

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.2004 d.130, effective March 5, 2004.
35 N.J.R. 4812(a), 36 N.J.R. 1780(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 5, Real Estate Commission, expires on September 1, 2009. See: 41 N.J.R. 1381(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: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

Chapter 5, Real Estate Commission, was readopted as R.2004 d.130, effective March 5, 2004. 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 organizational chart of the Real Estate Commission is as follows:

“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 topographical 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.

(b) The forms used by the Bureau of Subdivided Land Sales Control in the New Jersey Real Estate Commission are listed in the table below.

BUREAU OF SUBDIVIDED LAND SALES FORMS

1. Broker-Developer application/affidavit
2. Statement of Non-conviction and partner, officer, director or principal disclosure
3. Consent to Service of Process
4. Annual report of registered properties
5. Application for limited exemption or complete exemption
6. New Jersey Public Offering Statement—Timeshare (may not be required where situs state Public Offering Statement is deemed acceptable)
7. New Jersey Public Offering Statement—Non-timeshare (may not be required where situs state Public Offering Statement is deemed acceptable)
8. Application for Registration Questionnaire

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.

Amended by R.2003 d.440, effective November 3, 2003.

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

Added (b).

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

- ii. By means of evidence acceptable to the Commission, that a bond, irrevocable bank letter of credit, or other financial assurances acceptable to the Commission, but in no event bonds issued by the applicant or any affiliated company, in an amount sufficient to ensure all monies paid by New Jersey purchasers prior to the delivery of a deed or deed in trust has been posted by an acceptable third party surety or entity on behalf of the applicant. In order for a surety or entity to be deemed acceptable, it shall be authorized to do business in the situs state and engaged in the general business of providing financial assurances on the open market. Such a bond or other financial assurance shall provide that the New Jersey Real Estate Commission on behalf of all New Jersey purchasers, or the appropriate regulatory agency of the situs state on behalf of all purchasers, is the insured and shall ensure all purchasers' deposits paid and/or all installment payment made prior to the delivery of a deed in recordable form to the purchaser or trustee. Whether the amount of such instruments is acceptable shall be determined based upon past and projected sales, purchase price and other contract terms and shall be reviewed annually by the Commission if it is a named insured;
4. An irrevocable appointment of the Commission to accept, on behalf of the applicant, service of any lawful process in any proceeding arising under the Act against the applicant or his agents;
5. A statement as to the states or other jurisdictions, including the Federal government, in which an application for registration, or similar documents, have been filed, and copies of any adverse orders, judgments or decrees by any regulatory agency, court, or administrative body, with the exception of orders approving advertising, entered against the applicant, any parent or subsidiary of the applicant, or any company related to or affiliated with the applicant with respect to the property for which the application for registration is being filed;
6. The name, address and principal occupation for the past five years of every principal officer and director of the applicant, and of every partner who owns a 10 percent or greater interest in the applicant, and of every shareholder who owns 10 percent or more of the stock of the applicant as of 30 days prior to the filing of the application for registration, with an indication of the nature and extent of their interest in the applicant;
7. Copies of the certificate or articles of incorporation, with all amendments thereto, if the applicant is a corporation; copies of all instruments by which the trust is created or declared, if the developer is a trust; copies of the articles of partnership or association and all other organization papers if the applicant is organized under another form. In the event the applicant is not the legal title holder to the property being registered, the above documents shall be submitted for both the applicant and the legal title holder;
8. A legal description by metes and bounds or by lot and block numbers, section, township and range designation, or other acceptable means of the lands to be registered, together with a map showing the proposed or actual subdivision and showing the dimensions of the lots, parcels, units or interests, as available, and the relation of such lands to existing streets, roads and other improvements. The aforesaid map or plat shall be drawn to scale, signed and sealed by a licensed professional engineer or land surveyor;
9. Copies of the deed or other instruments establishing title in the developer or other record owner and any escrow agreement required pursuant to (a)3 above, and a current title search, title report, title insurance policy, title opinion from an independent attorney, or certificate or binder issued by a licensed title insurance company. The Commission may also require a copy of any agreement which grants the applicant the rights to dispose of the property interest on behalf of the title holder;
10. A statement or listing of any pending litigation, court orders, judgments or decrees which materially affect the sale or development of the offering or the financial stability of the applicant;
11. A statement that the lots, parcels, units or interests in the development will be offered to the public and sold or alienated without regard to marital status, sex, race, handicap, religion, familial status, color, ancestry, creed or national origin;
12. A statement of the present condition of access to the development and of the existence of any adverse conditions that affect the development, or unusual conditions relating to noise or safety which affect the development that are known to the applicant, or should reasonably be known, or are readily ascertainable;
13. Copies of all contracts, agreements and acknowledgements which a purchaser or lessee may be required to execute in connection with this offering;
14. In the event there is, or will be, a blanket encumbrance affecting the development or a portion thereof, a copy of the document creating it and a statement of the consequences to a purchaser of a failure of the person bound to fulfill the obligations under the instrument, and of the manner in which the interest of the purchaser is to be protected in the event of such eventuality;
15. The audited financial statements of the applicant for the fiscal year. The term "financial statements" includes, but is not limited to, the following statements: auditor's report, balance sheet, statement of income, statement of changes in retained earnings, statement of changes in financial position, statement of changes in owner's equity, notes to financial statements and current profit and loss statement. The filing of the audited consolidated financial statements of a parent company of an applicant may be permitted if the parent company is the registrant, applicant, co-registrant or guarantor. In

