

**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).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 5, Real Estate Commission, expires on March 12, 2004. See: 35 N.J.R. 4812(a).

**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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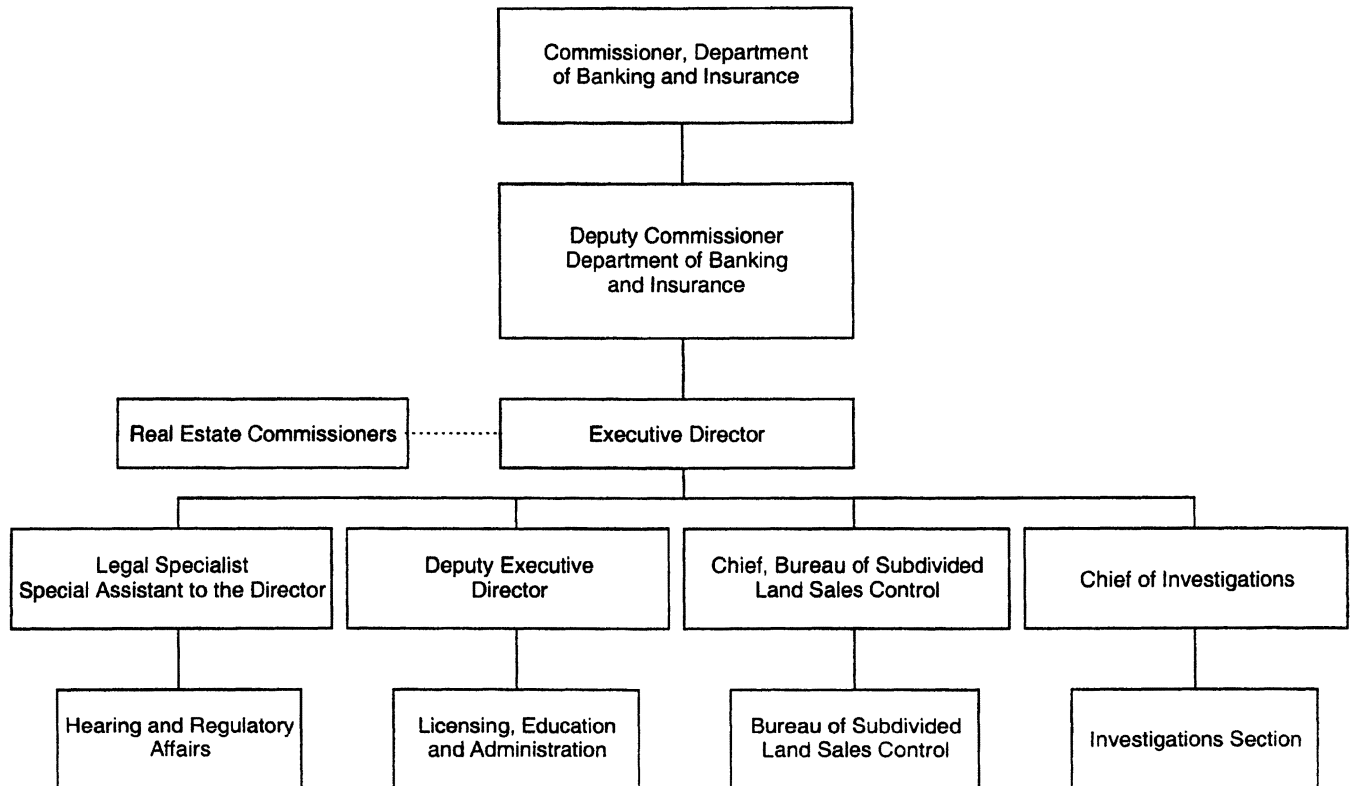
#### SUBCHAPTER 1. ORGANIZATIONAL RULES

##### 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.  
 Amended by R.1999 d.15, effective December 15, 1998.  
 See: 31 N.J.R. 544(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 sales-persons 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.

(e) The following records are maintained by the Bureau of Subdivided Land Sales Control, pursuant to the Real Estate Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq.:

1. Statements of record and additions or corrections thereto filed with the Bureau pursuant to N.J.S.A. 45:15-16.33, 16.36, 16.39 and 16.41(a);
2. Annual reports submitted by a subdivider pursuant to N.J.S.A. 45:15-16.40;
3. Public offering statements and amended public offering statements prepared pursuant to N.J.S.A. 45:15-16.38;
4. Orders to Show Cause and other pleadings charging violations of N.J.S.A. 45:15-16.27 et seq. and the final disposition of such orders, including Orders to Cease and Desist and/or imposing penalties or sanctions; documents accepted into the agency record in any such proceedings; and
5. Applications for exemption of a subdivision filed with the Bureau pursuant to N.J.S.A. 45:15-16.32(c) and N.J.A.C. 11:5-9.18 and the final disposition of any such exemption application.

(f) The following records are maintained pursuant to the Real Estate Guaranty Fund Act, N.J.S.A. 45:15-34 et seq.:

1. Court orders for payment from the Real Estate Guaranty Fund; and
2. Pleadings served upon the Commissioner of Insurance or any duly authorized agent or employee of the Department of Insurance pursuant to N.J.S.A. 45:15-39.

(g) The following licensee records are nonpublic in accordance with N.J.S.A. 47:1A-1 et seq.:

1. Criminal complaints, indictments, judgments of conviction and other separate documents submitted in connection with a license application concerning whether an applicant is disqualified by reason of indictment for or conviction of a crime;
2. Criminal history records obtained as the result of any criminal history check;
3. Petitions or discharges in bankruptcy, complaints, orders or other pleadings in actions for assignment to creditors and other separate documents submitted in connection with a license application concerning whether the applicant is disqualified by reason of unworthiness;
4. Copies of orders of suspension or revocation issued by professional or occupational licensing authorities, and other separate documents submitted in connection with a license application concerning whether the applicant is disqualified from licensure;
5. Records concerning the medical disability of any licensee;

6. Investigative files in any matter pending investigation, or in any completed investigation in which no formal disciplinary action was taken;

7. Personal data on a licensee such as home address, home telephone number and date of birth; and

8. The Social Security numbers of any applicants or licensees which were submitted to the Commission on a license application or otherwise obtained by the Commission.

