

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.
See: 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.

Subchapter 9A, Rules Interpreting and Implementing the New Jersey Real Estate Timeshare Act, N.J.S.A. 45:15-16.50 et seq., was adopted as new rules by R.2009 d.222, effective July 6, 2009. See: 40 N.J.R. 3944(a), 41 N.J.R. 2663(a).

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SUBCHAPTER 1. ORGANIZATIONAL RULES

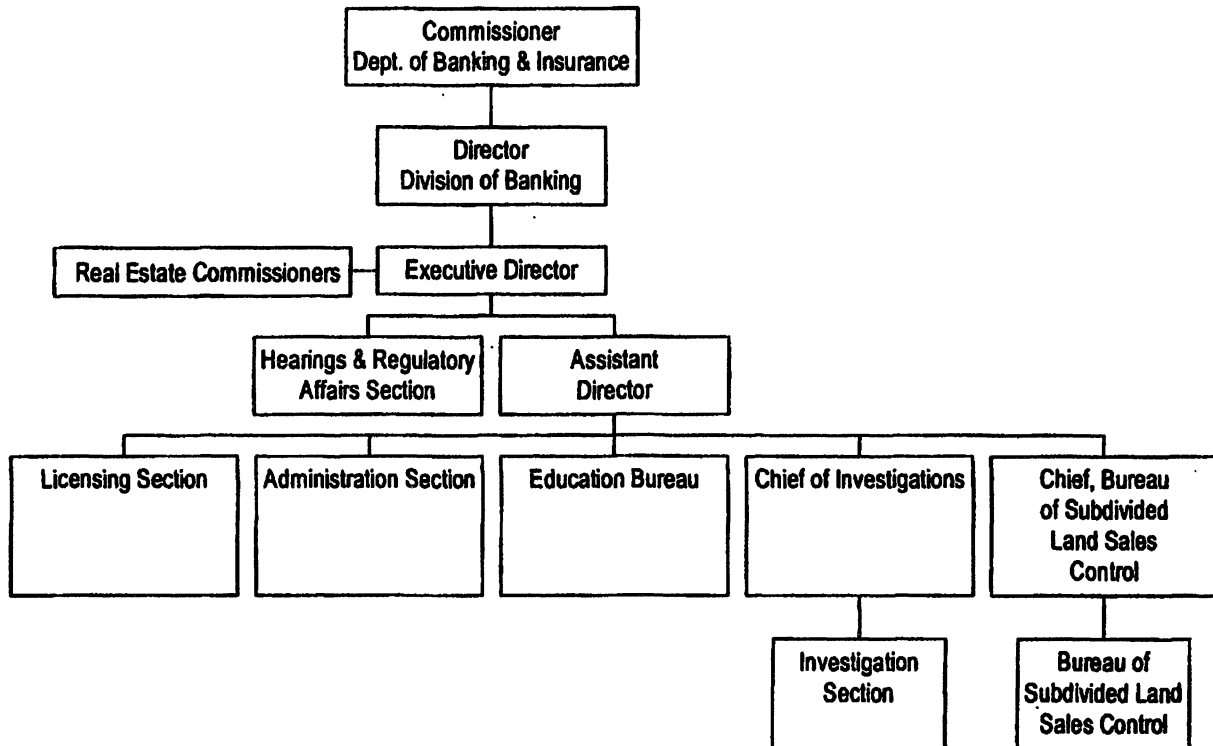
11:5-1.1 Commission responsibilities

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:

Organization Chart of
The New Jersey Real Estate Commission



Amended by R.1989 d.324, effective May 24, 1989.
 See: 21 N.J.R. 1364(a), 21 N.J.R. 1709(a).
 Amended by R.1998 d.497, effective October 5, 1998.
 See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
 Updated the Commission Organization Chart.
 Amended by R.1999 d.15, effective December 15, 1998.
 See: 31 N.J.R. 544(a).
 Updated the Commission Organization Chart.
 Amended by R.2004 d.130, effective April 5, 2004.
 See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).
 Updated the Commission Organization Chart.

