

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:

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 precensure 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 precensure courses referred to in N.J.A.C. 11:5-2.1 in order to fulfill the instructor precensure 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 precensure 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 precensure 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 prelicensure 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 prelicensure 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.

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).

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.

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

See: 4 N.J.R. 17(a).

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

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

Reference to a letter and its contents was deleted.

Amended by R.1994 d.60, effective February 7, 1994 (operative July 1, 1994).

See: 25 N.J.R. 4858(a), 26 N.J.R. 803(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 (c), changed N.J.A.C. reference in 3.

of the broker within five business days of their receipt by the broker.

(d) In the event that any monies due a salesperson under the terms of the written agreement with their broker are not paid within 10 business days of the broker's receipt of such funds or promptly thereafter upon their having cleared the broker's account, the broker shall provide to the salesperson a complete and comprehensive written explanation of the failure to pay such monies.

(e) Upon the termination of the affiliation of a salesperson with a broker, the broker shall make a complete accounting in writing of all monies due the salesperson as of the date of termination and/or which may become due in the future. In the event any sums so accounted for are not in accord with the terms of the post-termination compensation clause in the written agreement between the broker and the salesperson, the broker shall give a complete and comprehensive written explanation of any difference to the salesperson with the accounting. Such accounting shall be delivered to the salesperson not later than 30 days after termination.

(f) Copies of all written agreements as described in (a) above, of all written explanations of the failure to pay compensation due a salesperson on a timely basis as described in (e) above, and of all accountings and written explanations regarding compensation due a salesperson subsequent to the termination of their affiliation with a broker as described in (f) above shall be maintained by the broker, with adequate proof of the delivery of the same to the salesperson, for a period of six years.

(g) In situations where the Commission confirms that a broker has complied with all of the requirements imposed by this section, the Commission will not further investigate a complaint alleging the non-payment of a commission by a broker to a salesperson unless such complaint is accompanied by a copy of an arbitration decision or the equivalent, or a copy of a judgment of a court of competent jurisdiction secured by the salesperson against the broker. Unless appealed, the failure by a broker to pay monies awarded to a salesperson under the terms of any such decision or judgment within 30 days of its effective date shall subject the broker to sanctions pursuant to N.J.S.A. 45:15-17.

(h) Broker and salesperson licensees may only bring or maintain actions in the courts of New Jersey for the payment of compensation due them for brokerage services performed as provided in N.J.S.A. 45:15-3.

1. The Commission interprets the language "at the time the alleged cause of action arose" as used in N.J.S.A. 45:15-3 to mean at the time that the brokerage services which form the basis for the alleged claim to compensation were rendered. For example, at the time when a property was listed for sale or rental by a licensee.

SUBCHAPTER 4. EMPLOYMENT PRACTICES/OFFICE AND LICENSEE SUPERVISION

11:5-4.1 Employment agreements; commissions; accounting to salespersons; actions for collection of compensation

(a) No salesperson may commence operations as such for a broker and no broker may authorize a salesperson to act as such on his or her behalf until a written agreement as provided in this subsection has been signed by the broker and salesperson. Prior to an individual's commencement of activity as a salesperson under the authority of a broker, the broker and salesperson shall both sign a written agreement which recites the terms under which the services of the salesperson have been retained by the broker. Such terms shall include, but need not be limited to, the following:

1. The rate of compensation to be paid to the salesperson during his or her affiliation with the broker;
2. A promise by the broker to pay to the salesperson his or her portion of commissions earned within 10 business days of their receipt by the broker or as soon thereafter as such funds have cleared the broker's bank, or in accordance with another payment schedule explicitly set forth in the employment agreement;
3. The rate of compensation payable to the salesperson on transactions which close and, if applicable, on renewals which occur subsequent to the termination of the salesperson's affiliation with the broker; and
4. A provision that any future changes to the agreement will not be binding unless the changes are contained in a writing signed by both parties.

(b) A copy of the fully executed agreement shall be provided to the salesperson upon the commencement of his or her affiliation with the broker, and the original thereof shall be maintained by the broker as a business record in accordance with N.J.A.C. 11:5-5.5.

(c) All compensation paid to brokers shall, unless debited from funds held in escrow in accordance with N.J.A.C. 11:5-5.1(d), be deposited into the general business account

2. The Commission does not interpret the language "at the time the alleged cause or action arose" as requiring that the licensee must have been actively licensed at the time that the compensation allegedly due was to have been paid. For example, the Commission does not construe this language as requiring licensure at the time of the renewal of a lease to enable a claimant to sue for compensation based upon a promise, made or in effect when the lease was originally executed, to pay additional consideration to the claimant in the event that the lease was renewed.

(i) All references to "salesperson" in this section shall be construed to also include individuals licensed as broker-salespersons. All references to "non-payment of a commission" in this section shall be construed to include the non-payment of other forms of compensation.

As amended, R.1976 d.254, eff. August 16, 1976.

See: 8 N.J.R. 336(b), 8 N.J.R. 422(a).

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

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

"Salesman" replaced by "salesperson".

Amended by R.1989 d.424, effective August 21, 1989 (operative November 19, 1989).

See: 21 N.J.R. 1308(b), 21 N.J.R. 2519(a).

Language entirely deleted and replaced with more detailed requirements including essential provisions which must be included in all contracts between brokers and salespersons.

Amended by R.1994 d.57, effective February 7, 1994.

See: 25 N.J.R. 4851(a), 26 N.J.R. 799(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), rewrote 2; deleted former (c); recodified former (d) through (j) as (c) through (i); and changed N.J.A.C. references throughout.

Case Notes

Real Estate Commission regulation is reasonable interpretation of statute governing actions for recovery of real estate commissions, which requires that claimant be duly authorized real estate broker at time commission was earned. *Prestia Realty Inc. V. Hartz Mountain Industries, Inc.*, 303 N.J.Super. 140, 696 A.2d 95 (N.J.Super.A.D. 1997).

Regulation stating that real estate broker suing for commissions must have been duly licensed when broker performed all necessary brokerage services does not require broker to be licensed at time of closing. *Atlantic Commercial Group, Inc. v. Dunham*, 303 N.J.Super. 122, 696 A.2d 85 (N.J.Super.A.D. 1997).

