in accordance with the standards and procedures established in this section.

(h) The Public Offering Statement shall not be used for any promotional purposes before registration of the project, and thereafter only if used in its entirety.

1. No Public Offering Statement shall indicate, and no person shall represent or imply, that the Commission approves the merits of, or recommends the purchase of, an interest in the properties described in the offering.

Case Notes

New Jersey Land Sales Full Disclosure Act discriminated in its plain effect against interstate commerce and violated dormant commerce clause. *Old Coach Development Corp., Inc. v. Tanzman, C.A.3 (N.J.)1989, 881 F.2d 1227.*

11:5-6.6 Representation of applicants and registrants by New Jersey real estate brokers

(a) The applicant shall designate a currently licensed New Jersey real estate broker as its original broker of record with the initial application for registration, and such broker and any substituted or supplemental brokers must comply with the New Jersey Real Estate Brokers and Salesmen Act, N.J.S.A. 45:15-1 et seq., and the rules promulgated thereunder. An applicant/registrant may substitute another broker for the one initially designated. The initially designated broker and all substituted brokers shall execute an affidavit in accordance with N.J.A.C. 11:5-6.4(a)1.

1. The applicant may designate, in addition to the broker of record, other additional brokers who may join in the disposition of the registered property subject to filing the proper application with the Commission. The additional brokers, known as supplemental brokers, shall also execute an affidavit as required by N.J.A.C. 11:5-6.4(a). Nothing herein shall prevent any New Jersey broker from cooperating with any other New Jersey bro-

ker in any transaction, in accordance with N.J.A.C. 11:5-1.23(c). For the purposes of this section, persons who are licensed as New Jersey real estate brokers, and who have been designated by the applicant/registrant and approved by the Commission as the broker of record or as a supplemental broker for a particular subdivision, and who have been issued a current brokers release for that subdivision, are considered authorized brokers.

(b) Only authorized brokers may receive commissions from the registrant for the sale of interests in registered properties within New Jersey.

(c) Only authorized brokers and persons licensed under them may distribute literature on, or personally or via telephone solicit for prospective purchasers or offer or attempt to negotiate the sale or rental of an interest in a registered property, or provide or prepare contracts in New Jersey pertaining to registered property.

1. Where permitted by local law, unlicensed employees of a registrant working in the situs state and/or from the offices of the registrant may mail to New Jersey purchasers promotional literature on registered properties and may make appointments for New Jersey purchasers to inspect registered properties, provided that such persons make no material representations about such properties.

2. An authorized broker or a person licensed under them shall be present at any promotional booth maintained by a registrant or an agent of a registrant at any trade show or similar exhibition in New Jersey, and at any seminar promoting the sale or rental of registered property conducted by a registrant or any agent of a registrant in this State.

(d) All authorized brokers shall:

1. Prominently display the current broker's release;
2. Provide a copy of the current New Jersey Public Offering Statement to all New Jersey purchasers with whom they have had contact prior to the signing of any contract;
3. Obtain a signed and dated receipt for the same from the purchaser in all cases where the broker provides the Public Offering Statement to the purchaser, which receipt shall be maintained as a business record by the broker in accordance with N.J.A.C. 11:5-1.12; and
4. In all cases where the broker provides or prepares a contract which is signed by a New Jersey purchaser, the broker shall maintain a copy of that contract as a business record in accordance with N.J.A.C. 11:5-1.12.

(e) In all cases where a New Jersey purchaser has not had contact with an authorized New Jersey Broker, registrants shall maintain the signed and dated receipt for the New Jersey Public Offering Statement and a copy of the contract which the New Jersey purchaser signed for a period of seven years.

(f) New Jersey brokers may not represent unregistered subdivisions or sections of unregistered subdivisions unless such projects are exempted from registration pursuant to N.J.S.A. 45:15-16.32 and N.J.A.C. 11:5-6.19.

Case Notes

New Jersey Land Sales Full Disclosure Act discriminated in its plain effect against interstate commerce and violated dormant commerce clause. *Old Coach Development Corp., Inc. v. Tanzman, C.A.3 (N.J.)1989, 881 F.2d 1227.*

11:5-6.7 Fees with respect to the sale of interstate properties

(a) All applicants for registration shall pay application fees as prescribed in N.J.S.A. 45:15-16.34.

