

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.1998 d.497, effective October 5, 1998.  
 See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).  
 In (a), changed N.J.A.C. reference.

#### 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).

#### 11:5-7.3 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).  
 Public Notice: Petition for Rulemaking.  
 See: 28 N.J.R. 1412(c).  
 Public Notice: Action on petition for rulemaking.  
 See: 28 N.J.R. 2414(a).  
 Public Notice: Action on petition for rulemaking.  
 See: 28 N.J.R. 4816(a).

#### 11:5-7.4 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 who, in a personal meeting, solicits 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 personal meetings attended by his or her salesper-

sons, 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 therefore.

As amended, R.1972 d.127, effective June 28, 1972.  
 See: 4 N.J.R. 71(a).  
 Amended by R.1998 d.497, effective October 5, 1998.  
 See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (b), substituted "who, in a personal meeting, solicits" for "soliciting" and "personal meetings attended by his or her salespersons," for "his salesman," in the first sentence; and deleted a former (c).

#### 11:5-7.5 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).

#### 11:5-7.6 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).

### 11:5-7.7 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).

## SUBCHAPTER 8. DISCIPLINARY ACTIONS/CONDITIONS FOR RESTORATION OF LICENSE/REAL ESTATE GUARANTY FUND CLAIMS

### 11:5-8.1 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).  
Added (c).

#### Case Notes

Broker's disclosure to Real Estate Commission of appellate court's decision that competing broker had tortiously interfered with exclusive contract and with prospective economic advantage implicated the public interest so as to be protected by Conscientious Employee Protection Act. *Barratt v. Cushman & Wakefield of New Jersey, Inc.*, 144 N.J. 120, 675 A.2d 1094 (1966).

Real estate salespersons sanctioned for failure to pay taxes. *New Jersey Real Estate Commission v. Ansell*, 97 N.J.A.R.2d (REC) 33.

Real estate broker sanctioned for trust account violations. *New Jersey Real Estate Commission v. Fayad*, 97 N.J.A.R.2d (REC) 31.

Real estate salesperson sanctioned for failure to disclose criminal indictment. *New Jersey Real Estate Commission v. Mitchko*, 97 N.J.A.R.2d (REC) 29.

Real estate salesperson sanctioned for misrepresentations on licensure application. *New Jersey Real Estate Commission v. Apsaform*, 97 N.J.A.R.2d (REC) 27.

Insufficient evidence to suspend broker's license pending trial on fraud charges. *New Jersey Real Estate Commission v. Sourlis*, 97 N.J.A.R.2d (REC) 26.

Real estate salesperson sanctioned for fraud and misrepresentations. *New Jersey Real Estate Commission v. Iezzi*, 97 N.J.A.R.2d (REC) 23.

Real estate salesperson sanctioned for accepting deposit without authorization of broker. *New Jersey Real Estate Commission v. Guzman*, 97 N.J.A.R.2d (REC) 21.

No sanctions imposed against agent when evidence did not establish she had submitted falsified documents. *New Jersey Real Estate Commission v. Ross*, 97 N.J.A.R.2d (REC) 11.

Licensed real estate salesperson's deceit in course of REC investigation was deemed not sufficiently material to set aside settlement reached in matter. *Real Estate Commission v. Mosseri*, 96 N.J.A.R.2d (REC) 39.

Broker's license was revoked for failure to disclose pending criminal charges. *New Jersey Real Estate Commission v. Diaz*, 96 N.J.A.R.2d (REC) 35.

Broker's license was properly revoked for misconduct as insurance producer. *New Jersey Real Estate Commission v. Lopez*, 96 N.J.A.R.2d (REC) 31.

Formerly licensed agent engaging in real estate transactions was fined and penalized for sales activities. *New Jersey Real Estate Commission v. Abad*, 96 N.J.A.R.2d (REC) 26.

Real estate salesperson's failure to respond honestly to application question concerning prior professional license revocation justified revocation of salesperson's license. *New Jersey Real Estate Commission v. Rolston*, 96 N.J.A.R.2d (REC) 24.

Theft conviction supported revocation of real estate salesperson's license, even where conviction was unrelated to license. *New Jersey Real Estate Commission v. Kanoff*, 96 N.J.A.R.2d (REC) 23.

Real estate salesperson's license on probation for failure to disclose prior felony conviction. *New Jersey Real Estate Commission v. Irizarry*, 96 N.J.A.R.2d (REC) 17.

Licensed real estate salesperson's failure to disclose prior convictions justifies license suspension. *New Jersey Real Estate Commission*, 96 N.J.A.R.2d (REC) 16.

Real estate salesperson fined and permanently barred from licensure for unlicensed transactions and falsifying license. *New Jersey Real Estate Commission v. Fernandes*, 96 N.J.A.R.2d (REC) 11.

Real estate license revoked where salesperson impersonates broker during agency inspection. *New Jersey Real Estate Commission v. Cron*, 96 N.J.A.R.2d (REC) 8.

Pending criminal theft charges involving insurance license justify denial of real estate license. *New Jersey Real Estate Commission v. Nelson*, 96 N.J.A.R.2d (REC) 7.

Working as real estate broker after license expired and while conducting fraudulent activities compels permanent ban from licensure. *New Jersey Real Estate Commission v. Pinilis*, 96 N.J.A.R.2d (REC) 1.

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

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

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.

### 11:5-8.2 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 credit 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.

## SUBCHAPTER 9. RULES INTERPRETING AND IMPLEMENTING THE REAL ESTATE SALES FULL DISCLOSURE ACT, N.J.S.A. 45:15-16.27 ET SEQ.

### 11:5-9.1 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, PO Box 328, Trenton, New Jersey 08625-0328.

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (b), updated the address at the end.

**11:5-9.2 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 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.