Issues of fact precluded summary judgment on issue whether claimed agent was an employee of real estate agency for purposes of wrongful discharge claim. *MacDougall v. Weichert*, 144 N.J. 380, 677 A.2d 162 (1996).

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 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.

11:5-4.2 Broker supervision and oversight of individual licensees, office operations and escrowed monies

(a) The following apply to individual broker licensees operating as sole proprietors (employing brokers) or as the authorized broker (broker of record) of a corporation or other entity licensed as a New Jersey real estate broker. As used in this section, the term "individual broker" shall refer to employing brokers and brokers of record and the term "broker licensee" shall refer to sole proprietors and corporations or other entities licensed as brokers.

1. The Commission will hold responsible individual brokers for any actions of the broker licensee or any person employed by or licensed through the broker licensee taken in the pursuit of its real estate brokerage business which violate any of the provisions of the real estate license law, N.J.S.A. 45:15-1 et seq., or the regulations promulgated thereunder.

i. This responsibility shall apply regardless of where the persons licensed through the broker licensee engage in actions in pursuit of the broker licensee's real estate brokerage business.

2. Every real estate transaction in which a broker licensee participates as a broker shall be under the ultimate supervision of the individual broker.

3. The individual broker shall, in addition to ascertaining that a separate account is maintained for the funds of others coming into the possession of the broker licensee, make certain that no such funds of others are disbursed or utilized without his or her express authorization and knowledge.

4. The provisions of this subsection do not apply to brokers licensed as broker-salespersons.

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

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

Subsections (a) and (c) deleted; subsection (b) recodified as (a).

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.246, effective May 18, 1998.

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

Rewrote (a).

11:5-4.3 Use of license for the benefit of others

(a) No arrangement, direct or indirect, shall be entered into by any licensee whereby an individual licensee lends his name or license for the benefit of another person, firm or corporation, or whereby the provisions of the real estate statute and rules relating to licensing are circumvented.

“Notice” means a communication by mail from the Commission executed by its secretary or other duly authorized officer. Notice to subdividers shall be deemed complete when mailed to the subdivider’s address currently on file with the Commission.

“Offer” means every inducement, solicitation or attempt to encourage a person to acquire an interest in a subdivision if undertaken for gain or profit.

“Person” means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

“Principal” means all individual applicants or subdividers; all general partners of applicants or subdividers that are partnerships; all officers, directors and shareholders of corporate applicants or subdividers who are actively involved in the planning, management or promotion of the offering; and all other individuals who either own or control an interest of 10 percent or more in an applicant or subdivider, or who will actively participate in the planning, management or promotion of the offering, regardless of the form of organization of the applicant or subdivider.

“Purchaser” means a person who acquires or attempts to acquire or succeeds to an interest in a subdivision.

“Situs state” means the state, province, territory, protectorate, country or other jurisdiction situated outside of the State of New Jersey within which a subdivision is located.

“Time-share estates” includes both “fee simple” and “right to use” time-share interests and means:

1. An “interval estate” meaning a combination of an estate for years in a lot, parcel or unit, during the term of which title rotates among the time-share owners, coupled with a vested undivided fee simple interest in the remainder in that unit as established by the declaration or deed creating the interval estate; or

2. A “time-span estate” meaning a combination of an undivided interest in a present estate in fee simple in a lot, parcel or unit established by the declaration or deed creating the time-span estate, coupled with the exclusive right to possession and occupancy of the parcel or unit during a regularly recurring period; or

3. A “vacation license” meaning the exclusive right to possession and occupancy of a lot, unit or parcel during a regularly recurring period established by club membership, lease or license.

“Subdivider” or “developer” means any owner of subdivided lands or the agent of that owner who offers the subdivided lands for disposition.

“Subdivision” and “subdivided lands” mean any land situated outside the State of New Jersey whether contiguous or not, if one or more lots, parcels, units or interests are offered as part of a common promotional plan of advertising and sale and expressly means and includes such units or interests commonly referred to as a “condominium” defined in the “Condominium Act” P.L. 1969, c.257 (N.J.S.A. 46:8B-1 et seq.). In addition to condominiums, this definition shall also specifically include, but shall not be limited to, any form of homeowners association, any housing cooperative, any community trust or other trust device and any form of time-sharing.

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

In “Advertising”, deleted “land” preceding “sales contract”.

11:5-9.3 Forms of documents

(a) Rules concerning documents with respect to the registration of subdivisions with the Commission and to the sale of interests in out-of-State subdivisions pursuant to the Act are as follows:

1. All statements of record submitted to the Commission shall be bound, referenced and properly indexed with the exception of those received from the Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development.

2. All documents submitted to the Commission for filing shall, wherever possible, be typewritten on one side of the paper only. One copy of each exhibit or document shall be submitted, unless the Commission requests more than one copy. All documents submitted to the Commission shall not exceed 8½ x 14 inches. The Commission will make exceptions for documents which an applicant for registration cannot reasonably reduce, such as topo-

graphical maps, plat maps and surveys, if such documents can be folded to 8½ x 14 inches. Where the Commission requires certified documents and the applicant cannot obtain reduced certified documents, the applicant may reduce such documents and submit therewith an affidavit verifying such document. All documents submitted pursuant to these rules shall become part of the Commission’s public records.

3. An applicant may submit photographs as part of the application for registration. Photographs shall not be used in lieu of the legal description of the registered property or any other required written documents.

4. An applicant may submit verified copies of original documents.

5. An affidavit or affirmation as prescribed in the Commission’s forms shall be executed for each of the following documents:

- i. Statement of record, partial statement of record;
- ii. Application for consolidated registration;
- iii. Application for amendment to Order of Registration;
- iv. Annual report of registered properties;
- v. Partner, officer, director or principal disclosure;
- vi. Consent(s) to service of process; and
- vii. Broker’s Affidavit and application for release.

6. A certified property report and statement of record of the Office of Interstate Land Sales Registration, Department of Housing and Urban Development, may be filed as a statement of record conforming to the requirements of the Act, provided the following documentation shall also be submitted:

- i. Consent(s) to service of process;
- ii. Audited financial statement(s) as provided in N.J.A.C. 11:5-6.4(a)15;
- iii. A statement detailing any bonding or security agreements entered into;
- iv. Copies of all plats pertinent to the subdivision;
- v. A copy of each contract to be used in the sale of property in the development to New Jersey purchasers;
- vi. A list of the officers of the corporation;
- vii. A copy of the articles or certificate of incorporation;
- viii. Application/ affidavit of developer; and
- ix. Such other additional documents or proofs that may be requested.