New Rule, R.1994 d.269, effective June 20, 1994 (operative July 1, 1994).

See: 26 N.J.R. 736(a), 26 N.J.R. 1222(a), 26 N.J.R. 2585(b).

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

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

In (d)2 and (e)5, changed N.J.A.C. references.

## SUBCHAPTER 2. EDUCATION

### 11:5-2.1 Educational requirements for salespersons and brokers in making application for licensure examination

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

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

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

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

respect to those certain courses specified in (g)5 below, offered by some other Commission-approved provider.

(c) No person with the exception of qualified disabled veterans shall receive credit for satisfactory completion of the prescribed 150 hours of broker's courses unless that person was the holder of a salesperson's license at the time of enrollment in said course.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Property rights (9 hours);

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

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

4. Mortgages and other liens (12 hours);

5. Business opportunity sales (2 hours);

6. The laws of agency (12 hours);

7. Appraising (2 hours);

8. License Act and regulations (9 hours);

9. Other state, Federal and municipal laws and regulations, including N.J.S.A. 17:16C-1 et seq., 39:1-1 et seq., 46:8-43 et seq. and 46:8C-1 et seq. as they pertain to the resale of mobile and manufactured housing units which bear or are required to bear motor vehicle titles (5 hours);

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

11. Quizzes and final examination (3 hours).

(g) The 150 hours of prelicensure education required of candidates for licensure as a broker or broker-salesperson by N.J.S.A. 45:15-10 shall be acquired as provided in this subsection. A 90 hour general broker's prelicensure course shall first be completed in accordance with the following syllabus and directives. Thereafter, two 30 hour broker courses as described in (g)5, 6 and 7 below shall be completed. All three courses, totaling 150 hours of instruction, must be successfully completed within a period of two years. Where the three courses are not so completed, a candidate must again successfully complete any previously taken course and all courses not previously taken within the two year time frame, and again fulfill the experience requirement established at N.J.S.A. 45:15-9 and N.J.A.C. 11:5-3.8 in order to qualify to challenge the broker license examination.

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

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

vi. Closings;

vii. Environmental concerns; and

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

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

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

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

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

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

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

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

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

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

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

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

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

“Salesman” replaced by “salesperson”; subsection (k) deleted.

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

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

Section substantially amended.

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

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

Subsections (d) and (e) substantially amended.

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

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

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

Notice of Correction, effective May 4, 1992.

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

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

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

Notice of Correction, effective August 15, 1994.

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

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

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

In (f)9, added N.J.S.A. references; in (g)1xv, inserted reference to New Jersey Truth in Renting Law; and inserted N.J.S.A. references.

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), changed the N.J.A.C. references throughout and substituted “Real Estate” for “Land” in li; and deleted former (j).

#### Case Notes

Real Estate Commission did not deny real estate sales person due process by failing to notify her that her real estate license had expired.

Coyle v. New Jersey Real Estate Com'n, 280 N.J.Super. 93, 654 A.2d 986 (A.D.1994).

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

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

#### 11:5-2.2 Licensed schools and instructors; requirements

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

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

(b) The Commission shall require any school or instructor in making application for licensure to submit certain documents, statements and forms which shall form the basis for the Commission's judgment whether to grant a license. Where the Commission initially denies an application for a school or instructor license, it shall provide to the applicant notification in writing with reasons for such action. The applicant may appeal such a decision to the full Commission. N.J.A.C. 11:5-11.10 shall be applicable to all such appeals.

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

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

proper as to the honesty, trustworthiness, character and integrity of an applicant.

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

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

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

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

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

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

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

(j) In order to enable the Commission to confirm that courses offered by real estate schools include the required number of hours of instruction as prescribed in N.J.S.A. 45:15-10.1(a) and (b) and N.J.A.C. 11:5-2.1, every six months, each school director shall submit data on courses to be offered by their school in the forthcoming six month period, the starting and ending dates of the courses, the days and hours of class sessions and teaching locations. Such course information shall be provided on forms prescribed by the Commission and shall be retained as permanent records for not less than three years after submission.

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

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

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

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

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

3. Except as provided in (l)3i and ii below, all instructor license applicants must successfully complete all of the education requirements for licensure as a New Jersey broker established at N.J.A.C. 11:5-2.1, totaling 150 hours, not more than one year prior to passing the instructor license examination and applying for an instructor license.

i. New Jersey broker licensees who have been licensed as such for at least the two years immediately preceding the application and who have completed the full 150 hours of broker preclicensure courses established at N.J.A.C. 11:5-2.1 shall be deemed to have fulfilled the education requirements for licensure as an instructor.

ii. The following individuals will not be required to take the 90-hour general broker course but must successfully complete the two 30-hour broker preclicensure courses referred to in N.J.A.C. 11:5-2.1 in order to fulfill the instructor preclicensure education requirements:

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

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

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

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

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

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

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

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

(m) The maximum teaching load per instructor or guest lecturer shall not exceed the ratio of one instructor or guest lecturer to 60 students per class. Each preclicensure course offered by a licensed school shall be under the supervision of an instructor licensed pursuant to N.J.S.A. 45:15-10.5 and N.J.A.C. 11:5-2.2(k). At least one licensed instructor shall be present in the classroom at all sessions. However, additional instructors or guest lecturers may be utilized for instruction so long as not more than 25 percent of the required instruction is done by guest lecturers. Broker preclicensure courses may be taught by up to three instructors, provided that one licensed instructor is designated as having the responsibility for the quality of instruction in that course. School directors shall maintain as a business record the names of any persons teaching as guest lecturers or as a group of instructors, with an indication of the designated supervising instructor.

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

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

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

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

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

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

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

(s) To satisfactorily complete any preclicensure course, a student must receive a passing grade and attend at least 80 percent of the class session hours required for the course by N.J.A.C. 11:5-2.1.

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

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

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

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

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

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

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

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

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

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

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

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

(w) (Reserved)

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

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

NOTICE  
TO: ALL SALESPERSON COURSE STUDENTS  
FROM: NEW JERSEY REAL ESTATE COMMISSION  
RE: SOLICITATION OF SALESPERSON LICENSE CANDIDATES AT PRE-LICENSURE SCHOOLS

It is the policy of the New Jersey Real Estate Commission that there be a complete and total separation between the instruction you receive in your prelicensure education course and any efforts by brokers to recruit you to join the firm and/or to secure listings or offers on listed properties from you. This policy is reflected in Commission rule N.J.A.C. 11:5-2.2(x), which is reproduced in its entirety below.