(b) All applicants for an exemption or a limited exemption shall pay application fees as prescribed in N.J.A.C. 11:5-6.19.

(c) Any request for approval of a material change in, or an amendment to, an application for registration and/or an Order of Registration and/or a Public Offering Statement shall be accompanied by a fee of \$250. No fee shall be charged for amendments to applications or proposed Public Offering Statements made prior to the issuance of an Order of Registration.

1. If applications for approval of a material change in and/or for an amendment to an Order of Registration and/or an amendment to a Public Offering Statement are made simultaneously, only one fee will be payable;

2. If applications are made for approval of multiple material changes, and/or multiple amendments to an Order of Registration, and/or multiple amendments to a Public Offering Statement simultaneously, only one fee will be payable;

3. Notice(s) to the Commission that promised improvements have been completed on schedule or that changes as referenced in N.J.A.C. 11:5-6.10(b) have occurred do not constitute notice(s) of a material change requiring the payment of a fee.

(d) The Commission shall maintain a copy of every application for registration, together with all amendments thereto, that has been approved and shall make them reasonably available for public inspection during ordinary business hours at the Commission's office.

1. The Commission will furnish to the public, upon request, a copy of the statement of record of any registered subdivision at a cost of \$0.50 per page.

(e) All fees paid are non-refundable.

11:5-6.8 Issuance by the Commission of a Notice of Filing

(a) Upon receipt of an application for registration in proper form and accompanied by payment of the required filing fee in the correct amount as prescribed by N.J.S.A. 45:15-16.34, the Commission shall, within 10 business days of its receipt of the same, issue a Notice of Filing to the applicant. The notice of filing shall not be construed as an approval of the registration or any portion thereof.

1. The date of filing shall be considered as the date when all required documents have been submitted in proper form and all fees, including the inspection fee, if requested, have been paid.

11:5-6.9 Inspection of properties by the Commission

(a) As provided in N.J.S.A. 45:15-16.41, the Commission, at its discretion, may make on-site inspections of any subdivision which is the subject of an application for registration, either before an Order of Registration has been issued or thereafter. In any instance where an Order of Registration has been issued prior to the subdivision being inspected by the Commission, such Order shall be considered conditional and subject to the results of the Commission's inspection of the premises. The Commission may at its discretion conduct subsequent on-site inspections.

(b) The costs of inspections shall be paid by the applicant who shall provide a deposit when requested by the Commission. After the inspection the Commission shall provide the applicant/registrant with a statement of costs incurred and a refund of any portion of the deposit not expended or a request for additional funds if required.

11:5-6.10 Amendments to registration applications and Public Offering Statements

(a) The registrant shall immediately file with the Commission amendments to its registration application and/or Public Offering Statement reflecting any material change(s) in previously supplied information or documents, in order that the information provided purchasers is current.

(b) The definition of "material change" includes, but is not limited to, situations in which any significant change which has a material adverse impact upon the offering or registrant has occurred with respect to any man made or natural forces affecting the subdivision and/or in the size or character of the subdivision and/or in the promotional plan of disposition of the interests being offered, and specifically includes any situation having a significant adverse affect on the rights, duties or obligations of the applicant/registrant or of New Jersey purchasers. Changes in selling prices and advertising and in the identity of the officers and directors of a registrant are not considered material changes. The Commission shall determine what is a material change pursuant to the above standard. All changes in the information required by N.J.A.C. 11:5-6.5(e)1 through 21 to be contained in the New Jersey Public Offering Statement are presumed to be material changes, with the exception of

notices of the completion of improvements on a timely basis as represented in a previously approved Public Offering Statement.

1. The transfer of control of any association responsible for the maintenance of common areas and/or the operation of common facilities or amenities by the registrant to the owners of interests in the subdivision is a material change.

