

CHAPTER 5

REAL ESTATE COMMISSION

Authority

N.J.S.A. 45:15-6, 45:15-10.4, 45:15-16.49, 45:15-17(t) and 45:15-17.4.

Source and Effective Date

R.1998 d.497, effective September 14, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

Executive Order No. 66(1978) Expiration Date

Chapter 5, Real Estate Commission, expires on September 14, 2003.

Chapter Historical Note

Chapter 5, Real Estate Commission, was filed and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Chapter 5 expired on August 2, 1983.

Chapter 5, Real Estate Commission, 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, Real Estate Commission, 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, Real Estate Commission, was readopted as R.1993 d.552, effective October 15, 1993. See: 25 N.J.R. 3597(b), 25 N.J.R. 5229(a).

Pursuant to Executive Order No. 66(1978), Chapter 5, Real Estate Commission, was readopted as R.1998 d.497, effective September 14, 1998. As a part of R.1998 d.497, effective October 5, 1998, sections 1.1 through 1.44 of Subchapter 1, Rules and Regulations, were recodified as Subchapter 2, Education; Subchapter 3, Licensing; Subchapter 4, Employment Practices/Office and Licensee Supervision; Subchapter 5, Trust Accounts/Records of Brokerage Activity; Subchapter 6, Conduct of Business; Subchapter 7, Prohibited Activities; and Subchapter 8, Disciplinary Actions/Conditions for Restoration of License/Real Estate Guaranty Fund Claims. Also as a part of R.1998 d.497, effective October 5, 1998, Subchapter 2, Organizational Rules, was recodified as Subchapter 1; Subchapter 6, Rules Interpreting and Implementing the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq., was recodified as Subchapter 9; Subchapter 3, Petitions for Rulemaking, was recodified as Subchapter 10; Subchapter 4, Proceedings before the Commission, was recodified as Subchapter 11, Procedures on Disciplinary Actions, Contested Applications, Declaratory Ruling Requests; and Subchapter 5, Appeals of Initial Denials of Licensing Applications, was recodified as section 11.10. See: Source and Effective Date. See, also, section annotations.

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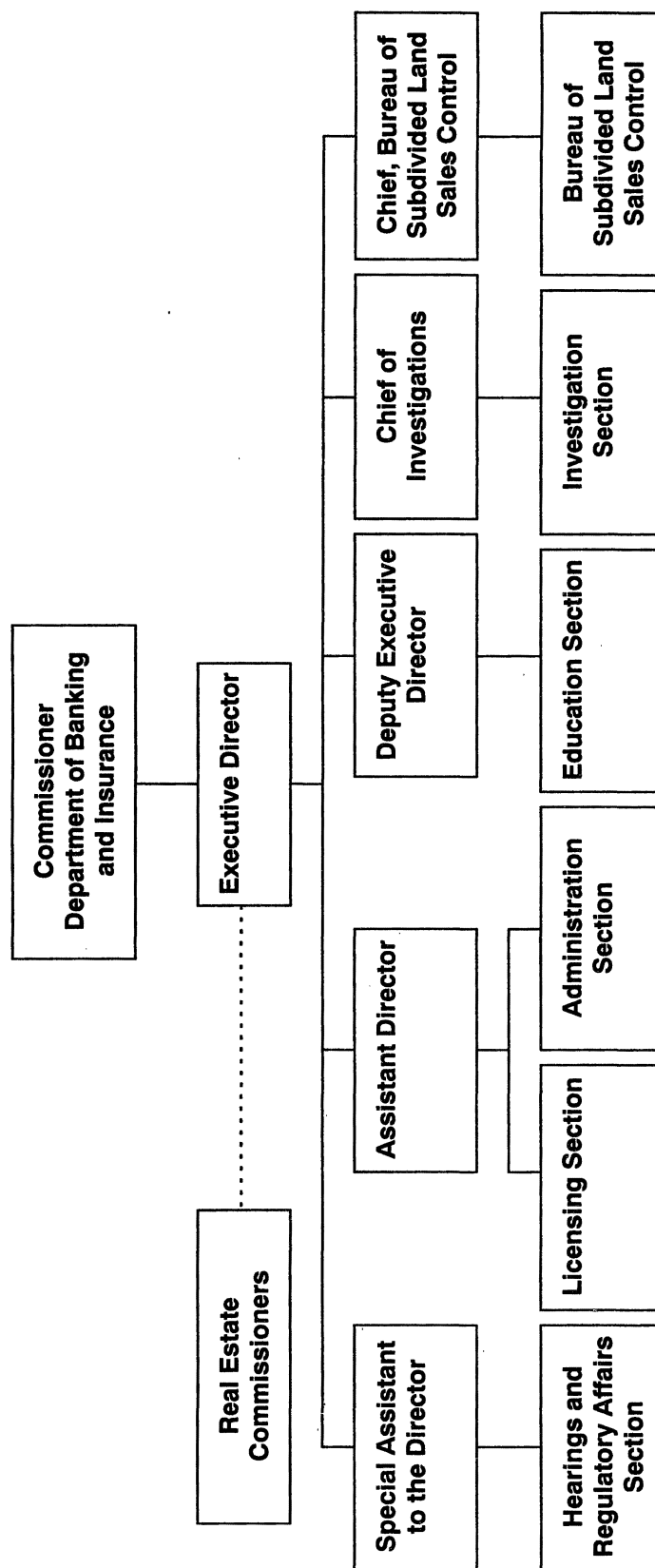
SUBCHAPTER 1. ORGANIZATIONAL RULES