7. The acceptance of the certified report and statement of record of the Office of Interstate Land Sales Registration may be conditioned upon an acceptable on-site inspection by the Commission or its designee. No marketing or sales activity will be permitted in New Jersey until all the proper authorizations have been received by the applicant and broker from the Commission.

8. Any applicant who wishes to register a subdivision which has been similarly registered in this State or any other state where the requirements of that registration are substantially similar to those imposed by this subchapter, may submit a certified copy of the approved application for registration filed in such other jurisdictions. In the event the Commission finds upon review that such an application substantially conforms to the standards and requirements imposed by the Act and this subchapter, the Commission may register such property; provided, however, that prior to such registration, the Commission may require submission of such supplemental documents and information as it may deem necessary.

9. Nothing herein, or in the Act, shall be construed to require an applicant to whom an Order of Registration has previously been issued to file any additional documents or affidavits with the Commission other than notices of amendments or requests for approval of material change(s) and annual reports prior to the expiration of that Order of Registration.

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), rewrote 6.

11:5-9.4 Contents of application for registration

(a) All applications for registration shall contain the following documents and information:

1. A form application provided by the Commission in which the applicant identifies the specific lots, parcels, units or interests to be registered. The application shall be accompanied by an affidavit, on a form provided by the Commission, signed by the applicant which affirms and attests that the applicant is familiar with the project being registered, the nature and content of the application for registration, the Act and the rules promulgated thereunder, and that the contents of the application are true and correct and conform with those requirements. A second affidavit to be completed by the designated New Jersey broker of record shall accompany the application. The broker's affidavit shall state that he is familiar with the registration and its contents or has physically inspected the property, or both, that he is familiar with the Act and the rules promulgated thereunder, and with the Real Estate Brokers and Salesmen Act, and that he is not aware of any information that would lead him to believe that the information in the registration application does not provide full and fair disclosure of the offering;

2. One copy of the proposed New Jersey Public Offering Statement;

3. A statement by the applicant confirming that all monies paid by New Jersey residents to the applicant or his agents prior to closing will be held in an escrow account, or in trust by an attorney licensed to practice law in this State or the state or country where the property is located, or be guaranteed by some means acceptable to the Commission. The statement shall specify the name and location of the institution where the escrow account is maintained as well as the name and address of any trustee or escrow agent. The statement shall include the applicant's acknowledgment that he shall hold all funds in escrow or in trust until the closing and delivery of the deed or until the applicant posts a bond or some other guarantee acceptable to the Commission to ensure New Jersey purchaser deposits, which bond shall be separate from and in addition to any bond or assurance for the completion of infrastructure and promised improvements. In the event that interests in the subdivision, including fee simple interests in timeshare projects, are offered through installment sale contracts where closing and delivery of deed or deed in trust are postponed until three or more installment payments, including, but not limited to, monthly payments for licenses, memberships or other non-fee interests in the subdivision, have been paid, the statement shall confirm:

i. That all monies paid by New Jersey purchasers shall be escrowed until:

(1) The statutory seven-day rescission period has expired;

(2) A deed in trust memorializing the transaction has been offered to the purchaser, which offer shall be made within 180 days of the date on which the first installment payment was made, presuming that all payments are current as of that time, and which deed in trust will, presuming that the purchaser has performed all acts required to enable the subdivider to do so, be recorded within the said 180 day period with the appropriate recording authority in the situs state;

(3) All statutory and other rescission periods have passed; and

(4) All contingencies other than the completion of secured promised improvements have been fulfilled; or

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 sale of interstate properties

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

(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.

(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 of \$0.50 per page.

(e) All fees paid are non-refundable.

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.

11:5-9.8 Issuance by the Commission of a Notice of Filing

(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.

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.

1. Changes in selling prices and advertising, the identity of the officers and directors of a registrant, and notice of the completion of improvements on a timely basis as represented in a previously approved Public Offering Statement are not considered material changes.

2. The transfer of control of any association responsible for the maintenance of common areas and/or the operation of common facilities or amenities by the registrant to the owners of interests in the subdivision is a material change.

(c) Subsequent to the Commission having approved a Public Offering Statement, no revised Public Offering Statement shall be given to prospective purchasers without the approval of the Commission.

1. Applications for approval of an amended or corrected Public Offerings Statement shall be made by filing a red-lined copy of the proposed Revised Public Offering Statement with the Commission and an application update.

(d) The Commission shall process and review requests for amendments to Orders of Registration and Public Offering Statements in accordance with the standards and procedures established in the Act and this subchapter for the review of applications for registration. Requests for amendments shall be accompanied by a fee of \$250.00, as provided in N.J.A.C. 11:5-9.7.

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) and (c); and in (d), changed N.J.A.C. reference.

11:5-9.11 Annual reporting upon and the termination of registrations

(a) No later than 30 days after the anniversary date of the latest Order of Registration, and while the registrant retains any interest in the subdivision, the registrant shall file, on a form designated by the Commission, an annual report reflecting any material changes in the information contained in the original application for registration or in the most recent Annual Report previously filed.

1. This requirement shall not diminish the obligation of the registrant to notify the Commission of material changes as they occur.

2. The annual report shall contain an audited financial statement or compilation prepared by an independent public accountant showing the receipts and expenditures of any association serving the project and under the control of the registrant, which financial statements shall be compiled on a yearly basis, and certified if required by the situs state.

3. The yearly audit submitted with the annual report shall be the most current audit available. In no event may the date of the yearly audit be earlier than 18 months prior to the date of the annual report. The registrant will not have to file a separate audit with the Commission for any association controlled by the owners of interests in the subdivision.

(b) The registrant may file an application for termination of its obligations with the Commission in which the registrant shall certify the grounds for termination.