the discretion of the Commission, it may accept or require alternative information evidencing the applicant's ability to complete the promised improvements to the development in lieu of the audited financial statements;

16. A statement concerning any filing for or adjudication of bankruptcy during the last five years by or with regard to the applicant, its predecessor, parent or subsidiary company and any principal owning more than a 10 percent interest in the subdivision at the time of the filing of the application for registration. These requirements shall not extend to limited partners or those whose interests are solely those of passive investors;

17. Copies of all easements and restrictions of record and any easements or restrictions not of record which are within the applicant's knowledge;

18. A statement as to the status of all applications for permits and/or compliance with any permits required or issued by any Federal, state, or local agencies or similar organizations which have the authority to regulate development or issue permits, approvals or licenses which may be material to the development, sale or other disposition of the lots, units, parcels or interests to be registered and the existing or proposed facilities, common areas or improvements thereof;

19. A statement indicating whether the applicant, or a parent or subsidiary of the applicant, or any of their current officers or principals have, during the past 10 years, or any of their former officers or principals have during the last two years been convicted of a crime involving any aspect of the real estate sales or real estate securities business in this State, the United States or any other state or foreign jurisdiction and whether the applicant has been subject to any permanent injunction or final administrative order restraining a false or misleading promotional plan involving real property disposition, or any final administrative order or judgement by any court finding that the applicant or any such persons have engaged in any unfair acts and/or fraudulent or deceptive practices involving the disposition of real property or of other products or services;

20. A copy of the proposed budget for the operation and maintenance of the common elements and facilities based upon full occupancy together with the estimated annual assessment and monthly charges to be assessed to each type of unit. If the proposed offering is a condominium, time-share or homeowners association, or involves any common ownership interest, the budget shall specifically state the amount set aside as reserves for the replacement of the common elements and facilities, as certified by an independent public accountant, or property manager or other independent expert. The budget should also indicate whether the applicant is subsidizing the maintenance fee or plans to subsidize the maintenance fee during sales prior to transfer of control to any association, and if so, the amount of the subsidy and the probable effect of the applicant's discontinuing the making of such payments upon the maintenance fee payable by each owner. The budget shall be accompanied by a letter of adequacy issued by an independent public accountant, or certified property manager, attesting that the budget was prepared in good faith and a letter from an independent insurance agent or broker confirming that the insurance coverage meets any standards required in the project documents and as required by situs state law;

21. A covering letter specifying the following information with regard to the project:

i. The nature of the project;

ii. Identifying to whom all correspondence should be directed, with an address; and

iii. Identifying to whom Annual Report Notices and forms should be sent, with an address and telephone number; and

22. Such other additional information as the Commission may require, after review of an application for registration, to assure full and fair disclosure.

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 3 and 21.

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.*

11:5-9.5 Public Offering Statements

(a) No registrant may dispose of any lot, parcel, unit or interest in a registered subdivision unless said registrant delivers to the purchaser a current New Jersey Public Offering Statement or approved equivalent, and affords the purchaser a reasonable opportunity to read the same before the purchaser signs the contract or purchase agreement.

1. In all cases where a New Jersey purchaser has not had contact with an authorized New Jersey broker, registrants shall maintain the signed and dated receipt for the New Jersey Public Offering statement and a copy of the contract which the New Jersey purchaser signed for a period of seven years.

(b) The Public Offering Statement shall disclose fully and accurately the characteristics of the subdivision and the lots, parcels, units or interests offered and shall make known to prospective purchasers all unusual and material circumstances and features affecting the subdivision. The Public Offering Statement shall be in clear and concise language and combine simplicity and accuracy in order to fully advise purchasers of their rights, privileges, obligations and restrictions.

1. The Public Offering Statement shall be in a form designated by the Commission. No change in form may be made without the consent of the Commission.