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

New Jersey Real Estate Commission  
20 West State Street  
PO Box 328  
Trenton, New Jersey 08625-0328  
Attn: Director, Real Estate Education

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

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

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

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

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

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

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

4. No in-person or electronic solicitation of students to apply for employment as salespersons with a particular real estate broker or any referral program shall be permitted at a licensed school location during the prescribed class hours, nor in the breaks between such class hours. Such soliciting may be scheduled and held at licensed schools before, after or separate from the prescribed class hours, for example as a "career night" for students, provided that students are notified in writing in advance

that their attendance at such recruitment functions is completely voluntary. However, no school director, instructor, guest lecturer or staff member shall engage in such activity at any time prior to, nor within seven days following, a student's successful completion of a course. Licensed instructors who are also licensed brokers or salespersons may conduct prelicensure courses, and licensees who are not licensed instructors may appear as guest lecturers in such courses, so long as their presentations do not include the solicitation of students.

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

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

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

i. Any advertisement by a school whose name includes the name of an affiliated licensed real estate broker or franchisor shall include the following disclosure legend:

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

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

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

i. Where space on two or more floors in a multi-story building is licensed as a main or branch office location, it is permissible for prelicensure courses to be conduct-

ed in such a building, provided that the primary means of access to and egress from the floor where the courses are conducted does not require the students to walk through any area of the licensed office location wherein brokerage activity occurs.

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

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

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

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

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

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

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

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

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

(e) and (f): New text.

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

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

Language simplified.

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

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

Section substantially amended.

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

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

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

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

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

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

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

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

Added new x.

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

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

Subsection (e) deleted and reserved.

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

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

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

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

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

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

Changed N.J.A.C. references throughout.

### 11:5-2.3 Applications processed by the Education Bureau of the Real Estate Commission

(a) Applications for the following licenses and approvals are processed by the Education Bureau of the Real Estate Commission:

1. Real Estate Instructor license;
2. Real Estate School license;
3. License for additional teaching location of a licensed real estate school;
4. Approval of Real Estate School Director; and
5. Approval of experience report for broker license applicant.

(b) Applications for the following waivers are processed by the Education Bureau of the Real Estate Commission:

1. Waiver of salesperson preclicensure education requirement;
2. Partial waiver of broker preclicensure education requirement and/or complete waiver of broker experience requirement; and
3. Waiver of broker experience and certain preclicensure education requirements based upon status of applicant as a qualifying disabled veteran pursuant to N.J.S.A. 45:15-11.

New Rule, R.2003 d.440, effective November 3, 2003.

See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).

### 11:5-2.4 Examination eligibility certificates

(a) The Education Bureau issues Certificates of Examination Eligibility to:

1. Broker license candidates who have fulfilled or, to the extent permitted by N.J.A.C. 11:5-3.8 and 2.1(e), had waived the broker license experience and/or education requirements;
2. Instructor license candidates who have fulfilled or, to the extent permitted by N.J.A.C. 11:5-2.2(k), had waived the instructor license education requirement; and
3. Salesperson license candidates who, as provided in N.J.A.C. 11:5-2.1(e), have had the salesperson's license education requirement waived.

New Rule, R.2003 d.440, effective November 3, 2003.

See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).

### 11:5-2.5 Education Bureau forms and processing times

(a) The following forms are utilized by the Education Bureau of the Real Estate Commission:

1. Application for real estate school license for non-public school;
2. Application for licensure of additional teaching location for a non-public real estate school;
3. Application for real estate school license for public college, university or adult education program;
4. Application for real estate instructor license;
5. Application for change in address of administrative office or primary teaching location of non-public real estate prelicensure school;
6. Application for relicensure of public college, university or adult education program with new director;
7. Application for relicensure of non-public school with new director or with new partner(s) (partnership) or new owner(s) of a controlling interest (corporation) or school name change;
8. Application for waiver of salesperson prelicensure education requirement;
9. Application for partial waiver of broker prelicensure education requirement and/or complete waiver of experience requirements;
10. Experience report for Broker License Applicant; and
11. New Jersey State Police, State Bureau of Identification Request for Criminal History Record Information Form.

(b) Following the receipt by the Commission of complete and accurate application forms with the required fee(s) in the correct form, the applications specified below are generally processed by the Education Bureau within the time frames indicated:

1. Applications for real estate instructor licenses, school licenses, and additional teaching location licenses—three weeks;
2. Applications for a change of address of a licensed school—three weeks;
3. Applications for relicensure of schools with new directors or new owners of a controlling interest—three weeks;
4. Applications for renewal of instructor licenses, school licenses, and additional teaching location licenses—four weeks;
5. Applications for waivers of the prelicensure education requirements and/or the broker experience requirement which do not require the review of additional information—four weeks; and
6. Applications for the approval of experience as a real estate salesperson to fulfill the experience require-

ment for licensure as a broker (see N.J.S.A. 45:15-9 and N.J.A.C. 11:5-3.8)—four weeks.

New Rule, R.2003 d.440, effective November 3, 2003.  
See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).

**11:5-2.6 Education Bureau transaction fees**

The fees applicable to transactions processed by the Education Bureau of the Real Estate Commission are listed in the table below.

**EDUCATION BUREAU TRANSACTION FEES**

Description	Amount
Criminal history check	\$18.00
Application fee, school license	\$100.00
Application fee, instructor license	\$50.00
Initial license fee, non-public school	\$400.00 for licenses issued in the first year of a two-year license term; \$200.00 for licenses issued in the second year of a two-year term.
Renewal fee, non-public school	\$400.00 plus \$200.00 for each additional licensed location
License fee, additional teaching location	\$200.00 for licenses issued in the first year of a two-year license term; \$100.00 for licenses issued in the second year of a two-year term.
Change of address (school)	\$50.00
License fee, instructor	\$200.00 for licenses issued in the first year of a two-year license term; \$100.00 for licenses issued in the second year of a two-year term.
Renewal fee, instructor	\$100.00
Change of name (school)	\$100.00
Change of name for individual	\$50.00
Change of school director	\$50.00
Application fee, waiver of salesperson education	\$25.00
Application fee, waiver of broker education or experience	\$25.00
Application fee, approval of experience report for broker license applicant	\$25.00

New Rule, R.2003 d.440, effective November 3, 2003.  
See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).  
Administrative correction.  
See: 36 N.J.R. 656(b).