(c) Any change meeting the definition of "material change" shall not be made unless such change has been approved by the Commission by way of amendment to the New Jersey Public Offering Statement and Order of Registration. Amended Public Offering Statements shall be designated as "First Amended Public Offering Statement", "Second Amended Public Offering Statement", etc. With the exception of those items specified in (b) above and in N.J.A.C. 11:5-6.7(c)3, all changes are presumed to be material changes requiring Commission approval as provided herein.

(d) The Commission shall process and review requests for amendments to Orders of Registration and Public Offering Statements in accordance with the standards and procedures established in the Act and this subchapter for the review of applications for registration. Requests for amendments shall be accompanied by a fee of \$250.00, as provided in N.J.A.C. 11:5-6.7.

11:5-6.11 Annual reporting upon and the termination of registrations

(a) No later than 30 days after the anniversary date of the latest Order of Registration, and while the registrant retains any interest in the subdivision, the registrant shall file, on a form designated by the Commission, an annual report reflecting any material changes in the information contained in the original application for registration or in the most recent Annual Report previously filed.

1. This requirement shall not diminish the obligation of the registrant to notify the Commission of material changes as they occur.

2. The annual report shall contain an audited financial statement or compilation prepared by an independent public accountant showing the receipts and expenditures of any association serving the project and under the control of the registrant, which financial statements shall be compiled on a yearly basis, and certified if required by the situs state.

3. The yearly audit submitted with the annual report shall be the most current audit available. In no event may the date of the yearly audit be earlier than 18 months prior to the date of the annual report. The registrant will not have to file a separate audit with the Commission for any association controlled by the owners of interests in the subdivision.

(b) The registrant may file an application for termination of its obligations with the Commission in which the registrant shall certify the grounds for termination.

1. Upon a determination by the Commission that an annual report is no longer necessary for the protection of the public interest because the registrant no longer retains any interest and no longer has any contractual, bond or other obligations to New Jersey purchasers in the subdivision, including having fulfilled all undertakings referred to in the Public Offering Statement, and the registrant has ceased all marketing activity in New Jersey, the Commission shall issue an order terminating the responsibilities of the registrant under the Act upon the registrant making application for the issuance of an Order of Termination, accompanied by acceptable proofs that the above requirements have been met.

11:5-6.12 Home builders

Unless exempt pursuant to N.J.S.A. 45:15-16.32, a home builder selling house and lot packages offered as part of a common promotional plan, regardless of whether the lots are contiguous, is a "subdivider" as defined in N.J.S.A. 45:15-16.28, and therefore such offerings are subject to the Act and to this subchapter.

11:5-6.13 Grounds for denial of registration applications and for the revocation of Orders of Registration

A finding that an applicant or registrant has previously been determined to have engaged in unfair acts and/or fraudulent or deceptive practices by the Federal Trade Commission, or as set forth in the Federal Interstate Land Sales Full Disclosure Act (82 Stat. 590; 15 U.S.C. § 1701 et seq.), or to have violated the Act and/or similar acts in other States, may constitute grounds for the Commission, after providing the applicant or registrant with the opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, to refuse to issue or to revoke an Order of Registration.

11:5-6.14 Advertising and sales promotions with respect to the sale or marketing of registered properties

(a) Advertisements that refer to the purchase price of any lot, unit, parcel or interest in real estate shall state the full purchase price and shall disclose any known or estimated additional assessments or costs to the purchaser.

1. In order to eliminate fictitious pricing or illusionary discounts, no certificates shall be distributed indicating that a discount from the advertised price shall be given. This shall not preclude the giving of a discount on the basis of any reasonable criteria.

2. Advertising shall not refer to a price increase unless the amount and date of the increase are indicated.

(b) Advertising that contains statements regarding taxes shall not use terms such as "low" and "stable", but shall state what the current taxes are, or an accurate estimate of such taxes based on current tax rates or value ratios.

1. Any reference to proposed improvements for which the purchaser will be assessed shall clearly set forth the facts of the assessment and the estimated amount of the assessment.

2. Advertising shall not state that items or services are free when the cost thereof is included in the assessment.

(c) Advertising shall not refer to any common element or facility that does not presently exist unless that fact is prominently stated in the advertising, accompanied by the proposed date of completion, which shall also appear prominently in the advertising.

