

Petition for Rulemaking.
See: 25 N.J.R. 4523(c), 26 N.J.R. 505(b).
Petition for Rulemaking.
See: 32 N.J.R. 850(a), 32 N.J.R. 1085(b).

Case Notes

For purposes of the rule-mandated three-workday escape period, within which the attorney for each party to a real estate sales contract prepared by a real estate agent or broker may disapprove of the contract, the onus is on the agent or broker to deliver any fully executed contract to the parties. *Peterson v. Estate of Pursell*, 771 A.2d 666 (2001).

In all real estate sales contracts prepared by real estate agents and brokers, a clause must provide that the three-day review period begins to run from the date of delivery of the signed contract to the buyer and the seller, that Saturdays, Sundays, and legal holidays are to be excluded in counting the three-day period, and that the contract will be legally binding at the end of the three-day review period unless an attorney for the buyer or seller disapproves of the agreement. *Peterson v. Estate of Pursell*, 771 A.2d 666 (2001).

In calculating the rule-mandated three-workday escape period, within which the attorney for each party to a real estate sales contract prepared by a real estate agent or broker may disapprove of the contract, the date of delivery to the parties is not counted. *Peterson v. Estate of Pursell*, 771 A.2d 666 (2001).

Listing real estate brokerage was not vendor's fiduciary for purposes of the attorney review period, rule-mandated three-workday escape period within which vendor's attorney could disapprove of real estate sales contract prepared by an agent of the brokerage, and thus, attorney review period began to run when the fully executed contract was delivered to vendor herself, not when prospective purchaser delivered it to the brokerage's agent. *Peterson v. Estate of Pursell*, 771 A.2d 666 (2001).

Prospective purchaser had no right to enforce real estate sales contract during the rule-mandated three-workday escape period, within which vendor's attorney could disapprove the contract, and thus, purchaser could not recover on tortious interference claim against the listing real estate brokerage and an agent of the brokerage who negotiated a contract with another purchaser. *Peterson v. Estate of Pursell*, 771 A.2d 666 (2001).

The attorney review period, the rule-mandated three-workday escape time period within which the attorney for each party to a real estate sales contract prepared by a real estate agent or broker may disapprove of the contract, begins to run when a conforming contract is delivered to a party. *Peterson v. Estate of Pursell*, 771 A.2d 666 (2001).

Purchaser's attorney's letter to vendors stating that attorney did not approve of residential sales contract in its present form, but that he would approve it with specified modifications, was sufficient to terminate contract under its attorney review clause; thus, purchasers were thereafter free to show and sell property in question to third party. *Gaglia v. Kirchner*, 317 N.J.Super. 292, 721 A.2d 1028 (A.D.1999).

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

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

11:5-6.3 Broker insurance placement provision

Where a contract provided by a real estate broker contains a provision to the effect that such broker, in his capacity as a licensed insurance agent or broker, is authorized to place or procure insurance on the property being sold, the licensee benefitting by such a provision shall obtain

separate written reaffirmation of such provision by the prospective insured not less than five days prior to the closing of title.

11:5-6.4 Obligation of licensees to public and to each other

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

(b) Every licensee shall make reasonable effort to ascertain all material information concerning the physical condition of every property for which he or she accepts an agency or which he or she is retained to market as a transaction broker, and concerning the financial qualifications of every person for whom he or she submits an offer to his or her client or principal. Information about social conditions and psychological impairments as defined in (d) below is not considered to be information which concerns the physical condition of a property.

1. A reasonable effort to ascertain material information shall include at least:

- i. Inquiries to the seller or seller's agent about any physical conditions that may affect the property; and
- ii. A visual inspection of the property to determine if there are any readily observable physical conditions affecting the property.

2. As used in this section, information is "material" if a reasonable person would attach importance to its existence or non-existence in deciding whether or how to proceed in the transaction, or if the licensee knows or has reason to know that the recipient of the information regards, or is likely to regard it as important in deciding whether or how to proceed, although a reasonable person would not so regard it.

