

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, c.467, L.1977, 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 whether the purchaser or the seller 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, no free offering, including the offering of a free appraisal, shall be made in any advertisement or promotional material. "Appraisal" as used herein is given its technical meaning as a complete study and analysis by a certified or licensed appraiser to ascertain fair market value by using a process in which all factors that would fix price in the market place must be considered.

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. Free offerings ancillary to the real estate transaction process and that are informational or educational in nature, including, but not limited to, offerings of market studies or seminars, and offerings in the nature of promotional items of token value, such as calendars or pens, are not prohibited. A market study is not an appraisal as herein defined.

i. The prohibition upon licensees from making free offerings of items of more than token value applies to all offerings which confer upon consumers a monetary benefit of a value of more than \$5.00 retail. Examples of prohibited free offerings 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.

ii. 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.

(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.

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.

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.

3. As used in this subsection, the term “instrument” means any complete and fully executed written contract of sale, lease, option agreement, or other writing affecting an interest in real estate, or any complete and fully executed addendum or amendment to any such contract, lease, option agreement or writing. The term instrument as used in this subsection does not include listing agreements and buyer brokerage agreements.

4. Licensees shall immediately deliver to all parties to any fully executed instrument a clear copy with original signatures of any such fully executed instrument. Licensees shall provide their clients with a fully executed copy of any sale or exclusive sale or rental listing contract at the time of execution thereof.

5. Licensee-prepared revisions or additions reflected on the instrument itself shall be initialed by all parties to the transaction. Licensee-prepared revisions or additions to an instrument not memorialized by changes on the instrument itself shall be reflected on amendments or addenda to the instrument signed by all parties to the transaction.

i. Licensees shall immediately deliver to the party proposing a revision or addition to an instrument a clear copy of any proposed revised instrument initialed by that party and a clear copy of any proposed amendment or addendum signed by that party.

ii. All revisions, amendments and addenda to any fully executed instrument which are prepared by licensees must comply with New Jersey law as it pertains to the attorney review of contract and lease documents prepared by real estate licensees.

6. This rule is to ensure prompt communication of the executed evidence of a transaction to all interested parties.

(b) No listing agreement or contract for the sale of real property, or any interest therein, shall contain a prescribed or predetermined fee, commission rate, or commission amount; nor shall any such writing contain a commission clause or provision which suggests (such as with a small blank space and percent sign) to a seller that the commission is a prescribed rate or amount.

(c) The commission clause or provision in all listing agreements for the sale of one to four family dwelling units or interest therein, or in all contracts for such sale, if there is no listing agreement, shall contain in print larger than the predominant size print in the writing, the language: “As seller you have the right to individually reach an agreement on any fee, commission, or other valuable consideration with any broker. No fee, commission or other consideration has been fixed by any governmental authority or by any trade association or multiple listing service.” Nothing herein is intended to prohibit an individual broker from independently establishing a policy regarding the amount of fee, com-

mission or other value consideration to be charged in transaction by the broker.

(d) Upon request, the listing broker shall advise the seller of the rate or amount of any commission split or distribution.

(e) All listing agreements of any licensed individual, partnership, firm or corporation which provide for the listing of property with any real estate multiple listing service operation shall specify the complete name of that listing service.

(f) No licensed individual, partnership, firm or corporation shall enter into a “net listing” contract for the sale of real property, or any interest therein. A “net listing” is defined as an agency agreement in which a prospective seller lists real estate for sale with an authorization to a broker to sell at a specified net dollar return to the seller, and which provides that the broker may retain as commission the difference between the specified dollar return to the seller and the actual sales price.

(g) Licensees shall comply with the following provisions:

1. All contracts prepared by licensees for the sale of residential real estate containing one to four dwelling units and for the sale of vacant one-family lots in transactions in which the licensee has a commission or fee interest shall contain, at the top of the first page and in print larger than the predominant size print in the writing, the following language:

THIS IS A LEGALLY BINDING CONTRACT THAT WILL BECOME FINAL WITHIN THREE BUSINESS DAYS. DURING THIS PERIOD YOU MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND CANCEL THE CONTRACT. SEE SECTION ON ATTORNEY REVIEW FOR DETAILS.