(c) The Commission may require an applicant to alter or amend the proposed Public Offering Statement in order to assure full and fair disclosure to prospective purchasers and may require the revision of a Public Offering Statement which it finds to be unnecessarily complex, confusing, illegible or incomplete.

(d) A Public Offering Statement shall not be deemed current unless it contains all amendments approved by the Commission.

(e) The Public Offering Statement shall contain the following information:

1. The name and address of the subdivision being offered, the name and principal address of the applicant and the name and address of the New Jersey broker of record;

2. A narrative description of the interest to be offered including; but not limited to; the rights and obligations of purchasers in their lots, parcels, units or interests and in the common elements;

3. A narrative description of the subdivision including, but not limited to, specific designation of the total number of lots, parcels, units or interests contained in the offering, the total number of lots, parcels, units or interests which will or may be constructed in the entire project, the present and proposed access to the development and the promised completion date of the present offering for sale and the estimated completion date of the entire development;

4. Relevant community information including, but not limited to, the existence and location of hospitals, health and recreational facilities, schools, fire and police protection, places of worship, streets, water supplies, levees, drainage control systems, irrigation systems, customary utilities, etc.;

5. A statement of the nature, type and capacity of improvements to be installed by the developer and the proposed dates of completion for sections offered for sale and estimated dates of completion for sections not yet offered for sale. The developer may indicate that the estimated dates of completion of improvements in sections not yet offered for sale are subject to market conditions and other variables, or similar qualifying language. Also, a statement of any approvals not yet obtained, the acquisition of which is a precondition to the completion of such improvements, and whether the identified improvements will be dedicated to public use;

6. A statement of the proposed method of operation and management of the common elements and facilities, and of all fixed, estimated or proposed fees, assessments, and reserves for future replacement and repair of common elements. If there are no provisions for reserves, a statement indicating same shall be included. If the proposed offering is a condominium, time-share or homeowners association, or involves any common ownership interest, in addition to the amount set aside as reserves for the replacement or repair of the common elements and facilities, the risk to purchasers if the applicant fails to sell out shall also be stated. A statement indicating whether the applicant is subsidizing the maintenance fee or plans to subsidize the maintenance fee during sales prior to transfer of control to any association, and if so, the amount of the subsidy and the probable effect of the cessation of the payment of the subsidy upon the maintenance fee payable by each owner shall also be included;

7. A description of any management or service contract, lease or other contract or agreement affecting the use, maintenance or access from and to any and all of the common elements or community facilities, together with a statement as to the effect of each upon the purchaser;

8. A statement of the relationship, if any, between the applicant and any management or servicing agent or firm;

9. A statement explaining any restrictions on occupancy, on the right of alienation and on the right of alteration of the lot, parcel, unit or interest, and on the use of any common facilities or amenities;

10. The significant terms of any encumbrances, easements, liens and restrictions including, but not limited to, zoning regulations affecting such lands and each lot, parcel, unit or interest, as well as the uses on and the zoning classification of adjoining lands at the time of registration, consolidation or the last filed annual report;

11. A statement as to whether the property or any portion thereof is regularly or periodically subject to natural forces that would tend to adversely affect the use or enjoyment of the property and whether the property or any portion thereof is located in a Federally designated flood hazard area;

12. A statement as to whether the property or any portion thereof is subject to man-made forces that would

tend to adversely affect the use or enjoyment of the property such as, but not limited to, the property's proximity to airports or flight paths, railroads, noisy or polluting industrial use, landfills, dumps, nuclear or toxic waste facilities or other similar forces;

13. A statement of all current or estimated taxes;

14. A statement of all existing or proposed special taxes and proposed assessments or assessments of record and identifying who shall be responsible for payment thereof;

15. A statement of all of the estimated title closing or settlement costs to be paid by the purchaser, including, but not limited to, all costs that are charged by the applicant and its agents and any person or entity controlled by the applicant;

16. A statement explaining the warranty or guarantee given by the applicant, if any, and the rights and remedies of the purchaser;

17. 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 escrow or in trust or guaranteed by some other means acceptable to the Commission, and which shall include all of the information required to be provided in applications for registration by N.J.A.C. 11:5-9.4(a)3.