1. Upon a determination by the Commission that an annual report is no longer necessary for the protection of the public interest because the registrant no longer retains any interest and no longer has any contractual, bond or other obligations to New Jersey purchasers in the subdivision, including having fulfilled all undertakings referred to in the Public Offering Statement, and the registrant has ceased all marketing activity in New Jersey, the Commission shall issue an order terminating the responsibilities of the registrant under the Act upon the registrant making application for the issuance of an Order of Termination, accompanied by acceptable proofs that the above requirements have been met.

11:5-9.12 Home builders

Unless exempt pursuant to N.J.S.A. 45:15-16.32, a home builder selling house and lot packages offered as part of a common promotional plan, regardless of whether the lots are contiguous, is a "subdivider" as defined in N.J.S.A. 45:15-16.28, and therefore such offerings are subject to the Act and to this subchapter.

11:5-9.13 Grounds for denial of registration applications and for the revocation of Orders of Registration

A finding that an applicant or registrant has previously been determined to have engaged in unfair acts and/or fraudulent or deceptive practices by the Federal Trade Commission, or as set forth in the Federal Interstate Land Sales Full Disclosure Act (82 Stat. 590; 15 U.S.C. § 1701 et seq.), or to have violated the Act and/or similar acts in other States, may constitute grounds for the Commission, after providing the applicant or registrant with the opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, to refuse to issue or to revoke an Order of Registration.

11:5-9.14 Advertising and sales promotions with respect to the sale and marketing of registered properties

(a) Advertisements that refer to the purchase price of any lot, unit, parcel or interest in real estate shall state the full purchase price and shall disclose any known or estimated additional assessments or costs to the purchaser.

1. In order to eliminate fictitious pricing or illusionary discounts, no certificates shall be distributed indicating that a discount from the advertised price shall be given. This shall not preclude the giving of a discount on the basis of any reasonable criteria.

2. Advertising shall not refer to a price increase unless the amount and date of the increase are indicated.

(b) Advertising that contains statements regarding taxes shall not use terms such as "low" and "stable", but shall state what the current taxes are, or an accurate estimate of such taxes based on current tax rates or value ratios.

1. Any reference to proposed improvements for which the purchaser will be assessed shall clearly set forth the facts of the assessment and the estimated amount of the assessment.

2. Advertising shall not state that items or services are free when the cost thereof is included in the assessment.

(c) Advertising shall not refer to any common element or facility that does not presently exist unless that fact is prominently stated in the advertising, accompanied by the proposed date of completion, which shall also appear prominently in the advertising.

(d) Advertising shall not contain photographs, sketches or artist's conceptions unless the fact that these are conceptions are stated immediately adjacent to them in the advertisement.

(e) Advertising shall not refer in wording, photograph, sketch or conception to any recreation, medical, social, shopping or other facility that is not located within the subdivision unless it clearly states that the facilities are not located in the subdivision and states the approximate distance therefrom in miles via paved roads.

(f) Any model unit that is used as part of a promotional plan shall be in substantial conformity with the units that are subsequently constructed unless otherwise noted in the contract of sale. If changes are to be made in the units other than landscaping, appliances, furnishings, heating, air conditioning, electrical or plumbing, a legible notice shall be conspicuously placed in the model, or picture photo or rendering of the model, advertising prospective purchasers of the change. In the event that there are items in the model that are available only at additional cost, legible notice informing purchasers that the items are available only at additional cost should be posted in a prominent place in the model.

(g) When properties or interests therein are not registered with the Commission, nor wholly or partially exempt from the Act, and advertisements regarding such properties or interests are placed in any media which is distributed in or broadcast into the State of New Jersey, a disclaimer shall be included, indicating that the properties or interests are not registered with the New Jersey Real Estate Commission, and that the advertisement is not an offer to New Jersey residents.

1. As a result of their failure to register such properties or interests pursuant to N.J.S.A. 45:15-16.27 et seq., the owners of such properties or interests may not make, or cause to be made, an offer or disposition of the properties or interests in this State, nor direct any offer of such properties or interests originating outside of this State to a person or resident within this State.

(h) Advertisements which contain offers of premiums or of reimbursement of travel expenses in cash or merchandise shall be subject to the following:

1. The promotional material shall clearly and conspicuously state the necessity of attendance at or submission to a sales promotion, the minimum length of time required to be spent at such sales promotion in order to qualify for reimbursement or other premium or inducement, the terms and conditions of the offer, and the retail value of any premiums offered;

i. Such advertisements shall also include a statement indicating that the promotion is a solicitation for the sale of timeshares, condominiums, lots, or other interests in real estate as applicable, the name of the project and the registration number assigned to the project by the Commission preceded by: "N.J. Reg. No."

2. "Travel expenses" may be reimbursed in cash or by merchandise;

3. Any advertisements, including those which contain offers of reimbursement of travel expenses, offers of premiums, or other inducements must also comply with the provisions of the New Jersey Consumer Fraud Act (N.J.S.A. 56:8-1 et seq.).

(i) Registrants who advertise in a language other than English shall make available to prospective purchasers all disclosure documents, including, but not limited to, the Public Offering Statement, and the sales contract written in the same language as that used in the registrant's advertisements.

Amended by R.1997 d.161, effective April 7, 1997 (operative July 1, 1997).

See: 29 N.J.R. 303(a), 29 N.J.R. 1325(a).

Added (i).

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

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

Rewrote (g) and (h).

11:5-9.15 Compliance with situs state requirements

Any instrument evidencing the sale or disposition of an interest in a registered property shall be executed in accordance with the laws of the situs state. An applicant/registrant may be required to submit proof of compliance.

11:5-9.16 Improvements to be made at registered properties

(a) A property in a subdivision, or any part thereof, on which construction of a promised improvement for public use, convenience or necessity has not been completed, shall not be registered for disposition unless completion of the improvement is assured by a court order, or government approved improvement district with sufficient taxing or other authority to raise adequate capital to assure completion, or a substantial completion bond or similar undertaking acceptable to the Commission as provided in (c) below, or by adequate reserves established and maintained in a trust or escrow account meeting the following criteria:

1. Such funds shall be kept and maintained in an escrow account separate and apart from the registrant's funds and from any other escrowed funds;

2. The account shall be established in a bank or trust company doing business in this State or the situs state, and approved by the Commission; and

3. The trust or escrow agreement shall have as its purpose the protection of the purchaser or prospective purchaser in the event of a failure to complete construction of promised improvements or a failure to satisfy any obligations or liens encumbering the purchaser's title by reason of the construction.