**SUBCHAPTER 3. LICENSING**

**11:5-3.1 Terms of real estate licenses**

Commencing July 1, 1997, broker, broker-salesperson, salesperson and branch office licenses shall be issued on the

basis of two year license terms. All licenses issued during each biennial term shall run from the date of issuance to the end of the biennial term. All licenses shall expire on June 30 of the second year following the year in which the license term commenced.

New Rule, R.1997 d.159, effective April 7, 1997.  
See: 29 N.J.R. 299(a), 29 N.J.R. 1324(b).

### 11:5-3.2 Payment of fees as prescribed by statute

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

Amended by R.1986 d.92, effective April 7, 1986.  
See: 17 N.J.R. 2353(a), 18 N.J.R. 702(a).

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

### 11:5-3.3 Criminal history record check

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

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

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

R.1971 d.83, effective May 27, 1971.  
See: 2 N.J.R. 42(e), 3 N.J.R. 110(d).  
Amended by R.1976 d.19, effective January 13, 1976.  
See: 7 N.J.R. 567(e), 8 N.J.R. 70(e).  
Amended by R.1983 d.471, effective November 7, 1983.  
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).

Subsections (c) and (e) deleted, recodification.  
 New Rule, R.1985 d.601, effective November 18, 1985.  
 See: 17 N.J.R. 2230(a), 17 N.J.R. 2779(a).

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 licenses".

**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 July 9, 1981.  
 See: 13 N.J.R. 306(a), 13 N.J.R. 440(c).

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

(d) added.  
 As amended, R.1983 d.471, effective November 7, 1983.  
 See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).  
 "Salesman" changed to "salesperson".  
 As amended, R.1984 d.218, effective June 4, 1984.  
 See: 16 N.J.R. 489(a), 16 N.J.R. 1352(a).  
 New subsections (d) through (f) added.  
 Amended by R.1995 d.23, effective January 17, 1995.  
 See: 26 N.J.R. 3111(a), 27 N.J.R. 370(a).  
 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

Regulation requiring applicants for licensure as brokers to be actively engaged on a full-time basis in brokerage business was reasonable, valid and authorized implementation of statutory purpose of Real Estate Licensing Act; purpose of the regulation was to ensure that real estate brokers possessed experience not only in sale and lease of real estate, but also in day-to-day operation of brokerage business, and in industry in which many salespersons worked part-time, regulation was recognition that full-time commitment insured protection to the public. In re Pipes, 329 N.J.Super. 391, 748 A.2d 118 (N.J.Super.A.D. 2000).

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).

Unlicensed real estate business must cease and desist engaging in real estate brokerage activity. New Jersey Real Estate Commission v. Goldstar Capital, Inc., 97 N.J.A.R.2d (REC) 35.

#### 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.

**Case Notes**

Fraud and failure to comply with record-keeping requirements warrant license revocation and imposition of fines. *New Jersey Real Estate Commission v. Tumolo and Rossell*, 97 N.J.A.R.2d (REC) 1.

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

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

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

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

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

**11:5-5.5 Inspection of records**

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

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

(c) All files on pending and closed sale, exchange or lease transactions, all files on listings for sales or rentals, and all property management files shall be maintained or stored at the offices of brokers licensed as employing brokers or corporate or partnership brokers. Upon terminating their employment with such a broker, and/or transferring to the employ of another such broker, no salesperson or broker-salesperson shall remove or cause to be removed any of the contents of such files from the offices of the broker. The term "files" as used herein shall be construed to mean all transaction records required to be kept by brokers pursuant to N.J.A.C. 11:5-5.4.

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

Language citing statute deleted in subsection (a). Amended by R.1988 d.410, effective September 6, 1988. See: 20 N.J.R. 883(a), 20 N.J.R. 2295(a).

Added (c).

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

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

Public Notice: Petition to amend subsection (c).

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

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

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

Meaning of "files" specified at (c).

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), deleted ", in addition to other powers conferred upon it by the Act" following "Commission"; and in (c), changed N.J.A.C. reference.

**Case Notes**

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

**SUBCHAPTER 6. CONDUCT OF BUSINESS****11:5-6.1 Advertising rules**

(a) Unless otherwise set forth herein, subsections (b) through (c) below shall apply to all categories of advertising including all publications, radio or television broadcasts, all electronic media including E-mail and the Internet, business stationery, business cards, business and legal forms and documents, and signs and billboards.

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

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

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

1. In all advertisements which contain the name of a salesperson or broker-salesperson the regular business name of the individual, partnership, firm or corporate broker through whom that person is licensed shall appear

in larger print or be displayed in a more prominent manner than the name of the salesperson or broker-salesperson.

2. Where a webpage on the worldwide web established by a salesperson, a broker-salesperson, or a team of such licensees is not linked electronically to the webpage of the broker through whom the person or team is licensed, the webpage shall display the telephone number and may display the street address of the licensed brokerage office from which the individual or team operates as real estate licensees. That information shall appear in wording as large as the predominant size wording on the webpage.

3. Where a webpage of an individual or team is linked electronically to the webpage of the broker through whom such person or persons are licensed, the webpage of the nonbroker licensee(s) shall display information which clearly indicates how to link to the broker. That information shall appear in wording as large as the predominant size wording on the webpage.

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

(d) Any advertising which contains a home telephone number, cell-phone number, beeper or pager number, home fax number, or E-mail address of an individual salesperson or broker-salesperson, or a team of such licensees, shall also include the telephone number and may include the street address of the licensed brokerage office from which the advertising licensee(s) operate. All such advertising shall also contain language identifying each number included in the advertising. For example, a home telephone number may be followed or preceded by the word "home" or the abbreviation "res."

1. No advertising shall represent that a location is a place at which the business of a real estate licensee is conducted unless that location is the licensed main office or a licensed branch office of the broker through whom the advertising licensee is licensed. Salespersons and broker-salespersons shall not include in their advertisements any reference to a "home office."