(d) Advertising shall not contain photographs, sketches or artist's conceptions unless the fact that these are conceptions are stated immediately adjacent to them in the advertisement.

(e) Advertising shall not refer in wording, photograph, sketch or conception to any recreation, medical, social, shopping or other facility that is not located within the subdivision unless it clearly states that the facilities are not located in the subdivision and states the approximate distance therefrom in miles via paved roads.

(f) Any model unit that is used as part of a promotional plan shall be in substantial conformity with the units that are subsequently constructed unless otherwise noted in the contract of sale. If changes are to be made in the units other than landscaping, appliances, furnishings, heating, air conditioning, electrical or plumbing, a legible notice shall be conspicuously placed in the model, or picture photo or rendering of the model, advertising prospective purchasers of the change. In the event that there are items in the model that are available only at additional cost, legible notice informing purchasers that the items are available only at additional cost should be posted in a prominent place in the model.

(g) Any advertising of a registered subdivision in newspapers, periodicals or other means, whether to appear in New Jersey media or in interstate media which have a distribution in New Jersey, shall include the registration number assigned to that project by the Commission followed by the letters "NJREC" and the following statement: "This project is registered with the New Jersey Real Estate Commission. Registration does not constitute an endorsement of the merits or value of the project. Obtain and read the N.J. Public Offering Statement before signing anything." The Commission may also consider allowing a registrant to use a brief legend where there is no apparent harm to purchasers. The registrant shall first obtain the New Jersey Real Estate Commission's written permission to use the brief legend.

1. When properties or any interests therein are not registered with the Commission, nor wholly or partially exempt from the Act, and advertisements regarding such properties or interests are placed in any media which is distributed in or broadcast into the State of New Jersey, a disclaimer shall be included, indicating that the properties or interests are not registered with the New Jersey Real Estate Commission, and that the advertisement is not an offer to New Jersey residents.

2. As a result of their failure to register such properties or interests pursuant to N.J.S.A. 45:15-16.27 et seq., the owners of such properties or interests may not make, or cause to be made, an offer or disposition of the properties or interests in this State, nor direct any offer of such properties or interests originating outside of this State to a person or resident within this State.

(h) Reimbursement of travel expenses in cash or merchandise shall be subject to the following:

1. The promotional material shall clearly and conspicuously state the necessity of attendance at or submission to a sales promotion, the minimum length of time required to be spent at such sales promotion in order to qualify for reimbursement or other premium or inducement, the terms and conditions of the offer, and the retail value of any premiums offered.

2. "Travel expenses" may be reimbursed in cash or by merchandise.

3. Any advertisements, including reimbursement of travel expenses, offers of premiums, or other inducements shall also comply with the provisions of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

11:5-6.15 Compliance with situs state requirements

Any instrument evidencing the sale or disposition of an interest in a registered property shall be executed in accordance with the laws of the situs state. An applicant/registrant may be required to submit proof of compliance.

11:5-6.16 Improvements to be made at registered properties

(a) A property in a subdivision, or any part thereof, on which construction of a promised improvement for public use, convenience or necessity has not been completed, shall not be registered for disposition unless completion of the improvement is assured by a court order, or government approved improvement district with sufficient taxing or other authority to raise adequate capital to assure completion, or a substantial completion bond or similar undertaking acceptable to the Commission as provided in (c) below, or by adequate reserves established and maintained in a trust or escrow account meeting the following criteria:

1. Such funds shall be kept and maintained in an escrow account separate and apart from the registrant's funds and from any other escrowed funds;

2. The account shall be established in a bank or trust company doing business in this State or the situs state, and approved by the Commission; and

3. The trust or escrow agreement shall have as its purpose the protection of the purchaser or prospective purchaser in the event of a failure to complete construction of promised improvements or a failure to satisfy any obligations or liens encumbering the purchaser's title by reason of the construction.