(c) Licensees shall disclose all information material to the physical condition of any property which they know or which a reasonable effort to ascertain such information would have revealed to their client or principal and when appropriate to any other party to a transaction. Licensees shall also disclose any actual or potential conflicts of interest which the licensee may reasonably anticipate.

1. With respect to off-site conditions which may materially affect the value of the residential real estate, in all sales contracts involving newly constructed residential real estate they prepare, licensees shall include a statement as set forth below. By including this statement in a contract of sale prepared by the licensee, the licensee shall be

deemed to have fulfilled his or her disclosure obligations under (c) above with respect to such off-site conditions. The statement shall be in print as large as the predominant size print in the document and shall read as follows:

**“NOTIFICATION REGARDING
OFF-SITE CONDITIONS**

Pursuant to the New Residential Construction Off-Site Conditions Disclosure Act, P.L. 1995, c.253 (C.46:3C-1 et seq.), sellers of newly constructed residential real estate are required to notify purchasers of the availability of lists disclosing the existence and location of off-site conditions which may affect the value of the residential real estate being sold. The lists are to be made available by the municipal clerk of the municipality within which the residential real estate is located and in other municipalities which are within one-half mile of the residential real estate. The address(es) and telephone number(s) of the municipalities relevant to this project and the appropriate municipal offices where the lists are made available are listed below. Purchasers are encouraged to exercise all due diligence in order to obtain any additional or more recent information that they believe may be relevant to their decision to purchase the residential real estate. Purchasers are also encouraged to undertake an independent examination of the general area within which the residential real estate is located in order to become familiar with any and all conditions which may affect the value of the residential real estate.

The purchaser has five (5) business days from the date the contract is executed by the purchaser and the seller to send notice of cancellation of the contract to the seller. The notice of cancellation shall be sent by certified mail. The cancellation will be effective upon the notice of cancellation being mailed. If the purchaser does not send a notice of cancellation to the seller in the time or manner described above, the purchaser will lose the right to cancel the contract as provided in this notice.

Municipality _____
 Address _____
 Telephone Number _____”

The statement shall either be included in the text of the contract itself or attached to the contract as an Addendum.

2. In all residential real estate sale contracts they prepare except contracts for newly constructed residential real estate, licensees shall include a statement as set forth below. The statement shall be in print as large as the predominant size print in the document and shall read as follows:

“NOTICE ON OFF-SITE CONDITIONS

Pursuant to the New Residential Construction Off-site Conditions Disclosure Act, P.L. 1995, c.253 the clerks of municipalities in New Jersey maintain lists of off-site conditions which may affect the value of residential properties in the vicinity of the off-site condition. Purchasers may examine the lists and are encouraged to independently investigate the area surrounding this property in order to become familiar with any off-site conditions which may affect the value of the property. In cases where a property is located near the border of a municipality, purchasers may wish to also examine the list maintained by the neighboring municipality.”

The statement shall either be included in the text of the contract itself or attached to the contract as an Addendum.

i. Licensees who possess actual knowledge of an off-site condition which may materially affect the value of residential real estate other than newly constructed properties shall disclose that information to prospective purchasers of such residential real estate affected by the condition. That disclosure shall be made prior to the signing of the contract by a prospective purchaser.

ii. In cases where the licensee did not possess actual knowledge of the presence of an off-site condition which might materially affect the value of the residential real estate, by virtue of including the foregoing statement in a contract of sale prepared by him or her, the licensee shall be deemed to have fulfilled his or her disclosure obligations under (c) above with respect to such off-site conditions.

3. As used in this subsection, the following words and terms shall have the following meanings:

i. “Newly constructed” means any dwelling unit not previously occupied, excluding dwelling units constructed solely for lease and units governed by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §§ 5402 et seq.

ii. “Off-site conditions” refers to the following conditions as set forth in the New Residential Construction Off-Site Conditions Disclosure Act, N.J.S.A. 46:3C-3 (P.L. 1995 c.253), or as amended:

(1) The latest Department of Environmental Protection listing of sites included on the National Priorities List pursuant to the “Comprehensive Environmental Response, Compensation and Liability Act of 1980,” 42 U.S.C. §§ 9601 et seq.;