18. A statement printed in 10-point boldface type or larger, conspicuously located, which states that the purchaser has the right to cancel any contract or agreement for the purchase of any lot, parcel, unit or interest in the development, without cause, by sending or delivering written notice of cancellation to the developer or his agent by midnight of the seventh calendar day following the day on which such contract or agreement was executed and that all monies paid will be promptly refunded, and further stating that the purchaser should read the Public Offering Statement in its entirety before signing any contracts or paying any monies;

19. A statement indicating that, regardless of whether the registrant offers or recommends financing the purchase of an interest in the subdivision through a particular lender or lenders, alternate sources of financing are available;

20. Where applicable, a statement explaining the nature, type and amount of hazard and liability insurance supplied or to be supplied by the applicant or association and what the insurance covers and an explanation of the nature and type of hazard and liability insurance available to the owner, and the necessity of flood or hazard insurance; and

21. Any additional information required by the Commission to assure full and fair disclosure to prospective purchasers.

(f) Applicants and registrants shall immediately report to the Commission any material change, as defined in N.J.A.C. 11:5-9.10(b), in the information contained in any proposed or approved Public Offering Statement and shall simultaneously submit a request for approval of the appropriate amendment.

(g) The Commission shall process and review requests for amendments to Public Offering Statements in accordance with the standards and procedures established in N.J.A.C. 11:5-9.10.

(h) The Public Offering Statement shall not be used for any promotional purposes before registration of the project, and thereafter only if used in its entirety.

1. No Public Offering Statement shall indicate, and no person shall represent or imply, that the Commission approves the merits of, or recommends the purchase of, an interest in the properties described in the offering.

(i) Prior to distributing a Public Offering Statement as required by N.J.A.C. 11:5-9.14(i) written in a language other than English, registrants who advertise in a language other than English shall file with the Commission copies of the Public Offering Statement approved by the Commission 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 Public Offering Statement. 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 (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 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.*

11:5-9.6 Representation of applicants and registrants by New Jersey real estate brokers

(a) The applicant shall designate a currently licensed New Jersey real estate broker as its original broker of record with the initial application for registration, and such broker and any substituted or supplemental brokers must comply with the New Jersey Real Estate Brokers and Salesmen Act, N.J.S.A. 45:15-1 et seq., and the rules promulgated thereunder. An applicant/registrant may substitute another broker for the one initially designated. The initially designated broker and all substituted brokers shall execute an affidavit in accordance with N.J.A.C. 11:5-9.4(a)1.

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 or that 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 that 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.

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

In (b)1, substituted "or that" for "because" following "the public interest", and inserted "that" following "Public Offering Statement, and".

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:

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.

11:5-9.19 Imposition of regulatory sanctions; cease and desist orders; hearings

(a) Prior to issuing an Order revoking or suspending a registration and/or imposing any penalty authorized by the Act, and/or directing that a registrant permanently cease and desist from taking any action or continuing any course of conduct, the Commission shall provide written notice of the charges which allegedly support the entry of such an Order and afford the registrant to whom such notice is directed the opportunity for a hearing on the charges. All such hearings shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, promulgated thereunder by the Office of Administrative Law, and any rules of the Commission applicable to such hearings.

1. If the Commission makes a finding of fact in writing that the public interest will be irreparably harmed by a delay in issuing an order, it may issue a temporary cease and desist order. Every temporary cease and desist order shall include in its terms a provision that upon written request of the party to whom the order was directed, a hearing will be held within 15 days of the Commission's receipt of the request.

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

SUBCHAPTER 10. RULEMAKING AND PETITIONS FOR RULEMAKING

11:5-10.1 Rulemaking—scope

Unless otherwise specified in this subchapter, the procedures governing the promulgation of administrative rules by the New Jersey Real Estate Commission pursuant to the

authority granted in N.J.S.A. 45:15-6, 45:15-10.14, 45:15-16.49, 45:15-17(t), 45:15-17.4 and 45:15-42 shall be those established in the Administrative Procedure Act, P.L. 1968, c.410 (N.J.S.A. 52:14B-1 et seq.) and the Rules for Agency Rulemaking, N.J.A.C. 1:30.

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

Section was "Petitions for rulemaking—scope", was recodified to N.J.A.C. 11:5-10.5.

11:5-10.2 Notice of proposed adoption of new rule, or proposed amendment or repeal of existing rule

(a) The Commission shall provide primary notice of any proposal to adopt a new rule, or amend or repeal any existing rule, by filing such notice with the Office of Administrative Law for publication in the New Jersey Register through the procedures established in N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:30.

(b) With the exception of rules which, pursuant to N.J.S.A. 52:14B-4, may be adopted without prior notice, in addition to the primary notice described in (a) above in all circumstances the Commission shall provide secondary notice of proposals to adopt a new rule, or amend or repeal an existing rule, through the following methods:

1. Notice to the news media maintaining a press office to cover the New Jersey State House complex;
2. Notice posted on the bulletin board of the office of the New Jersey Real Estate Commission;
3. Notice posted on the website of the New Jersey Real Estate Commission at <http://www.naic.org/nj/real-com.htm>; and
4. Notice mailed to all persons who have submitted written or e-mail requests to the Commission for advance notice of its rulemaking proposals.