(b) A property in a subdivision, or a part thereof, on which construction of a promised improvement not for public use, convenience or necessity is represented or implied, shall not be registered for disposition to the public where such improvement has not been completed, unless completion is assured by:

1. An adequate plan of development, including financial resources committed to carry out the plan as provided in (c) below, which plan is subject to the Commission's continuing review and approval; or

2. Adequate funds maintained in a trust or escrow account, or an irrevocable bank letter of credit.

(c) The Commission may accept surety bonds, escrow accounts, irrevocable bank letters of credit, or any other financial security adequate to assure a plan of development. In determining the security required, the Commission shall examine the status of improvements, the overall cost of improvements, the terms of purchaser contracts, the financial condition of the subdivider and such other data as it considers necessary. The Commission may consider whatever financial security has been posted with other governmental authorities in making its determination.

11:5-6.17 Street identification requirements

All registered properties comprised in whole or in part of lots or lot and house packages should be traversable by roads sufficiently improved to handle automobile traffic. In the alternative, the applicant may qualify for the registration of such property by including a statement in the Public Offering Statement indicating the conditions of access to the property and identifying the location of the filed map on which the property can be identified by purchaser.

11:5-6.18 Contracts for the purchase of an interest in a registered property

(a) All contracts or agreements for the disposition of a lot, parcel, unit or interest in a registered subdivision shall not impose undue restrictions or hardships upon the purchaser. All contracts shall be in accordance with the laws of the situs state, except that they shall conform to the Real Estate Sales Full Disclosure Act and to this subchapter, and all conflicts shall be resolved to the satisfaction of the Commission.

(b) Any contract or agreement for the purchase of any lot, parcel, unit or interest in a registered subdivision may be cancelled without cause, by the purchaser sending or delivering written notice of cancellation by midnight of the seventh calendar day following the date on which such contract or agreement was executed. Upon receipt of such a notice of cancellation, the developer or his agent shall promptly refund all monies to the purchaser.

(c) Every contract or agreement shall contain the following notice in 10-point boldfaced type or larger, directly above the space provided for the signature of the purchaser:

NOTICE to PURCHASER or LESSEE: You have the right to cancel this contract by midnight of the seventh calendar day following the day on which you have executed this contract or agreement. You should read this entire contract and the Public Offering Statement on this project before signing any documents or paying any monies.

(d) All deposits, downpayments, or other funds paid to a registrant or its agents by a purchaser shall be held in a separate trust or escrow account in a banking or similar institution situated within this State or in the situs state, or deposited with an attorney licensed to practice law in this State, or in the situs state or country, until the closing and delivery of the deed or until the applicant posts a bond or some other guarantee acceptable to the Commission to ensure New Jersey purchaser deposits, which bond shall be separate from and in addition to any bond or assurance for the completion of infrastructure and promised improvements. In the event that interests in the registered subdivision, including fee simple interests in timeshare projects, are offered through installment sale contracts where closing and delivery of deed or deed in trust are postponed until three or more installment payments, including, but not limited to, monthly payments for licenses, memberships or other non-fee interests in the subdivision, have been paid, the applicant/registrant shall either produce evidence acceptable to the Commission that a bond in an amount sufficient to ensure all monies paid by New Jersey purchasers prior to closing has been posted by an acceptable third party surety or entity on behalf of the applicant as provided in N.J.A.C. 11:5-6.5(e)17, or all monies paid by New Jersey purchasers shall be escrowed as required by that rule.

Case Notes

New Jersey Land Sales Full Disclosure Act discriminated in its plain effect against interstate commerce and violated dormant commerce clause. *Old Coach Development Corp., Inc. v. Tanzman, C.A.3 (N.J.)1989, 881 F.2d 1227.*

11:5-6.19 Exemptions from the provisions of N.J.S.A. 45:15-16.27 et seq.

(a) Any person who believes that property may be exempt from the provisions of the Act, or who is contemplating marketing property in New Jersey which he believes may be exempt, may apply to the Commission for a Letter of Exemption. Such application shall be in written affidavit form and shall list the reasons why such property or proposed project may be exempt from the Act. Such an application for exemption shall be accompanied by a non-refundable fee of \$80.00.

1. In the event the Commission shall determine that such property is exempt from the Act, it shall issue a Letter of Exemption setting forth the facts upon which the determination is based.

2. In the event the Commission shall determine that such property is not exempt from the provisions of the Act, it shall deny the request for exemption in writing, setting forth therein the facts upon which the determination is based, and shall send such writing to the applicant via certified mail, return receipt requested.