(b) A property in a subdivision, or a part thereof, on which construction of a promised improvement not for public use, convenience or necessity is represented or implied, shall not be registered for disposition to the public where such improvement has not been completed, unless completion is assured by:

1. An adequate plan of development, including financial resources committed to carry out the plan as provided in (c) below, which plan is subject to the Commission's continuing review and approval; or

2. Adequate funds maintained in a trust or escrow account, or an irrevocable bank letter of credit.

(c) The Commission may accept surety bonds, escrow accounts, irrevocable bank letters of credit, or any other financial security adequate to assure a plan of development. In determining the security required, the Commission shall examine the status of improvements, the overall cost of improvements, the terms of purchaser contracts, the financial condition of the subdivider and such other data as it considers necessary. The Commission may consider whatever financial security has been posted with other governmental authorities in making its determination.

11:5-9.17 Contracts for the purchase of an interest in a registered property

(a) All contracts or agreements for the disposition of a lot, parcel, unit or interest in a registered subdivision shall not impose undue restrictions or hardships upon the purchaser. All contracts shall be in accordance with the laws of the situs state, except that they shall conform to the Real Estate Sales Full Disclosure Act and to this subchapter, and all conflicts shall be resolved to the satisfaction of the Commission.

(b) Any contract or agreement for the purchase of any lot, parcel, unit or interest in a registered subdivision may be cancelled without cause, by the purchaser sending or delivering written notice of cancellation by midnight of the seventh calendar day following the date on which such contract or agreement was executed. Upon receipt of such a notice of cancellation, the developer or his agent shall promptly refund all monies to the purchaser.

(c) Every contract or agreement shall contain the following notice in 10-point boldfaced type or larger, directly above the space provided for the signature of the purchaser:

NOTICE to PURCHASER or LESSEE: You have the right to cancel this contract by midnight of the seventh calendar day following the day on which you have executed this contract or agreement. You should read this entire contract and the Public Offering Statement on this project before signing any documents or paying any monies.

(d) All contracts which contain provisions requiring the payment of deposit monies shall contain a statement describing how the deposit moneys will be maintained in escrow or otherwise secured as provided in N.J.A.C. 11:5-9.4(a)3.

(e) Prior to using a contract or an agreement for the disposition of a lot, parcel, unit or interest in a registered subdivision that is written in a language other than English, as required by N.J.A.C. 11:5-9.14(i), registrants who advertise in a language other than English shall file with the Commission copies of the contract accepted by the Commission that are printed in both English and in the language in which the advertising appears. That filing shall be accompanied by a certification attesting to the accuracy of the translation of the text of the contract. The certification shall be in a form as specified by the Commission and signed by an authorized representative of the registrant and a qualified translator.

Amended by R.1997 d.161, effective April 7, 1997 (operative July 1, 1997).

See: 29 N.J.R. 303(a), 29 N.J.R. 1325(a).

Added (e).

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

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

Rewrote (d); and in (e), changed N.J.A.C. reference.

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.*

11:5-9.18 Exemptions from the provisions of N.J.S.A. 45:15-16.27 et seq.

(a) Any person who believes that property may be exempt from the provisions of the Act, or who is contemplating marketing property in New Jersey which he believes may be exempt, may apply to the Commission for a Letter of Exemption. Such application shall be in written affidavit form and shall list the reasons why such property or proposed project may be exempt from the Act. Such an application for exemption shall be accompanied by a non-refundable fee of \$80.00.

1. In the event the Commission shall determine that such property is exempt from the Act, it shall issue a

Letter of Exemption setting forth the facts upon which the determination is based.

2. In the event the Commission shall determine that such property is not exempt from the provisions of the Act, it shall deny the request for exemption in writing, setting forth therein the facts upon which the determination is based, and shall send such writing to the applicant via certified mail, return receipt requested.

3. Any person who is aggrieved by such a determination is entitled to a hearing on such determination, provided said hearing is requested in writing no later than 30 days from the date of the applicant's receiving notice of such determination.

4. The Commission shall issue a determination as to whether a property is, or is not, exempt within 30 days of its receipt of a complete request for exemption, with the appropriate fee.

(b) If the nature of the property and/or of the proposed offering indicate that the applicant would be subject to the registration requirements of the Act, the applicant may apply to the Commission for a limited exemption. If the commission determines that enforcement of the entire Act and of all of these rules is not necessary in the public interest or for the protection of purchasers, due to the small amounts involved or the limited character of the offering, it may issue a "Limited Exemption" from registration to the applicant.

1. A limited exemption may be granted by reason of the small number of lots, parcels, units or interests to be offered only if all improvements necessary for the use of the property have been completed, or adequate surety and/or financial assurances for completion of promised improvements and amenities has been established. No limited exemption may be granted with regard to property contiguous or reasonably contiguous to property for which a limited exemption has previously been granted and which is being offered by the same applicant, or by a predecessor or successor in title to or an affiliate of that applicant.

2. A limited exemption may be granted by reason of the limited character of the offering where the nature of the property, or of the prospective purchasers to whom the property will be offered, is such that it is likely prospective purchasers will have expert advice concerning the purchase independent of that supplied by the applicant or his agents. An application for a limited exemption for this reason shall include a copy of any prospectus, offering statement or other such solicitation. A limited exemption granted for this reason shall be confined to the group of offerees specified in the application.

3. An application for a limited exemption shall specify the particular lots, parcels, units or interests for which exemption is sought. Any limited exemption granted

shall be confined to those lots, parcels, units or interests so specified.

4. An application for a limited exemption shall include a narrative description that clearly describes the nature of the subdivision and the factual basis and reasons why the limited exemption should be granted.

5. The Commission shall assign a New Jersey exemption number beginning with the prefix "N.J.E." to each project to which a limited exemption is issued. This number shall thereafter appear on all publications or broadcasts of advertisements of the exempted project which include offers of a premium or to provide or reimburse the cost of travel which are directed to citizens of this State, or which appear in national or regional advertising circulated within this State.

6. Any limited exemption granted shall remain in effect for a period of two years from the date of issuance indicated in the Letter of Exemption, unless revoked as described below.

