

1. The foregoing shall not apply to the displays which, pursuant to N.J.S.A. 45:15-12, are required to conspicuously appear on the exterior of every place of business maintained by New Jersey real estate brokers and to include the name of the broker and, in the case of business entities licensed as brokers, the name of the individual licensed as its authorized broker, and the words "Licensed Real Estate Broker."

(q) Any advertisement which includes any reference to a commission rate or compensation amount charged by the advertising licensee's brokerage firm or by one or more other brokerage firms shall also include the following statement: "In New Jersey commissions are negotiable." The said statement shall be included in the advertisement in a clear and conspicuous manner.

(r) No advertisement shall contain false, misleading or deceptive claims or misrepresentations. In all advertisements which make express or implied claims that are likely to be misleading in the absence of certain qualifying information such qualifying information shall be disclosed in the advertisement in a clear and conspicuous manner.

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. 570(d), 19 N.J.R. 664(a).
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 realist 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).
Amended by R.1997 d.26, effective January 21, 1997.

See: 28 N.J.R. 3064(a), 29 N.J.R. 365(a).

In (l), inserted reference to the seller regarding warranty payment; in (m)2, inserted reference to informational or educational; and added (m)2i.

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

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

In (a), inserted "all electronic media including E-mail and the Internet," in the introductory paragraph; in (b), added new 1 through 3; rewrote (d); and in (m), substituted "certified or licensed appraiser" for "specialist or expert" in the introductory paragraph, added ", and coupons offering discounts on commissions charged by brokerage firms" at the end of li, and inserted a new lii.

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

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

In (g), deleted "without qualification," following "mentioned" in the second sentence; and in (i), changed N.J.A.C. reference.

Amended by R.2000 d.223, effective June 19, 2000 (operative September 17, 2000).

See: 31 N.J.R. 2678(a), 32 N.J.R. 2242(b).

In (n), added l.

Amended by R.2001 d.236, effective July 16, 2001 (operative October 15, 2001).

See: 32 N.J.R. 2205(a), 33 N.J.R. 2532(a).

In (a), substituted "(o)" for "(n)"; in (b)1, substituted "In" for "With the exception of business cards, in"; in (d), substituted "Any" for "With the exception of business cards, any" in the introductory paragraph; in (g), deleted "unqualified" preceding "references shall"; added (o).

Amended by R.2002 d.346, effective November 4, 2002 (operative February 2, 2003).

See: 33 N.J.R. 3620(a), 34 N.J.R. 3832(a).

Rewrote the section.

Amended by R.2004 d.130, effective April 5, 2004.

See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).

In (e), substituted "the words broker-associate, associate broker, realtor-associate or" for "any of the aforementioned words or by the use of the words" in the second sentence.

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.*

11:5-6.2 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 initialed 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 initialed 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 initialing party a clear copy of the writing as signed and/or initialed by them.

(g) If any offer on any real property or interest therein is made orally, the licensee shall advise the offeror that he is not obligated to present to the owner or his authorized representative any offer unless the offer is in writing. Unless a writing containing or confirming the terms of the listing agreement otherwise provides, the licensee shall transmit every written offer on any real property or interest therein presented to or obtained by the licensee during the term of the listing to the owner or his authorized representative within 24 hours of receipt of the written offer by their firm. For the purposes of this section, the term of a listing shall be deemed to expire either on the termination date established in the listing agreement, or upon the closing of a pending sale or lease. If any acceptance of an offer is given orally, the licensee shall secure the acceptance in writing within 24 hours.

(h) 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 (g) 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. 11:5-5.4.

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. 11:5-5.4.

(i) 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.

(j) 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.

(k) No licensee shall deny real estate brokerage services to any person for reasons of race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, familial status, sex, gender identity or expression, affectional or sexual orientation, disability, nationality, or source of lawful income used for rental or mortgage payments, 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, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, familial status, sex, gender identity or expression, affectional or sexual orientation, disability, nationality, or source of lawful income used for rental or mortgage payments. For the purposes of this subsection, the term "disability" shall have the same meaning as the definition of "disability" codified at N.J.S.A. 10:5-5q.

(l) Licensees may engage in brokerage activity in transactions involving the resale of mobile and manufactured homes as provided in N.J.S.A. 39:10-19. Licensees who do so shall be familiar with all laws applicable to such transactions. These laws include N.J.S.A. 39:1-1 et seq. as it applies to the resale of and the transfer of the titles to such motor vehicle units, N.J.S.A. 46:8C-1 et seq., as it applies to the resale of such units when situated in Mobile Home Parks, N.J.S.A. 17:16C-1 et seq., as it applies to the financing of purchases of personal property and New Jersey's Truth in Renting Act, N.J.S.A. 46:8-43 et seq. Licensees who, when involved in transactions of this type, evidence a lack of familiarity with these laws either through acts of omission or commission shall be subject to sanctions by the Commission for having engaged in conduct demonstrating incompetency, in violation of N.J.S.A. 45:15-17(e).

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).

Amended by R.1997 d.27, effective January 21, 1997.

See: 28 N.J.R. 3065(a), 29 N.J.R. 366(a).

Added (i).

Amended by R.1997 d.275, effective July 7, 1997.

See: 29 N.J.R. 300(a), 29 N.J.R. 2849(a).

Substantially amended (b); recodified former second sentence of (b) as (c) and amended; added (c)1 through 3, (d) and (e); and recodified former (c) through (i) as (f) through (l).

Administrative correction.

See: 29 N.J.R. 3260(a).

In (c)1, in the second paragraph, inserted "shall be sent by certified mail. The cancellation".

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

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

In (f) and (h), changed N.J.A.C. references.

Amended by R.2001 d.237, effective July 16, 2001.

See: 32 N.J.R. 2207(a), 33 N.J.R. 2533(a).

Rewrote (f) and (g).

Amended by R.2004 d.130, effective April 5, 2004.

See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).

In (g), deleted "forthwith" following "shall secure" and inserted "within 24 hours" following "in writing".

Amended by R.2009 d.287, effective September 21, 2009.

See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).

Section was "Obligation of licensees to public and to each other".

Rewrote (k).

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. *Melveney 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.

11:5-6.5 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.

(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.