11:5-1.3 Functions of the Commission

(a) The Commission is comprised of six sections whose functions are as follows:

1. The Licensing Section is responsible for processing license applications, transfers, terminations, renewals and upgrades, and for providing licensing information to the public and to licensees.
2. The Investigations Section is responsible for investigating the qualifications of applicants for licensure, and for investigating complaints against licensed brokers or

sales-persons or individuals who have allegedly engaged in the business of a real estate broker or a salesperson without being licensed to do so.

3. The Real Estate Education Section is responsible for reviewing the qualifications of real estate school and instructor applicants and for regulating their activities as such through the Education Subsection.

4. The Bureau of Subdivided Land Sales Control is responsible for enforcing the provisions of the New Jersey Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq. Its duties include, but are not limited to, reviewing applications for the registration of new projects, conducting inspections of conditionally registered projects, and reviewing applications for the renewal of projects.

5. The Administration Section is responsible for the budget and accounting functions and also for ensuring that personnel operate in a manner which will accomplish their designated duties in conjunction with the staff of the Department of Banking and Insurance. It is also responsible for other functions including administration of the Real Estate Guaranty Fund.

6. The Hearings and Regulatory Affairs Section is responsible for processing the rulemaking activity of the Commission, the scheduling and processing of contested cases, the prosecution of certain contested matters, and other functions.

Amended by R.1989 d.324, effective May 24, 1989.

See: 21 N.J.R. 1709(a).

At (a)3, reference to Education Subsection added to end of sentence.

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

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

Rewrote (a).

Amended by R.2004 d.130, effective April 5, 2004.

See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).

In (a)4, rewrote the first sentence.

11:5-1.4 Information available to the public

With the exception of the records designated as non-public in N.J.A.C. 11:5-1.5(g), the public may obtain information or make submissions or requests concerning any Commission functions by contacting the Real Estate Commission, Department of Banking and Insurance, PO Box 328, Trenton, New Jersey 08625-0328.

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

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

Rewrote the section.

Administrative correction.

See: 36 N.J.R. 4318(a).

11:5-1.5 Commission records open to public inspection; investigative files not open to the public

(a) The New Jersey Real Estate Commission makes, maintains and keeps records as listed in (b) through (g) below.

(b) Current and computerized public licensing records are available at the Commission's office for inspection and copying during normal business hours upon sufficient notice to the Commission staff. The Commission staff may require several weeks notice to locate records other than computerized records. Except as otherwise noted in this section, records are maintained for a minimum of three years. Older records may be unavailable. Copies of records can be purchased from the Commission at the fees established in the Right to Know Law, N.J.S.A. 47:1A-2.

(c) Requests for certified copies of the Commission's public licensing records (or for a certificate of the absence of a public record) shall be submitted in writing and must specify which records are requested and the time period covered by the request. The Commission staff requires at least 10 working days to provide certified copies of public records.

(d) The following records are maintained pursuant to the Real Estate Licensing Act:

1. Certifications of license history and status based upon computerized licensing records;

2. Real estate broker, broker-salesperson, salesperson, school and instructor license applications, and materials submitted therewith to obtain, transfer, reinstate or renew such licenses, and the final disposition of such applications. However, criminal history information obtained by the Commission pursuant to N.J.A.C. 11:5-3.3 and personal data on a licensee such as home address, home telephone number and date of birth are considered confidential;

3. Real Estate Commission meeting minutes;

4. Orders to Show Cause and complaints issued by the Attorney General's office charging that a licensee or an unlicensed person has violated provisions of the Real Estate License Act or the Commission's administrative rules; documents accepted into the agency record in any such proceeding; and the final disposition of such proceedings including settlements; and

5. Notices, proposals and other records concerning rulemaking required to be kept or distributed to the public by the Commission pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:30-3 and 4 et seq. Complete records of unadopted proposals are available for one year after publication of the proposal. Complete records of adopted rules are available for three years after each rule's effective date.