2. The contract shall also contain the following language within the text of every such contract.

ATTORNEY REVIEW:

1. Study by Attorney

The Buyer or the Seller may choose to have an attorney study this contract. If an attorney is consulted, the attorney must complete his or her review of the contract within a three-day period. This contract will be legally binding at the end of this three-day period unless an attorney for the Buyer or Seller reviews and disapproves of the contract.

2. Counting the Time

You count the three days from the date of delivery of the signed contract to the Buyer and the Seller. You do not count Saturdays, Sundays or legal holidays. The Buyer and the Seller may agree in writing to extend the three-day period for attorney review.

3. Notice of Disapproval

If an attorney for the Buyer or the Seller reviews and disapproves of this contract, the attorney must notify the Broker(s) and the other party named in this contract within the three-day period. Otherwise this contract will be legally binding as written. The attorney must send the notice of disapproval to the Broker(s) by certified mail, by telegram, or by delivering it personally. The telegram or certified letter will be effective upon sending. The personal delivery will be effective upon delivery to the Broker's office. The attorney may but need not also inform the Broker(s) of any suggested revisions in the contract that would make it satisfactory.

3. The contract shall also contain the names and full addresses of all persons to whom a Notice of Disapproval must be sent in order to be effective as provided in item three of the Attorney Review Provision.

4. All leases prepared by licensees for a term of one year or more for residential dwelling units in transactions in which they have a commission or fee interest shall, at the top of the first page and in print larger than the predominant size print of the writing, contain the following language:

THIS IS A LEGALLY BINDING LEASE THAT WILL BECOME FINAL WITHIN THREE BUSINESS DAYS. DURING THIS PERIOD YOU MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND CANCEL THE LEASE. SEE SECTION ON ATTORNEY REVIEW FOR DETAILS.

5. The lease shall also contain the following language within the text of every such lease.

ATTORNEY REVIEW:

1. Study by Attorney

The Tenant or the Landlord may choose to have an attorney study this lease. If an attorney is consulted, the attorney must complete his or her review of the lease within a three-day period. This lease will be legally binding at the end of this three-day period unless an attorney for the Tenant or the Landlord reviews and disapproves of the lease.

2. Counting the Time

You count the three days from the date of delivery of the signed lease to the Tenant and the Landlord. You do not count Saturdays, Sundays or legal holidays. The Tenant and the Landlord may agree in writing to extend the three-day period for attorney review.

3. Notice of Disapproval

If an attorney for the Tenant or the Landlord reviews and disapproves of this lease, the attorney must notify the Broker(s) and the other party named in the lease within the three-day period. Otherwise this lease will be legally binding as written. The attorney must send the notice of disapproval to the Broker(s) by certified mail, by telegram, or by delivering it personally. The telegram or certified letter will be effective upon sending. The personal delivery will be effective upon delivery to the Broker's office. The attorney may but need not also inform the Broker(s) of any suggested revisions in the lease that would make it satisfactory.

6. The lease shall also contain the names and full addresses of all persons to whom a Notice of Disapproval must be sent in order to be effective, as provided in item three of the Attorney Review Provision.

7. The failure of any licensee to include such language in any such contract of sale or lease agreement prepared by the licensee shall be construed by the Commission as engaging in the unauthorized practice of law and shall be considered by the Commission as conduct which demonstrates the licensee's unworthiness and incompetency, thereby subjecting the licensee to sanctions pursuant to N.J.S.A. 45:15-17(e).