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

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

(g) Any advertisement which sets forth amounts of down payment, monthly payment, carrying charges, taxes or mortgage money obtainable shall contain appropriate qualifying words such as "approximate" or "estimated," which qualifying words shall be clearly associated with the amounts set forth. If such amounts are mentioned the broker shall maintain written proof of the validity of these statements in the broker's files. Such written proof shall be maintained for a period of 12 months from the date upon which an advertisement containing such references shall have last appeared in any publication.

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

(i) No licensed individual, limited or general partnership, firm or corporation shall advertise or use any form of application or make any inquiry which expresses directly or indirectly any limitation, specification or discrimination as to race, religion, creed, color, sex, affectional or sexual orientation, marital status, national origin, ancestry or as to whether a person is handicapped as that term is defined in N.J.A.C. 11:5-6.4(h).

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

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

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

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

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

iii. Business cards; and

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

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

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

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

2. Business cards;

3. All business signs.

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

(m) Except as herein provided, licensees may include offers of free, discounted or other services or products in advertisements or promotional material. No offering of free, discounted or other services or products, including the offering of a free appraisal, shall be made by a real estate licensee in any advertisement or promotional material or otherwise where the promotion or offering involves a lottery, a contest, a game or a drawing, or the offering of a lot or parcel or lots or parcels, or where the consumer is required to enter into a sale, listing or other real estate contract as a condition of the promotion or offer.

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

2. The prohibition upon licensees making offerings of free, discounted or other services or products as set forth in (m) above applies to all such offerings which confer a monetary benefit upon consumers. Examples of free or discounted products or services which would be prohibited if offered in a manner proscribed by (m) above include free or subsidized homeowners warranties, property, radon and pest inspections, surveys, mortgage fees, offers to pay other costs typically incurred by parties to real estate transactions, and coupons offering discounts on commissions charged by brokerage firms.

3. "Appraisal" as used herein is given its technical meaning as a study and analysis by an appraiser authorized by law to perform appraisals of New Jersey real estate to ascertain fair market value by using a process in which all factors that would fix price in the market place must be considered. A comparative market analysis or study is not an appraisal as herein defined. Any written comparative market study or analysis (CMA) provided by a licensee to a consumer shall include a statement indicating that the CMA is not an appraisal and should not be considered the equivalent of an appraisal. The said statement shall appear in print as large as the predominant size print in any writing reporting the results of the CMA.

4. Subject to (m) above, whenever a licensee participates in a promotion or offering of free, discounted, or other services or products which confers upon the recipient a monetary benefit of greater than token value, which for the purposes of this rule shall mean a value of more

than \$5.00 retail, the licensee shall provide written disclosure to the recipient of the promotional material or offering. The disclosure shall state in a clear and conspicuous manner:

i. That a consumer is not required to enter into any sale, listing or other real estate contract as a condition of their receipt and use of the free, discounted or other services or products included in the promotion or offer;

ii. Whether the consumer is required to perform any action to qualify to receive the free, discounted or other services or products offered and, if so, what specific action(s) the consumer must perform in order to do so. For the purposes of this paragraph, a consumer's attendance at any listing presentation, informational session or other meeting is considered to be an action by the consumer; and

iii. In the event that delivery of the offered services or products does not occur at the time that the disclosure is provided to the consumer, the date by which the services or products will be delivered to the consumer if the offer is accepted. If the delivery date is unknown to the licensee at the time the offer or promotion is extended to the consumer, the written disclosure to be provided by the licensee to the consumer shall so state.

5. In the event that a licensee has received, or will receive, compensation for participating in a promotion or offering of free, discounted, or other services or products, the disclosure required under (m)4 above shall also state the compensation the licensee has received or will receive. Should the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. §§ 2601 et seq., be applicable to the arrangement between the broker and the person paying the compensation to the broker, the disclosure shall be in the form and substance required by that Act.

6. The written disclosure referenced in (m)4 and 5 above shall be provided to consumers no later than when the promotion or offer is extended by the licensee to the consumer.

i. For the purposes of this subsection, an offer or promotion is extended to a consumer when the free or discounted product or service is delivered to the consumer, or when written confirmation of the consumer's right to receive the free or discounted product or service at some future time is delivered to the consumer.

7. No licensee may utilize a marketing or promotional program which requires, as a condition of the consumer's receipt of a free or discounted product or service, the taking of any action by the consumer prior to the delivery of the disclosure(s) referenced in (m)4 and 5 above other than an action necessary to accomplish the delivery of the disclosure to the consumer.

(n) No licensee shall publish or cause to be published any advertisement or place any sign which makes reference to the availability of a specific property which is exclusively listed for sale by another broker unless the licensee obtains the prior written consent of the broker with whom the property is exclusively listed. Such consent shall not be given or withheld by the listing broker without the knowledge of the owner.

1. With regard to information on listings disseminated through the Internet by licensees other than the listing broker, listing brokers shall be deemed to have given the consent referred to in (n) above with the knowledge of the owner where:

i. A written listing agreement contains the seller's authorization for information on the listing to be posted on the website of the broker, or of a multiple listing service to which the broker belongs, or of another party to which the broker or such an MLS submits information on listings; and

ii. The website on which the listing information shall initially appear has instituted no measures to prevent other parties with websites from utilizing an electronic link to enable consumers to view that information while remaining in the website of the other party.

(o) No licensee shall indicate in any advertisement that a property has been sold, or that they participated in the sale of a property, until a closing has occurred at which title to the property was transferred from the seller to the buyer.

1. For the purposes of this subsection, the term "advertisement" shall include communications to other licensees through notices submitted to a multiple listing service or otherwise.

2. In the time period after a contract prepared by a licensee emerges from Attorney Review or a contract not subject to Attorney Review is fully executed and delivered to all parties, but before a closing occurs at which title is transferred, unless such a contract is canceled and the seller authorizes the listing broker to renew efforts to market the property, any advertisement of the property which is the subject of the contract shall include the term "under contract."

(p) Advertisements by licensees may, but are not required to, include a statement indicating that the advertiser is licensed by the New Jersey Real Estate Commission. Any advertisement by a licensee that includes a reference to licensure by the New Jersey Real Estate Commission shall immediately thereafter also include the following statement: "Licensure does not imply endorsement," which statement shall be included in the advertisement in a clear and conspicuous manner.