7. Any limited exemption granted shall permit the recipient to offer the property to New Jersey residents without obtaining an Order of Registration. A limited exemption shall not deprive the Commission of jurisdiction to enforce any other provision of the Act or this subchapter, or to revoke the limited exemption after notice and an opportunity to be heard.

8. A \$250.00 non-refundable fee shall be tendered with any application for a limited exemption.

9. All applications for a limited exemption shall comply with the following minimum requirements:

- i. The filing of an exemption application affidavit-questionnaire;
- ii. The filing of proof of title and a plat map specifying the lots or units to be exempted, with colored shading;
- iii. The requirements for the securing of all deposits, down payments, or funds of others as prescribed in this subchapter;
- iv. The filing of satisfactory proof of surety and/or financial assurances for any promised improvements or amenities;
- v. The advertisement standards and procedures established at N.J.A.C. 11:5-9.14; and
- vi. The filing of any other documents that the Commission may deem necessary.

10. Any applicant granted a limited exemption by the Commission, pursuant to this subchapter, shall comply with the annual reporting requirements of N.J.S.A. 45:15-16.40 and N.J.A.C. 11:5-9.11.

11. No limited exemption granted hereunder shall be effective until a Letter of Limited Exemption is issued by the Commission to the applicant for the exemption.

12. A copy of the New Jersey Letter of Limited Exemption, or of a Public Offering Statement approved by the Commission, shall be provided to each New Jersey purchaser prior to their signing any contract for the purchase of an interest in property included within the limited exemption issued by the Commission, and a receipt obtained for the same shall be kept on file for seven years by the recipient of the limited exemption.

13. Any material change in the information reflected on the application for a limited exemption or on any documentation submitted in support of such application, shall immediately void any exemption issued based upon such application.

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), rewrote 5, deleted "The Commission shall determine what constitutes a material change" from the end of 13, and changed N.J.A.C. references throughout.

SUBCHAPTER 10. PETITIONS FOR RULEMAKING

11:5-10.1 Petitions for rulemaking—scope

This subchapter shall apply to all petitions made by interested persons for the promulgation, amendments or repeal of any rule by the New Jersey Real Estate Commission, as required by N.J.S.A. 52:14B-4(f).

11:5-10.2 Procedure for the submission of petitions for rulemaking

(a) Any interested person may petition the Real Estate Commission to promulgate, amend or repeal a rule. Such petition shall state clearly and concisely:

1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request;
4. The petitioner's interest in the request, including, without limitation, any relevant organizational affiliation or economic interest; and
5. References to the Commission's authority to take the requested action.

(b) Petitions should be sent to the following address:

New Jersey Real Estate Commission
PO Box 328
Trenton, New Jersey 08625-0328

(c) Filing a petition shall be made by forwarding an original and two copies to the Commission at the address indicated in (b) above.

(d) Any document submitted to the Real Estate Commission which is not in substantial compliance with (a) above shall not be deemed to be a petition for a rule requiring further Commission action pursuant to N.J.S.A. 52:14B(f).

(e) Within 30 days of its receipt of a petition for rulemaking, the Commission shall review the same to ascertain if the submission complies with the requirements of (a) above and, in the event that the Commission determines that the submission is not in substantial compliance with (a) above, the Commission shall notify the petitioner of such noncompliance and of the particular deficiency or deficiencies in the submission on which the decision of the Commission was based. The Commission shall also advise the petitioner that any deficiencies may be corrected and the petition may be re-submitted for further consideration.

11:5-10.3 Procedure for the consideration and disposition of rulemaking petitions

(a) Upon receipt of a petition in compliance with N.J.A.C. 11:5-10.2, the Commission will file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register. The notice will include:

1. The name of the petitioner;
2. The substance or nature of the rulemaking action which is requested;
3. The problem or purpose which is the subject of the request; and
4. The date the petition was received.

(b) Within 30 days of receiving the petition, the Commission will consider the petition and decide upon an action on the petition. The petitioner may be requested to attend a Commission meeting and answer questions concerning the petition. The Commission will mail to the petitioner, and file with the Office of Administrative Law for publication in the New Jersey Register, a notice of action on the petition which will include:

1. The name of the petitioner;
2. The New Jersey Register citation for the notice of petition, if that notice appeared in a previous Register;
3. Certification by the Commission that the petition was duly considered pursuant to law;
4. The nature or substance of the Commission's action upon the petition; and
5. A brief statement of reasons for the Commission's action.

(c) Commission action on a petition may include:

1. Denying the petition;
2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or
3. Referring the matter for further deliberations, the nature of which will be specified and which will conclude upon a specified date. The results of these further deliberations will be mailed to the petitioner and submitted to the OAL for publication in the New Jersey Register.

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

11:5-10.4 Public hearings for promulgation, amending or repealing rules

(a) The Commission may hold a public hearing to gather information concerning any proposed rule, amendment, or repeal.

(b) The Commission shall publish a notice of the place, date and time of the hearing at least 15 business days before the date of the hearing.

SUBCHAPTER 11. PROCEDURES ON DISCIPLINARY ACTIONS, CONTESTED APPLICATIONS, DECLARATORY RULING REQUESTS

11:5-11.1 Pleadings enumerated and defined

(a) Pleadings before the Commission shall be orders to show cause, complaints, answers, petitions, and motions, which for purposes of these rules are defined as follows:

1. "Orders to show cause" means orders issued by the Director on behalf of the New Jersey Real Estate Commission compelling the persons to whom the order is directed to appear and show cause before the Commission why certain actions, including but not limited to the imposition of sanctions, should not be taken by the Commission pursuant to the Real Estate Licensing Act, N.J.S.A. 45:15-1 et seq. and the rules promulgated thereunder.

2. "Complaint" means a filing by the Office of the Attorney General of New Jersey alleging violations of one or more of the provisions of N.J.S.A. 45:15-1 et seq. and/or of the Commission's rules.

3. "Answer" means the pleading filed by a licensee or other party against whom an order to show cause or complaint is directed which sets forth the respondent's position with the respect to each factual and legal allegation in the order or complaint and specifies all affirmative defenses raised by the respondent.

4. "Petition" means the pleading filed by an interested person to request a rulemaking action or declaratory ruling by the Commission or the pleading filed by an interested person seeking to intervene in any rulemaking or declaratory ruling proceeding.