3. Any person who is aggrieved by such a determination is entitled to a hearing on such determination, provided said hearing is requested in writing no later than 30 days from the date of the applicant's receiving notice of such determination.

4. The Commission shall issue a determination as to whether a property is, or is not, exempt within 30 days of its receipt of a complete request for exemption, with the appropriate fee.

(b) If the nature of the property and/or of the proposed offering indicate that the applicant would be subject to the registration requirements of the Act, the applicant may apply to the Commission for a limited exemption. If the Commission determines that enforcement of the entire Act and of all these rules is not necessary in the public interest or for the protection of purchasers, due to the small amounts involved or the limited character of the offering, it may issue a limited exemption from registration to the applicant.

1. A limited exemption may be granted by reason of the small number of lots, parcels, units or interests to be offered only if all improvements necessary for the use of the property have been completed, or adequate surety and/or financial assurances for completion of promised improvements and amenities has been established. No limited exemption may be granted with regard to property contiguous or reasonably contiguous to property for which a limited exemption has previously been granted and which is being offered by the same applicant, or by a predecessor or successor in title to or an affiliate of that applicant.

2. A limited exemption may be granted by reason of the limited character of the offering where the nature of the property, or of the prospective purchasers to whom the property will be offered, is such that it is likely prospective purchasers will have expert advice concerning the purchase independent of that supplied by the applicant or his agents. An application for a limited exemption for this reason shall include a copy of any prospectus, offering statement or other such solicitation. A limited exemption granted for this reason shall be confined to the group of offerees specified in the application.

3. An application for a limited exemption shall specify the particular lots, parcels, units or interests for which exemption is sought. Any limited exemption granted shall be confined to those lots, parcels, units or interests so specified.

4. An application for a limited exemption shall include a narrative description that clearly describes the nature of the subdivision and the factual basis and reasons why the limited exemption should be granted.

5. The Commission shall assign a New Jersey exemption number beginning with the prefix "N.J.E." to each project to which a limited exemption is issued. This number shall thereafter appear on all publications or broadcasts of advertisements of the properties in the exempted project directed to citizens of this State, and in all national or regional advertising circulated within this State.

6. Any limited exemption granted shall remain in effect for a period of two years from the date of issuance indicated in the Letter of Exemption, unless revoked as described below.

7. Any limited exemption granted shall permit the recipient to offer the property to New Jersey residents without obtaining an Order of Registration. A limited exemption shall not deprive the Commission of jurisdiction to enforce any other provision of the Act or this subchapter, or to revoke the limited exemption after notice and an opportunity to be heard.

8. A \$250.00 non-refundable fee shall be tendered with any application for a limited exemption.

9. All applications for a limited exemption shall comply with the following minimum requirements:

i. The filing of an exemption application affidavit-questionnaire;

ii. The filing of proof of title and a plat map specifying the lots or units to be exempted, with colored shading;

iii. The requirements for the securing of all deposits, down payments, or funds of others as prescribed in this subchapter;

iv. The filing of satisfactory proof of surety and/or financial assurances for any promised improvements or amenities;

v. The advertisement standards and procedures established at 11:5-6.14; and

vi. The filing of any other documents that the Commission may deem necessary.

10. Any applicant granted a limited exemption by the Commission, pursuant to this subchapter, shall comply with the annual reporting requirements of N.J.S.A. 45:15-16.40 and N.J.A.C. 11:5-6.11.

11. No limited exemption granted hereunder shall be effective until a Letter of Limited Exemption is issued by the Commission to the applicant for the exemption.

12. A copy of the New Jersey Letter of Limited Exemption, or of a Public Offering Statement approved by the Commission, shall be provided to each New Jersey purchaser prior to their signing any contract for the purchase of an interest in property included within the limited exemption issued by the Commission, and a receipt obtained for the same shall be kept on file for seven years by the recipient of the limited exemption.

13. Any material change in the information reflected on the application for a limited exemption or on any documentation submitted in support of such application shall immediately void any exemption issued based upon such application. The Commission shall determine what constitutes a material change.