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 realtor and added new (n) regarding consent of exclusive listing broker.

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

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

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

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

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

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 1i, and inserted a new 1ii.

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 1.

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.

#### 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.

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.;

(2) The latest sites known to and confirmed by the Department of Environmental Protection and included on the New Jersey master list of known hazardous discharge sites, prepared pursuant to P.L. 1982, c.202 (N.J.S.A. 58.10-23.15 et seq.);

(3) Overhead electric utility transmission lines conducting 240,000 volts or more;

(4) Electrical transformer substations;

(5) Underground gas transmission lines as defined in 49 C.F.R. 192.3;

(6) Sewer pump stations of a capacity equal to, or in excess of 0.5 million gallons per day and sewer trunk lines in excess of 15 inches in diameter;

(7) Sanitary landfill facilities as defined pursuant to section 3 of P.L. 1970, c.39 (N.J.S.A. 13:1E-3);

(8) Public wastewater treatment facilities; and

(9) Airport safety zones as defined pursuant to section 3 of P.L. 1983, c.260 (N.J.S.A. 6:1-82).

iii. "Residential real estate" means a property or structure or both which will serve as a residence for the purchaser.

(d) Information about social conditions or psychological impairments of a property is not considered information which affects the physical condition of a property. Subject to (d)3 below, licensees are not required by (c) above to disclose such information.

1. As used in this section, the term "social conditions" includes, but is not limited to, neighborhood conditions such as barking dogs, boisterous neighbors, and other conditions which do not impact upon or adversely affect the physical condition of the property.

2. As used in this section, the term "psychological impairments" includes, but is not limited to, a murder or suicide which occurred on a property, or a property purportedly being haunted.

3. Except as provided below, upon receipt of an inquiry from a prospective purchaser or tenant about whether a particular property may be affected by a social condition or psychological impairment, licensees shall provide whatever information they know about the social conditions or psychological impairments that might affect the property.

i. In accordance with N.J.S.A. 10:5-1 et seq. (the "Law Against Discrimination"), licensees shall make no inquiry and provide no information on the racial composition of, or the presence of a group home in, a neighborhood. In response to requests for such information, licensees shall inform the persons making the inquiry that they may conduct their own investigation. This paragraph does not apply to the owner of a multiple dwelling or his agent to the extent that such inquiries are necessary for compliance with N.J.A.C. 13:10.

ii. In accordance with N.J.S.A. 2C:7-6 through 11 ("Megan's Law") and the guidelines promulgated thereunder, licensees shall make no inquiry about and provide no information on notifications from a county prosecutor issued pursuant to that law. In response to requests for such information, licensees shall inform the person making the inquiry that information about registered sex offenders is maintained by the county prosecutor.

(e) In all contracts and leases on residential real estate they prepare, licensees shall include the following statement in print as large as the predominant size print in the document:

MEGAN'S LAW STATEMENT—Under New Jersey law, the county prosecutor determines whether and how to provide notice of the presence of convicted sex offenders in an area.

In their professional capacity, real estate licensees are not entitled to notification by the county prosecutor under Megan's Law and are unable to obtain such information for you. Upon closing the county prosecutor may be contacted for such further information as may be disclosable to you.

(f) Unless directed not to do so in writing by an owner as provided herein, every licensee shall fully cooperate with all other New Jersey licensees utilizing cooperation arrangements which shall protect and promote the interests of the licensee's client or principal. Collusion and discrimination with respect to commission rates and splits are prohibited as provided in N.J.A.C. 11:5-7.5 and 7.6.

1. The obligation to fully cooperate with all other licensees includes the requirements that listing brokers:

i. Notify any Multiple Listing System to which a listing is to be submitted of having acquired the listing within 48 hours of the effective date of the listing;

ii. Transmit to their principal(s) all written offers on their listings submitted by licensees with other firms within 24 hours of receipt of the written offer by their firm; and

iii. Place no unreasonable restrictions upon the showing of properties listed with them to prospective purchasers who are working through cooperating brokers. A requirement that all appointments for showings must be made through the listing broker's office is not considered an unreasonable restriction upon showings.

2. All requirements imposed by the obligation to fully cooperate shall be complied with on all listings unless the client or principal, with full knowledge of all relevant facts, expressly relieves the listing broker from one or more of those requirements in writing. Such a writing shall be signed by the owner and made an attachment to the listing agreement. Such a writing shall be made available for inspection by other brokers upon request.

3. All written listing agreements prepared by licensees shall include a provision as set forth below, which provision shall be in print larger than the predominant size print in the agreement. The provision may be included within the body of the listing agreement or attached to the listing as an addendum to it. Where the provision is made an addendum to the listing agreement it shall be signed by the owner at the same time that the owner signs the listing agreement. Prior to securing the owner's signature on the listing agreement, the listing broker shall specify the complete formula for determining the commission split in the indicated location in the provision.

**COMMISSION SPLITS**

LISTING BROKERS USUALLY COOPERATE WITH OTHER BROKERAGE FIRMS BY SHARING INFORMATION ABOUT THEIR LISTINGS AND OFFERING TO PAY PART OF THEIR COMMISSION TO THE FIRM THAT PRODUCES A BUYER. THIS IS GENERALLY REFERRED TO AS THE "COMMISSION SPLIT."

SOME LISTING BROKERS OFFER TO PAY COMMISSION SPLITS OF A PORTION OF THE GROSS COMMISSION, USUALLY EXPRESSED AS A PERCENTAGE OF THE SELLING PRICE, LESS A SIGNIFICANT DOLLAR AMOUNT. OTHER LISTING BROKERS OFFER A PORTION OF THE GROSS COMMISSION LESS ONLY A MINIMAL LISTING FEE OR LESS ZERO.

THE AMOUNT OF COMMISSION SPLIT YOUR BROKER OFFERS CAN AFFECT THE EXTENT TO WHICH YOUR PROPERTY IS EXPOSED TO PROSPECTIVE BUYERS WORKING WITH LICENSEES FROM OTHER BROKERAGE FIRMS.

ON THIS LISTING, THE BROKER IS OFFERING A COMMISSION SPLIT OF \_\_\_\_\_ MINUS \_\_\_\_\_ TO POTENTIAL COOPERATING BROKERS.