5. "Motion" means the application filed incidental to an action before the Commission for the purpose of obtaining a ruling or order directing that some action be taken in favor of the movant.

(b) Documents, affidavits or other evidentiary matter submitted with or attached to a pleading other than a motion shall not be deemed evidentiary. Such materials must be offered into evidence at a hearing and admitted as such in order to be considered as part of the evidentiary record.

11:5-11.2 Answers

(a) Any party against whom an order to show cause or complaint is directed and who desires to contest the same or make any representation to the Commission in connection therewith shall file an answer in writing with the Commission.

(b) The answer shall apprise the Commission fully and completely of the nature of all defenses and shall admit or deny specifically and in detail all material allegations of the order to show cause or complaint.

(c) Matters alleged by way of affirmative defense shall be separately stated and numbered in the answer.

(d) An Answer must be filed within 20 days after service of the Order to Show Cause or complaint unless the deputy attorney general or staff member who represents the complainant consents, or the Commission orders an extension of time to Answer.

(e) Filing of an Answer shall be made by forwarding an original and two copies to the Director of the Commission and a copy to the deputy attorney general or staff member who is representing the complainant in the matter.

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), inserted "or staff member" following "attorney general"; and rewrote (e).

11:5-11.3 Adversary hearing determination by the Commission

(a) Promptly after the answer is filed, the Commission will review the pleadings at a Commission meeting and decide whether any material fact or issue of law is contested. If the Commission determines that a matter is contested, a hearing will be scheduled. On its own motion or at the request of either party, the Commission may, in its discretion, transmit the case to the Office of Administrative Law for hearing and initial decision.

(b) If, upon review of the pleadings, the Commission determines that no material facts or issues of law are contested, the Commission shall afford the respondent an opportunity to be heard and to present witnesses and documentary evidence, which presentation shall be limited to the issue of the severity of any sanction or penalty to be imposed. By stipulation or other means, the deputy attorney general or staff member representing the complainant shall present evidence sufficient to establish the factual basis for all alleged violations and may present documentary evidence or witnesses in rebuttal of any mitigation testimony or evidence presented by the respondent.

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), inserted "or staff member" following "attorney general" in the second sentence.

11:5-11.4 Motions

(a) In all matters heard by the Commission, motions and replies shall be made in the manner and form prescribed by the rules which establish the procedures for motion practice before the Office of Administrative Law, N.J.A.C. 1:1-12. In construing those rules, the terms "Executive Director" and "Commission" are substituted for the terms "Clerk" and "Judge", respectively.

(b) Filing of a motion or reply shall be made by forwarding an original and 15 copies to the Director of the Commission and a copy to all other attorneys and pro se parties, if any, in the matter.

(c) A motion shall be considered by the Commission at a regularly scheduled meeting pursuant to the requirements of N.J.A.C. 1:1-12.

(d) Oral argument on a motion when permitted or directed by the Commission shall be presented to the Commission by the parties or their representatives in person at a Commission meeting; motions will not be heard by telephone conference.

(e) Motions for the reconsideration of sanctions imposed by the Commission must be filed within 30 days of the date upon which notice of the decision imposing sanctions was provided to the movant. Such motions must be accompanied by a recitation of the particular facts and legal basis which purportedly support the application.

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

In (a), changed N.J.A.C. reference.

11:5-11.5 Conference hearing procedure

(a) The Director may, on behalf of the Commission, issue an Order to Show Cause requiring a licensee or other person to appear before the Commission for a conference hearing as defined in N.J.A.C. 1:1-2.1 in circumstances where violations of N.J.S.A. 45:15-17d, 17n, 17o and/or 19.1 are alleged to have occurred or where there is danger of imminent harm to the public.

(b) The order to show cause shall be served upon the respondent at least 10 days prior to the hearing.

(c) The respondent shall not be required to file a written answer, but shall be required to appear on the return date of the order to show cause and admit or deny the allegations in the order to show cause and present all defenses to the alleged violations.

(d) The respondent may notify the Commission by telephone or letter of any witnesses to be subpoenaed on the respondent's behalf and shall provide to the Commission the addresses at which such witnesses can be served.

(e) Discovery and motions in conference hearings shall be limited in accordance with N.J.A.C. 1:1-10.6 and 1:1-12.1, respectively.

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), added an N.J.S.A. reference.

11:5-11.6 Sanctions: failure to answer or appear; default

(a) In all matters heard by the Commission, the imposition of sanctions for the failure to appear and/or to comply with any order of the Commission or the requirements of these procedural rules shall be governed by the procedures established for the imposition of sanctions in matters heard by the Office of Administrative Law at N.J.A.C. 1:1-14.4.

(b) The Commission shall have the discretionary authority to grant extensions of the time to file an answer or appear.

11:5-11.7 Settlements

(a) The parties to a proposed settlement shall present the settlement to the Commission pursuant to the requirements of N.J.A.C. 1:1-19.1.

(b) Such a settlement shall be presented to the Commission during the public session of a Commission meeting. Should a proposed settlement be rejected by the Commission, the proposal shall not be considered or used for any purpose in any subsequent hearing. Any settlement approved by the Commission shall be a public record.

11:5-11.8 Decisions in enforcement actions

All final decisions of the Real Estate Commission on contested and uncontested matters shall be reduced to writing, in the form of an Order of the Commission, which shall be served upon all parties to the matter either personally or by registered or certified mail sent to the last known business address of all parties. Unless otherwise ordered, all fines imposed by order of the Commission shall be payable within 30 days of the effective date of the order as established by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

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

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
Added a new last sentence.

11:5-11.9 Applications for temporary suspension

(a) The Commission may on its own motion, and upon the terms and conditions as set forth in N.J.S.A. 45:15-17.1 and as the Commission deems appropriate, enter an order temporarily suspending the license of any licensee upon making a finding that prima facie evidence exists that:

1. The licensee has failed to account for or to pay over any moneys belonging to others that have come into the possession of the licensee, in violation of N.J.S.A. 45:15-17(d); or

2. The licensee has commingled his or her personal money or property with the money or property of others or has failed to maintain and deposit such moneys in a special account, separate and apart from personal or other business accounts, when acting in the capacity of a real estate broker, or escrow agent, or as the temporary custodian of the funds of others, in a real estate transaction, in violation of N.J.S.A. 45:15-17(o).