11:5-1.1 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.

11:5-1.2 Organization of the Commission

The organization chart of the Real Estate Commission is as follows:



Amended by R.1989 d.324, effective May 24, 1989.
 See: 21 N.J.R. 1364(a), 21 N.J.R. 1709(a).
 Amended by R.1998 d.497, effective October 5, 1998.
 See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

Updated the Commission Organization Chart.

11:5-1.3 Functions of the Commission

(a) The Commission is comprised of six 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.

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 Banking and Insurance. It is also responsible for other functions including administration of the Real Estate Guaranty Fund.

6. The Hearings and Regulatory Affairs Section is responsible for processing the rulemaking activity of the Commission, the scheduling and processing of contested cases, the prosecution of certain contested matters, and other functions.

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.

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

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

Rewrote (a).

11:5-1.4 Information available to the public

With the exception of the records designated as non-public in N.J.A.C. 11:5-2.5(g), the public may obtain information or make submissions or requests concerning any Commission functions by contacting the Real Estate Commission, Department of Banking and Insurance, 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).

Rewrote the section.

11:5-1.5 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. 11:5-3.3 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.

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).

Repealed 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).

11:5-3.4 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 special accommodations may be made if the applicant qualifies for such accommodations as provided in the Americans With Disabilities Act or any other applicable law. Such requests shall initially be made to the firm administering the licensing examinations. The Commission shall retain final authority to determine whether such requests shall be granted.

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).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
Rewrote (b).

11:5-3.5 Requests for disclosure of social security numbers

(a) The Commission may request that licensees and license applicants, including registrants for license examinations, submit their social security numbers to the

Commission. All such requests shall either include or be accompanied by a notice stating:

1. The purpose or purposes for which the Commission intends to use the social security numbers;
2. That disclosure made pursuant to the request is either voluntary or mandatory; and
3. That the request is authorized by this section and by such other law as may be applicable.

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).
Repeal and New Rule, R.1997 d.160, effective April 7, 1997.
See: 29 N.J.R. 302(a), 29 N.J.R. 1324(c).

Section was "Collection of Social Security numbers of licensees".

11:5-3.6 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. 11:5-2.2, unless waived by the Commission in accordance with the provisions of N.J.S.A. 45:15-10.2.

(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. 11:5-2.1. Any person who fails to apply for the issuance of a 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 applicants for licensure as a salesperson shall certify that they possess a high school education or equivalency. The Commission may require the production of evidence of such education or equivalency as a condition to issuing a license to any applicant.

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 June 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).
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) and (c), changed N.J.S.A. and N.J.A.C. references; rewrote (d); and deleted former (e) through (f).

11:5-3.7 Employment of salesperson sponsored by broker

No broker shall knowingly sponsor an applicant for licensure as a real estate salesperson who does not bear a good reputation for honesty and fair dealings.

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.1998 d.497, effective October 5, 1998.

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

Rewrote (a); and deleted former (b).

11:5-3.8 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 vocation, 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 prelicensure course and the two 30-hour courses referred to in N.J.A.C. 11:5-2.1(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. 11:5-2.1 and 2.2, unless waived by the Commission in accordance with the provisions of N.J.S.A. 45:15-10.2 and N.J.A.C. 11:5-2.1.

(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 prelicensure 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).

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)2ii and (d), changed N.J.A.C. references.

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).

11:5-3.9 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 records as required in N.J.A.C. 11:5-5.4. 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. 11:5-5.4 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).

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

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

In (c), changed N.J.A.C. reference and deleted "permanent type" following "maintain" in 10; and in (e), changed N.J.A.C. reference in 7.

11:5-3.10 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.

11:5-3.11 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 cashier's check or money order or broker's business account check. See N.J.A.C. 11:5-3.2.

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 to or 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).

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.