IF YOU FEEL THAT THIS MAY RESULT IN YOUR PROPERTY RECEIVING LESS THAN MAXIMUM EXPOSURE TO BUYERS, YOU SHOULD DISCUSS THOSE CONCERNS WITH THE LISTING SALESPERSON OR HIS/HER SUPERVISING BROKER.

BY SIGNING THIS LISTING AGREEMENT THE OWNER(S) ACKNOWLEDGE HAVING READ THIS STATEMENT ON COMMISSION SPLITS.

4. Should the client or principal direct the listing broker not to cooperate at all with all other licensees, evidence of this intent shall be in writing in the form of a WAIVER OF BROKER COOPERATION as set forth below and signed by the client or principal. Copies of this WAIVER OF BROKER COOPERATION and the listing agreement to which it relates shall be provided to the client or principal and to their authorized representative by the broker. This waiver shall become a part of the listing agreement at the time it is signed, and shall be made available for inspection by other brokers upon request. However, no direction or inducement from the client or principal shall relieve the listing broker of his responsibility of dealing fairly and exercising integrity with all other licensees.

**WAIVER OF BROKER COOPERATION**

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

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

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

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

Dated: \_\_\_\_\_ Owner \_\_\_\_\_  
 \_\_\_\_\_ Owner \_\_\_\_\_  
 \_\_\_\_\_ Listing Broker \_\_\_\_\_  
 By: Authorized Licensee or Broker \_\_\_\_\_

(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 forthwith the acceptance in writing.

(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, religion, color, sex, affectional or sexual orientation, marital status, national origin or because a person is handicapped; and no licensee shall participate or otherwise be a party to any plan, scheme or agreement to discriminate against any person on the basis of race, religion, color, sex, affectional or sexual orientation, marital status, national origin or because a person is handicapped. For the purposes of this subsection, the term "handicapped" means suffering from physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness including epilepsy, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or from any mental, physiological or developmental disability resulting from anatomical, psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques. Handicapped shall also mean suffering from AIDS or HIV infection, as defined in N.J.S.A. 10:5-5(ff) and (gg).

(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.  
 Sec: 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.  
 Sec: 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).

#### 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.

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

1. All units advertised in media shall be verified each day the advertisement appears; and

2. All units to which prospective tenants are referred shall be verified as available every three working days.

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

1. Every prospective tenant shall upon request be advised of the date and time any particular unit was last verified as available.

2. No licensee subject to this section shall refer a prospective tenant to any rental unit not verified as available within the previous seven calendar days.

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

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

1. Any fee charged, collected or received in excess of \$25.00 is deposited promptly in the broker's escrow account until the services described by the contract are fully performed; or

2. The licensee posts with an approved escrow agent cash security in an amount approved by the Commission, based upon the following criteria:

- i. The rental referral fees;
- ii. The volume of rental referral business of the licensee;
- iii. The duration of the rental referral contract; and
- iv. The prior performance of the licensee or its principals in the rental referral business.

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

1. Written consent or written confirmation of oral consent of a lessor or agent to refer prospective tenants;

2. Records of the verification of availability of rental units as set forth in (e) above; and

3. Copies of contracts with prospective tenants.

(j) Every licensee subject to this section shall prominently post a copy of this regulation in its office for the informa-

tion of its customers, and provide customers a copy upon request.

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

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

Section was "Rental location and operations".

New Rule, R.1985 d.93, effective March 4, 1985.

Sec: 16 N.J.R. 2952(a), 17 N.J.R. 600(a).

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

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

In (b), deleted an address at the end of 6.

#### Case Notes

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

### 11:5-6.6 Participation in trade associations or listing services

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

1. Places requirements, obligations, or standards upon licensed members or participants which conflict with the Real Estate License Act, N.J.S.A. 45:15-1 et seq., the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq., the New Jersey Antitrust Act, N.J.S.A. 56:9-1 et seq., or the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., or which otherwise relate to the comprehensive scheme of regulation already preempted by the State of New Jersey.

2. Interferes with the licensee's obligation of fidelity to his client's interests, his obligation of dealing fairly with all other parties in a transaction, or his obligation of fully cooperating with any other New Jersey licensee, as more fully set forth in N.J.A.C. 11:5-6.4;

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

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

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

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

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

In (a), substituted "Real Estate Sales Full Disclosure Act" for "Land Sales Disclosure Act" and changed an N.J.S.A. reference in 1, and changed N.J.A.C. reference in 2; and deleted a former (b).

1. The applicant may designate, in addition to the broker of record, other brokers who may join in the disposition of the registered property subject to filing the proper application with the Commission. The additional brokers, known as supplemental brokers, shall also execute an affidavit as required by N.J.A.C. 11:5-9.4(a). Nothing herein shall prevent any New Jersey broker from cooperating with any other New Jersey broker in any transaction, in accordance with N.J.A.C. 11:5-6.4(c). For the purposes of this section, persons who are licensed as New Jersey real estate brokers, and who have been designated by the applicant/registrant and approved by the Commission as the broker of record or as a supplemental broker for a particular subdivision, and who have been issued a current brokers release for that subdivision, are considered authorized brokers.

(b) Only authorized brokers may receive commissions from the registrant for the sale of interests in registered properties within New Jersey.

(c) Only authorized brokers and persons licensed under them may distribute literature on, or personally or via telephone solicit for prospective purchasers or offer or attempt to negotiate the sale or rental of an interest in a registered property, or provide or prepare contracts in New Jersey pertaining to registered property.

1. Where permitted by local law, unlicensed employees of a registrant working in the situs state and/or from the offices of the registrant may mail to New Jersey purchasers promotional literature on registered properties and may make appointments for New Jersey purchasers to inspect registered properties, provided that such persons make no material representations about such properties.

2. An authorized broker or a person licensed under them shall be present at any promotional booth maintained by a registrant or an agent of a registrant at any trade show or similar exhibition in New Jersey, and at any seminar promoting the sale or rental of registered property conducted by a registrant or any agent of a registrant in this State.