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

1. Statements of record and additions or corrections thereto filed with the Bureau pursuant to N.J.S.A. 45:15-16.33, 16.36, 16.39 and 16.41(a);

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

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

11:5-2.5 Education Bureau forms and processing times

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

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

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

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

6. Applications for the approval of experience as a real estate salesperson to fulfill the experience requirement for licensure as a broker (see N.J.S.A. 45:15-9 and N.J.A.C. 11:5-3.8)—four weeks.

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

11:5-2.6 Education Bureau transaction fees

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

EDUCATION BUREAU TRANSACTION FEES

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

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

SUBCHAPTER 3. LICENSING

11:5-3.1 Terms of real estate licenses

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

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

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

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

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

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

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

11:5-3.3 Criminal history record check

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

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

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

R.1971 d.83, effective May 27, 1971.

See: 2 N.J.R. 42(e), 3 N.J.R. 110(d).

Amended by R.1976 d.19, effective January 13, 1976.

See: 7 N.J.R. 567(e), 8 N.J.R. 70(e).

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

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

Subsections (c) and (e) deleted, recodification.

New Rule, R.1985 d.601, effective November 18, 1985.

See: 17 N.J.R. 2230(a), 17 N.J.R. 2779(a).

Repealed this section dealing with "Fingerprinting" and adopted New Rule.

Amended by R.1995 d.23, effective January 17, 1995.

See: 26 N.J.R. 3111(a), 27 N.J.R. 370(a).

11:5-3.4 Examination rules

(a) In the administration of examinations for licensure as a real estate broker, broker-salesperson or salesperson, the following examination rules shall apply:

1. Examinees shall not be permitted to refer to any notes, books, or memoranda.

2. The copying of questions or making of notes for personal use is strictly prohibited.

3. No examinee shall leave the examining room except at the discretion of the examiner.

4. The real estate broker license and salesperson license examinations, required by N.J.S.A. 45:15-10 to be taken and successfully passed by all applicants for a real estate broker, broker-salesperson or salesperson license before said license may be issued, shall be in the form of a multiple choice examination prepared by a testing service as designated by the Commission. Fees charged applicants to take the real estate examinations shall be considered service fees to be paid directly to the testing service separate and apart from any fee required by N.J.S.A. 45:15-9 to be paid to the Commission at the time of the license application.

(b) A request for special accommodations may be made if the applicant qualifies for such accommodations as provided in the Americans With Disabilities Act or any other applicable law. Such requests shall initially be made to the firm administering the licensing examinations. The Commission shall retain final authority to determine whether such requests shall be granted.

As amended, R.1972 d.168, effective August 26, 1972.

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

As amended, R.1973 d.43, effective February 5, 1973.

See: 5 N.J.R. 13(b), 5 N.J.R. 86(b).

As amended, R.1973 d.306, effective October 25, 1973.

See: 5 N.J.R. 350(a), 5 N.J.R. 338(a).

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

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

"Salesman" replaced by "salesperson".

Amended by R.1995 d.23, effective January 17, 1995.

See: 26 N.J.R. 3111(a), 27 N.J.R. 370(a).

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

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

Rewrote (b).

11:5-3.5 Requests for disclosure of social security numbers

(a) The Commission may request that licensees and license applicants, including registrants for license examinations, submit their social security numbers to the Commission. All such requests shall either include or be accompanied by a notice stating:

1. The purpose or purposes for which the Commission intends to use the social security numbers;

2. That disclosure made pursuant to the request is either voluntary or mandatory; and

3. That the request is authorized by this section and by such other law as may be applicable.

New Rule, R.1994 d.268, effective June 20, 1994 (operative July 1, 1994).

See: 26 N.J.R. 735(a), 26 N.J.R. 1222(a), 26 N.J.R. 2585(a).

Repeal and New Rule, R.1997 d.160, effective April 7, 1997.

See: 29 N.J.R. 302(a), 29 N.J.R. 1324(c).

Section was "Collection of Social Security numbers of licenses".

11:5-3.6 Salesperson's license; age requirement

(a) No salesperson's license shall be issued to any person who has not attained the age of 18 years.

(b) Every applicant for licensure as a salesperson shall present with his/her application for licensure a certificate of satisfactory completion of a course of education in real estate subjects at a school licensed by the Commission pursuant to N.J.S.A. 45:15-10.1(a) and 10.4 and N.J.A.C. 11:5-2.2, unless waived by the Commission in accordance with the provisions of N.J.S.A. 45:15-10.2.

(c) An applicant must pass the State salesperson examination and apply for and request the issuance of a salesperson's license not later than one year after the date of successful completion of the course prescribed at N.J.A.C. 11:5-2.1. Any person who fails to apply for the issuance of a salesperson's license within the one year period shall be required to retake and successfully complete the prescribed course in real estate and the examination.

(d) All applicants for licensure as a salesperson shall certify that they possess a high school education or equivalency. The Commission may require the production of evidence of such education or equivalency as a condition to issuing a license to any applicant.

As amended, R.1973 d.214, effective August 2, 1973.

See: 5 N.J.R. 228(f), 5 N.J.R. 316(a).

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

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

As amended, R.1981 d.261, effective July 9, 1981.

See: 13 N.J.R. 306(a), 13 N.J.R. 440(c).

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

(d) added.

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

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

"Salesman" changed to "salesperson".

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

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

New subsections (d) through (f) added.

Amended by R.1995 d.23, effective January 17, 1995.

See: 26 N.J.R. 3111(a), 27 N.J.R. 370(a).

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

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

In (b) and (c), changed N.J.S.A. and N.J.A.C. references; rewrote (d); and deleted former (e) through (f).

Amended by R.2004 d.130, effective April 5, 2004.

See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).

In (c), inserted "pass the State salesperson examination and" following "An applicant must" in the first sentence.

11:5-3.7 Employment of salesperson sponsored by broker

No broker shall knowingly sponsor an applicant for licensure as a real estate salesperson who does not bear a good reputation for honesty and fair dealings.

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

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

"Salesman" replaced by "salesperson".

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

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

Rewrote (a); and deleted former (b).

11:5-3.8 Qualifications for licensing; broker and broker-salesperson

(a) All references in this section to "brokers" shall include broker-salespersons. The experience requirement for licensure as a broker imposed by N.J.S.A. 45:15-9 is construed to require a demonstration by the applicant of their commitment to real estate brokerage as their primary vocation, as evidenced by their involvement in the real estate brokerage business on a full-time basis.

1. With the exception of persons licensed as brokers in other states, all applicants for licensure as a broker must have been continuously licensed and employed on a full-time basis as a real estate salesperson during the three years immediately preceding their application. Such full-time employment shall be demonstrated by a showing that:

i. The applicant has worked as a salesperson under the authority of the broker(s) with whom they were licensed for at least 40 hours per week and during the hours of approximately 10:00 A.M. to 8:00 P.M.;

ii. Such work in (a)i above was performed during any five days in each week of the three year period; and

iii. If the applicant was employed in any other occupation during the three year period, such other employment was on a part-time basis and did not exceed 25 hours per calendar week.

2. No applications for approval of an applicant's experience to qualify for licensure as a broker shall be made until an applicant:

i. Has been continuously licensed as a salesperson for at least the three years immediately preceding such application;

ii. Has completed the 90-hour general broker's prelicensure course and the two 30-hour courses referred to in N.J.A.C. 11:5-2.1(g).

(b) The Commission shall give due consideration to the following in reviewing the experience of an applicant:

1. Evidence of having been actively involved in the real estate brokerage business as a real estate salesperson on a full-time basis during each year of the three year period. Written statements by the brokers with whom the applicant was licensed during the three year period which certify the applicant's activity as a salesperson while licensed through those brokers must be submitted.

2. Applicants and/or brokers may also be required to submit supporting documentation relating to the closed transactions on which the applicant received compensation as a salesperson from the broker, or to supply other evidence of full-time activity, such as extensive involvement in a specialized field of real estate brokerage.

3. In no event will an applicant whose brokerage activity was limited to solely making referrals to other licensees be deemed to have fulfilled the full-time, active involvement in the brokerage business requirement for licensure.

(c) Broker-salespersons shall meet the same qualifications as brokers, including the qualifications as set forth in (a) and (b) above. A person licensed as a broker-salesperson must be employed by and act under the supervision of a duly licensed real estate broker and shall not independently maintain an office or escrow account. A broker-salesperson may be authorized to serve as an office supervisor or a branch office in accordance with the provisions of N.J.S.A. 45:15-12.

(d) Every applicant for licensure as a broker or broker-salesperson shall present with his or her application for licensure examination a certificate of satisfactory completion of courses in real estate and related subjects at a school licensed by the Commission or offered by another approved provider pursuant to N.J.S.A. 45:15-10.1(b) and N.J.A.C. 11:5-2.1 and 2.2, unless waived by the Commission in accordance with the provisions of N.J.S.A. 45:15-10.2 and N.J.A.C. 11:5-2.1.

(e) An applicant must pass the State broker license examination and apply for and request the issuance of a license as a broker or broker-salesperson not later than one year after successful completion of the 150-hour broker prelicensure education requirements. Any person who fails to apply for the issuance of a license as a broker or broker-salesperson within the said one year time period shall be required to retake and successfully complete all prescribed courses and the examination and must submit evidence of having again fulfilled the experience requirement during the three years immediately preceding the new application.

As amended, R.1972 d.150, effective July 27, 1972.

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

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

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

As amended, R.1981 d.261, effective July 9, 1981.

See: 13 N.J.R. 306(a), 13 N.J.R. 440(c).

Substantially amended.

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

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

Former subsections (a) and (f) deleted, recodified, "salesman" changed to "salesperson".

Amended by R.1987 d.68, effective January 20, 1987.

See: 18 N.J.R. 1782(a), 19 N.J.R. 232(a).

Deleted text in (a) "full-time during his apprenticeship as a salesperson" and added text "on a full . . . per calendar week."

Amended by R.1994 d.56, effective February 7, 1994 (operative July 1, 1994).

See: 25 N.J.R. 4849(b), 26 N.J.R. 798(a).

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

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

In (a)2ii and (d), changed N.J.A.C. references.

Case Notes

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

Real estate salesman was not authorized to sue to collect commission to which employer may have been entitled. Harper-Lawrence, Inc. v. United Merchants and Mfrs., Inc., 261 N.J.Super. 554, 619 A.2d 623 (A.D.1993), certification denied 134 N.J. 478, 634 A.2d 525.

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

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

11:5-3.9 Return of license when broker ceases to be active; office closing; change of broker of record

(a) Each broker who ceases to be active shall within five business days of the cessation of business return to the Commission his license, and the 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.

Amended by R.2004 d.130, effective April 5, 2004.

See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).

In (a), substituted "within five business days of the cessation of business" for "immediately".

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.

11:5-3.12 License applications processed by the Licensing Section of the Real Estate Commission

(a) Applications for the following license types are processed by the Licensing Section of the Real Estate Commission:

1. Real Estate Salesperson;
2. Real Estate Broker—Salesperson;
3. Real Estate Broker—Sole Proprietor;
4. Real Estate Broker—Business entity;
5. Real Estate Broker—Broker of Record of a licensed business entity; and
6. Branch office.

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

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

11:5-3.13 Licensing Section forms, instructions, processing times, deadlines

(a) The following forms are utilized by the Licensing Section of the Real Estate Commission:

1. Original salesperson license application;
2. Original broker/broker-salesperson application;
3. Name change (by license or application);
4. Broker status change;
5. Salesperson or broker-salesperson transfer of license (on rear of license document);
6. Broker's Authorized Designee or Power of Attorney;
7. Change of business address;
8. Application for broker license for business entity (includes application for broker of record license);
9. Application for sole proprietor broker license;
10. Application for reactivation within current license term or for reinstatement of salesperson license;
11. Application for reactivation within current license term or for reinstatement of broker-salesperson license;
12. Office Closing affidavit;
13. Application for branch office license;