(b) At least 24 hours prior to ordering a temporary suspension, the Commission shall give notice to the licensee of the application for the order and provide the licensee an opportunity to appear before the Commission to show cause why the license should not be suspended pending a full hearing of the matter. Such notice shall be given in writing or telephonically.

1. Written notice shall be served personally or sent by certified mail to the last known business address of the licensee.

2. Telephonic notice shall be confirmed in a writing sent to the licensee's last known business address as soon as practicable after the delivery of the telephonic notice.

3. The person who personally or telephonically delivers notice of an application for a temporary suspension shall execute a certification confirming that he or she has provided the notice, which certification shall be submitted into the record of the proceeding on the application for the temporary suspension.

(c) At the hearing on the application for the temporary suspension, the Commission shall consider evidence presented by the licensee to explain, disprove or rebut the prima facie evidence upon which the application for the temporary suspension is based. Unless otherwise provided in N.J.S.A. 45:15-17.1, the provisions of N.J.A.C. 1:1-12.6(f) shall apply to proceedings on applications for temporary suspensions.

(d) Prior to entering any order imposing a temporary suspension as provided in (a) above, the Commission shall also make findings that:

1. An adequate good faith effort to provide notice to the licensee was made and that the licensee was afforded an opportunity to be heard. Submission of the certifica-

tion referred to in (b) above shall be sufficient to establish that an adequate good faith effort was made to provide notice of the proceeding;

2. Based on the evidence presented, there is a substantial likelihood that the charging party will prevail on the merits when the matter is fully argued before the Commission; and

3. Immediate and irreparable harm will probably result before the licensee can be fully heard. Prima facie evidence of a violation of N.J.S.A. 45:15-17(d) or (o) shall be considered sufficient to satisfy this criterion.

(e) All orders imposing temporary suspensions shall advise the suspended licensee of the date upon which the Commission shall hold a full evidentiary hearing on the violations upon which the temporary suspension is based, which date shall be no more than 30 days following the effective date of the temporary suspension. Such a hearing shall be a plenary hearing, conducted in accordance with N.J.A.C. 1:1-14.1 through 14.7.

(f) The temporary suspension shall become effective upon issuance by the Commission, and the licensee and his or her broker shall promptly be notified of its issuance, whereupon the license of the suspended person shall immediately be returned to the Commission. The Commission shall confirm the suspension in a written order which shall be served upon the licensee and his or her broker via personal service or by certified mail, return receipt requested at the licensee's last known business address.

(g) In order to entertain applications for temporary suspensions made during time periods when the Commission is not scheduled to meet, or when a quorum cannot be obtained, the Commission may delegate to three commissioners, at least one of whom shall be either the President or Vice-President of the Commission and at least one of whom shall be a public member, the authority to temporarily suspend a license as provided in (a) through (f) above. In such circumstances, all references in these rules to the Commission shall be construed as referring to the three commissioners so designated by the Commission.

New Rule, R.1994 d.270, effective June 20, 1994 (operative July 1, 1994).

See: 26 N.J.R. 737(a), 26 N.J.R. 1222(a), 26 N.J.R. 2586(a).

Case Notes

Conviction of crime of theft compelled revocation of real estate salesperson's license. NJREC v. Belle, 96 N.J.A.R.2d (REC) 22.

Pending criminal trial for theft justified suspension of real estate salesperson's license. NJREC v. Reich, 96 N.J.A.R.2d (REC) 21.

11:5-11.10 Procedures applicable to appeals of initial denials of licensing applications

(a) Initial denials of the following applications may be appealed to the full Real Estate Commission through compliance with all of the requirements established in (b) below:

1. License applications, with the exception of reinstatement applications submitted beyond the statutorily established time limitations upon such reinstatements;

2. Applications from disabled veterans for education waivers and/or broker experience requirement waivers;

3. Applications for the issuance of education waivers by persons other than disabled veterans;

4. Applications for the issuance of broker experience requirement waivers by broker licensees of other states; and

5. Applications by broker license candidates for the Commission's approval of their experience as a salesperson so as to qualify to challenge the broker license examination.

(b) All appeals to the full Real Estate Commission provided for in (a) above shall be filed by the appealing applicant submitting to the Commission within 45 days of the date of the notice of denial an original and 15 copies of all of the documentation noted below:

1. A covering letter stating the factual and legal basis of the appeal, to which shall be attached a copy of the application and the denial letter which forms the basis of the appeal. The said covering letter shall also state whether the applicant desires to appear and present oral argument and/or testimony when the appeal is considered by the Commission;

2. Where the denial was based upon an applicant's prior criminal history and/or their loss of a professional license, all judgments of conviction on the convictions which form the basis of the denial and a letter from their probation or parole officer, if within one year of making the application they were under such supervision, which letter shall state the extent of the applicant's compliance with the terms and conditions of his or her probationary sentence or parole supervision, and/or a copy of the order or memorandum of settlement evidencing the loss of the professional license;

3. On all applications as described in (b)2 above, a letter from the broker with whom the applicant intends to be licensed, evidencing that person's full knowledge of the factors which formed the basis of the initial denial;

4. Any other relevant documentation which the applicant desires the Commission to consider when hearing the appeal; and

5. Any other documentation which the Commission determines is required in order to allow it to make a fully informed decision on the appeal.

(c) Upon the proper filing of an appeal as described in (b) above, the appeal package shall be reviewed and the applicant advised of the following:

1. The date, time and place at which the appeal will be considered by the full Real Estate Commission; or

2. That based upon the content of the appeal documents a determination has been made to approve the application; or

3. The appeal package is deficient in certain respects, which shall be specified to the applicant, with an indication that upon receipt of the missing documentation the appeal will be given further consideration.

(d) All applicants have the opportunity to be represented by counsel when submitting an appeal and/or appearing before the Real Estate Commission and to call witnesses to

testify on their behalf at the time of its consideration of their appeal.

(e) Upon the conclusion of a hearing on an appeal, the Commission shall either render a decision or take the matter under advisement and render a decision at a future date. The ruling of the Commission shall be communicated to the applicant in written form promptly upon the decision being rendered.

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).