(d) All authorized brokers shall:

1. Prominently display the current broker's release;

2. Provide a copy of the current New Jersey Public Offering Statement to all New Jersey purchasers with whom they have had contact prior to the signing of any contract;

3. Obtain a signed and dated receipt for the same from the purchaser in all cases where the broker provides the Public Offering Statement to the purchaser, which receipt shall be maintained as a business record by the broker in accordance with N.J.A.C. 11:5-5.4; and

4. In all cases where the broker provides or prepares a contract which is signed by a New Jersey purchaser, the

broker shall maintain a copy of that contract as a business record in accordance with N.J.A.C. 11:5-5.4.

(e) New Jersey brokers may not represent unregistered subdivisions or sections of unregistered subdivisions unless such projects are exempted from registration pursuant to N.J.S.A. 45:15-16.32 and N.J.A.C. 11:5-9.18.

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

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

Deleted former (e); recodified former (f) as (e); and changed N.J.A.C. references throughout the section.

#### Case Notes

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

#### 11:5-9.7 Fees with respect to the registration of interstate properties

(a) All applicants for registration shall pay application fees as prescribed in N.J.S.A. 45:15-16.34 and in (f) below.

(b) All applicants for an exemption or a limited exemption shall pay application fees as prescribed in N.J.A.C. 11:5-9.18 and in (f) below.

(c) Any request for approval of a material change in, or an amendment to, an application for registration and/or an Order of Registration and/or a Public Offering Statement shall be accompanied by a fee of \$250.00. No fee shall be charged for amendments to applications or proposed Public Offering Statements made prior to the issuance of an Order of Registration.

1. If applications for approval of a material change in and/or for an amendment to an Order of Registration and/or an amendment to a Public Offering Statement are made simultaneously, only one fee will be payable;

2. If applications are made for approval of multiple material changes, and/or multiple amendments to an Order of Registration, and/or multiple amendments to a Public Offering Statement simultaneously, only one fee will be payable.

(d) The Commission shall maintain a copy of every application for registration, together with all amendments thereto, that has been approved and shall make them reasonably available for public inspection during ordinary business hours at the Commission's office.

1. The Commission will furnish to the public, upon request, a copy of the statement of record of any registered subdivision at a cost in accordance with the copying fee schedule prescribed in N.J.S.A. 47:1A-1.

(e) All fees paid are non-refundable.

(f) Fees charged by the Bureau of Subdivided Land Sales Control are listed in the table below.

**BUREAU OF SUBDIVIDED LAND SALES CONTROL FEES**

Description	Fee
Out-of-State Property Registration application fee	\$500.00 plus \$35.00 per unit fee up to a maximum of \$3,000
Limited Exemption	\$250.00
Complete Exemption	\$80.00
Amendments to registrations	\$250.00

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), changed N.J.A.C. reference; and in (c), deleted former 3.  
Amended by R.2003 d.440, effective November 3, 2003.  
See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).

In (d)1, inserted N.J.A.C. reference; added (f).

**11:5-9.8 Issuance by the Commission of a Notice of Filing, Order of Registration, Notice of Correction, or Order of Rejection; Petition for Reconsideration, Automatic Registration**

(a) Upon receipt of an application for registration in proper form and accompanied by payment of the required filing fee in the correct amount as prescribed by N.J.S.A. 45:15-16.34, the Commission shall, within 10 business days of its receipt of the same, issue a Notice of Filing to the applicant. The notice of filing shall not be construed as an approval of the registration or any portion thereof.

1. The date of filing shall be considered as the date when all required documents have been submitted in proper form and all fees, including the inspection fee, if requested, have been paid.

(b) Within 90 days from the date of a notice of filing, the Commission shall either enter an Order of Rejection or, if the Commission affirmatively determines that the requirements of N.J.S.A. 45:15-16.27 et seq. and this subchapter have been met, an Order of Registration. If within the said 90-day time period, no Order of Rejection is entered and no Notice of Deficiency as set forth in (c) below is issued, the subdivision or subdivided lands shall be deemed registered unless the applicant has consented in writing to a delay.

(c) If, during the 90 days following the date of the Notice of Filing, the Commission determines that any of the requirements of N.J.S.A. 45:15-16.27 et seq. or of this subchapter have not been met, the Commission shall issue a Notice of Deficiency to the applicant. The Notice of Deficiency shall indicate that the properties referenced in the application for registration are not registered and that the application must be corrected in a manner specified in the notice within 30 days from the date that the Notice of Deficiency is received by the applicant.

1. In the event the requirements of the Notice of Deficiency are not met within the time allowed, the Commission may enter an order rejecting the registration. All such orders shall include the factual and legal basis for the rejection and shall provide that, unless appealed, as provided in (d) below the terms of the order shall become final after 45 days.

(d) Upon the issuance of an Order of Rejection, the applicant shall have the right to file an appeal with the Commission and shall be entitled to a hearing thereon, provided that the appeal shall be filed within 45 days of the date of the Order of Rejection.

1. In the event an appeal is filed by the applicant, the Order of Rejection shall not take effect until such time as a determination has been rendered on the appeal. While an appeal of an Order of Rejection remains pending, no property which was the subject of the Notice of Filing referenced in the Order of Rejection shall be considered registered.

Amended by R.2003 d.440, effective November 3, 2003.  
See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).  
Added (b) through (d).

**11:5-9.9 Inspection of properties by the Commission**

(a) As provided in N.J.S.A. 45:15-16.41, the Commission, at its discretion, may make on-site inspections of any subdivision which is the subject of an application for registration, either before an Order of Registration has been issued or thereafter. In any instance where an Order of Registration has been issued prior to the subdivision being inspected by the Commission, such Order shall be considered conditional and subject to the results of the Commission's inspection of the premises. The Commission may at its discretion conduct subsequent on-site inspections.

(b) The costs of inspections shall be paid by the applicant who shall provide a deposit when requested by the Commission. After the inspection the Commission shall provide the applicant/registrant with a statement of costs incurred and a refund of any portion of the deposit not expended or a request for additional funds if required.

**11:5-9.10 Amendments to registration applications and Public Offering Statements**

(a) The registrant shall immediately file with the Commission amendments to its registration application and/or Public Offering Statement reflecting any material change(s) in previously supplied information or documents, in order that the information provided purchasers is current.

(b) Material change means, but is not limited to, any significant change in the size or character of the development or interest being offered or anything having a significant effect on the rights, duties or obligations of the developer or purchaser.