(c) In addition to the methods for providing secondary notice of proposed rulemaking specified in (b) above, the Commission may provide such notice in the text of a newsletter or similar publication mailed to all licensed offices of New Jersey real estate brokers and/or a written communication from the New Jersey Real Estate Commission mailed to all licensed offices of New Jersey real estate brokers.

(d) The Commission shall provide secondary notice under (b) above at least 30 days prior to its intended action of adopting a new rule, or amending or repealing any existing rule.

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

Former N.J.A.C. 11:5-10.2, Procedure for the submission of petitions for rulemaking, was recodified to N.J.A.C. 11:5-10.6.

11:5-10.3 Comments concerning proposed adoption of new rule, or proposed amendment or repeal of existing rule; extensions of time for comments

(a) For a period of no less than 30 days following the publication of any proposal to adopt a new rule, or amend or repeal an existing rule, the Commission shall afford all interested persons reasonable opportunity to submit written comments on the proposal in accordance with the procedures established in N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:30. Said period shall be deemed the "comment period."

(b) A written comment may be submitted via mail, delivery service, facsimile transmission, e-mail or any other means which results in the Commission's receipt of a writing containing the text of the comment.

(c) If, during the comment period, sufficient public interest is demonstrated in an extension of the time for the submission of comments, the Commission shall provide an additional 30-day period for the receipt of comments from interested persons. In determining whether sufficient public interest has been demonstrated for the purposes of extending the comment period pursuant to N.J.A.C. 1:30-5.4, the Commission shall consider the following criteria:

1. Whether comments received indicated a previously unrecognized impact on regulated entities or persons; or
2. Whether comments received raise unanticipated issues related to the notice of proposal.

(d) Where a 30-day extension of the comment period under (c) above is granted, the proposal shall not be adopted until the Commission has considered all comments received during the entire comment period as extended.

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

Section was "Procedure for the consideration and disposition of rulemaking petitions", was recodified to N.J.A.C. 11:5-10.7.

11:5-10.4 Public hearings concerning proposed adoption of new rule, or proposed amendment or repeal of existing rule

(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.

(c) If, during the comment period following the publication of any proposal to adopt a new rule, or amend or repeal any existing rule, sufficient public interest in holding a public hearing on the proposal is demonstrated, the Commission shall conduct such a hearing. The Commission shall provide at least 15 days notice of such a public hearing, which shall be conducted in accordance with the procedures established in N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:30.

(d) In determining whether sufficient public interest has been demonstrated for purposes of conducting a public hearing pursuant to N.J.A.C. 1:30-5.5, the Commission shall consider a request for such a hearing that has been submitted on a form prescribed by the Department of Banking and Insurance. Such a request shall be submitted within 60 days following the publication of the notice of proposal in the New Jersey Register.

1. A person interested in having a public hearing held on a notice of proposal shall submit an application on a form prescribed by the Department of Banking and Insurance to New Jersey Real Estate Commission, Department of Banking and Insurance, PO Box 328, Trenton, NJ 08625-0328. The application shall contain the following information:

- i. The person's name, address, telephone number, agency or association (if applicable);
- ii. The citation and title of the proposed rule and the date the notice of proposal was published in the New Jersey Register; and
- iii. The reasons a public hearing regarding the notice of proposal is considered necessary pursuant to (e) below.

(e) Sufficient public interest for the purpose of holding a public hearing pursuant to N.J.A.C. 1:30-5.5 shall be demonstrated if the Commission determines that the consideration of additional data, findings and/or analysis regarding the notice of proposal is necessary in order to ensure that the proposed rulemaking does not violate the intent of the statutory authority.

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

Added (c) through (e).

11:5-10.5 Petitions for rulemaking—scope

N.J.A.C. 11:5-10.5, 10.6 and 10.7 shall apply to all petitions made by interested persons for the adoption of a new rule, or the amendment or repeal of any existing rule by the New Jersey Real Estate Commission, in accordance with N.J.S.A. 52:14B-4(f).

Recodified from N.J.A.C. 11:5-10.1 and amended by R.2003 d.440, effective November 3, 2003.

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

11:5-10.6 Procedure for the submission of petitions for rulemaking

(a) Any interested person may petition the Real Estate Commission to adopt a new rule, or amend or repeal an existing rule. Such interested person shall be deemed a "petitioner." The petitioner may include with any petition the text of the proposed new rule, amended rule or repealed rule. All petitions for rulemaking shall clearly and concisely state: