

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 Hearing procedure

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 hearing, pursuant to the rules of the Office of Administrative Law, 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.

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.
Amended by R.2009 d.287, effective September 21, 2009.
See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).
Section was "Conference hearing procedure". Rewrote the section.

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, motions for reconsideration

(a) 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.

(b) Motions for reconsideration of final decisions of the Real Estate Commission shall be made within the time frame specified in N.J.A.C. 11:5-11.4. All such motions shall be considered on the papers unless oral argument is requested and that request is granted by the Commission or the Commission directs oral argument on the motion.

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.
Amended by R.2003 d.440, effective November 3, 2003.
See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).
Designating existing paragraph as (a) and added (b).

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 certification 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).