Amended by R.1977 d.84, effective March 10, 1977.
 See: 9 N.J.R. 91(d), 9 N.J.R. 178(a).
 Amended by R.1977 d.391, effective October 19, 1977.
 See: 9 N.J.R. 344(a), 9 N.J.R. 536(a).
 Amended by R.1979 d.461, effective November 26, 1979.
 See: 10 N.J.R. 499(a), 12 N.J.R. 44(b).
 Amended by R.1980 d.51, effective January 31, 1980.
 See: 12 N.J.R. 127(e).
 Amended by R.1980 d.214, effective May 14, 1980.
 See: 12 N.J.R. 342(d).
 Amended by R.1980 d.274, effective June 19, 1980.
 See: 12 N.J.R. 423(d).
 Amended by R.1980 d.408, effective September 23, 1980.
 See: 12 N.J.R. 340(b), 12 N.J.R. 665(c).
 (c) substantially amended.
 Amended by R.1980 d.409, effective September 24, 1980.
 See: 12 N.J.R. 665(d).
 (c) compliance date amended from November 1, 1981 to January 2, 1981.
 Amended by 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.
 Amended by R.1987 d.159, effective April 6, 1987.
 See: 18 N.J.R. 1677(a), 18 N.J.R. 2112(a), 19 N.J.R. 551(a).
 Added (g).
 Amended by R.1987 d.359, effective September 8, 1987.
 See: 19 N.J.R. 503(b), 19 N.J.R. 1646(a).
 Added (h) "Agreement to Honor".
 Invalidity Annotation
 N.J.A.C. 11:5-1.16(h) held invalid as an intrusion upon the State Supreme Court's constitutional authority to regulate the practice of law. *Carmagnola v. Hann*, 233 N.J.Super. 547 (App. Div. June 12, 1989), 559 A.2d 478.
 Amended by R.1989 d.539, effective October 16, 1989.
 See: 21 N.J.R. 2438(b), 21 N.J.R. 3299(a).
 Subsection (h) deleted due to Appellate Court decision — N.J.Super. —, Dkt. No. A-2211-88T2F (App.Div.1989).
 Amended by R.1993 d.10, effective January 4, 1993.
 See: 24 N.J.R. 3485(a), 25 N.J.R. 179(a).
 Text at (a) substantially amended to specify licensees' obligations to parties in a real estate transaction involving offers or counter-offers. *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

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 Obligations 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 pro-

vide 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) 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. Commission splits shall be governed by the provisions of N.J.A.C. 11:5-7.5 and 7.6. Full cooperation requires a listing broker to transmit to their principal(s) all written offers submitted through the offices of other licensees on properties listed with the listing broker. Full cooperation also requires listing brokers not to place restrictions upon the showing of properties listed with them to prospective purchasers who are working through cooperating brokers. This obligation shall be a continuing one unless the client or principal, with full knowledge of all relevant facts, expressly relieves his agent from this responsibility. Should the client or principal direct the licensee not to cooperate 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 licensee 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 a fully executed copy 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, and the licensee shall secure forthwith the offer in writing. Unless a writing containing or confirming the terms of the listing agreement otherwise provides, the licensee shall transmit forthwith 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. 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.
See: 24 N.J.R. 3486(a), 25 N.J.R. 3219(a).

Amended by R.1994 d.266, effective June 20, 1994 (operative July 1, 1994).
See: 26 N.J.R. 729(a), 26 N.J.R. 1194(a), 26 N.J.R. 1222(a), 26 N.J.R. 2581(b).

Amended by R.1997 d.27, effective January 21, 1997.
See: 28 N.J.R. 3065(a), 29 N.J.R. 366(a).
Added (i).

Amended by R.1997 d.275, effective July 7, 1997.
See: 29 N.J.R. 300(a), 29 N.J.R. 2849(a).
Substantially amended (b); recodified former second sentence of (b) as (c) and amended; added (c)1 through 3, (d) and (e); and recodified former (c) through (i) as (f) through (l).
Administrative correction.
See: 29 N.J.R. 3260(a).
In (c)1, in the second paragraph, inserted "shall be sent by certified mail. The cancellation".

Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (f) and (h), changed N.J.A.C. references.

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

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

See: 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.

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

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

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

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

In (a), 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).