14. Change of branch office supervisor;

15. Initial Application for Renewal of Broker License and of all related licenses;

16. First Supplemental Renewal Application (lists licensees who became licensed with the broker between the date on which the Initial Renewal Application form was generated and the date on which the First Supplemental Renewal Application form was generated);

17. Second Supplemental Renewal Application (lists licensees who became licensed with the broker between the date on which the First Supplemental Renewal Application form was generated and the expiration date of the license term in which the renewal forms are generated);

18. Change of corporate representative and multiple license;

19. Change of broker of record;

20. Change of corporate title;

21. Corporate license and multiple broker license;

22. Reinstatement of business entity broker license;

23. Reinstatement of sole proprietor broker license;

24. Additional broker of record license to sole proprietor broker;

25. Change of tradename or new tradename;

26. Multiple broker of record license;

27. Temporary broker's license;

28. Change of Broker of Record Affidavit;

29. Individual irrevocable consent to service of process;

30. Corporate irrevocable consent to service of process;

31. Partnership/LLC/other irrevocable consent to service of process; and

32. New Jersey State Police, State Bureau of Identification Request for Criminal History Record Check form.

(b) In addition to the instructions that are contained on the forms themselves, separate instructions for the licensing forms related to broker licenses and branch offices are available from the Licensing Section.

(c) License applications are normally processed within 15 business days from the date a complete and accurate application with all required fees in the correct form is received. Processing times during the biennial renewal of licenses may vary. License certifications are normally processed within 15 business days from receipt of the written request and correct fee.

(d) Deadlines for the submission of license applications and other required forms are as follows:

1. Original salesperson, broker-salesperson or broker: one year from date on which prelicensure course and education requirements were completed (see N.J.A.C. 11:5-3.6(c) for salespersons and 11:5-3.8(e) for brokers and broker-salespersons);

2. Applications for the reinstatement of a salesperson, broker-salesperson or brokers license: two years from the expiration date of the last license held unless exempted as provided in N.J.S.A. 45:15-9;

3. Brokerage firm office closing affidavit: within 30 business days from date of closing (see N.J.A.C. 11:5-3.9(c));

4. Brokerage firm change of address: prior to or immediately upon move to new address (see N.J.S.A. 45:15-12 and 45:15-13);

5. Temporary broker license: within 30 business days from date of death or of incapacity of sole proprietor broker or broker of record (see N.J.S.A. 45:15-11.3); and

6. License renewals:

i. Initial renewal application: by June 30 of the year in which the license is due to expire (see N.J.A.C. 11:5-3.1);

ii. First supplemental renewal application: 45 days from date application issued; and

iii. Second supplemental renewal application: 30 days from date application issued.

(e) Late fees are assessed for license renewals post-marked and received by the Commission after the deadlines referenced in (d)6 above. Those fees are set forth in N.J.A.C. 11:5-3.14.

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

11:5-3.14 Licensing fees

The fees applicable to transactions processed by the Licensing Section of the Real Estate Commission are listed in the table below. Renewal fees are assessed biennially for the renewal of licenses for a two-year term pursuant to N.J.S.A. 45:15-15. All other fees are payable in full regardless of when during a license term the application to which the fee pertains is submitted.

LICENSE FEES

Initial License Fees (amounts include \$50.00 application fee, \$18.00 criminal history record check fee for each individual required by N.J.A.C. 11:5-3.3 to undergo such a check and, where applicable, Real Estate Guaranty Fund fees of \$10.00 for salespersons and \$20.00 for brokers and broker-salespersons. See N.J.S.A. 45:15-35.):

| <u>License</u> | <u>Fee</u> |
|--|------------|
| Corporations, partnerships and other business entities | \$270.00 |
| Broker of record | \$285.00 |
| Sole proprietor broker | \$285.00 |
| Broker-salesperson | \$285.00 |
| Salesperson | \$175.00 |
| Branch office | \$150.00 |
| Temporary broker license | \$250.00 |
| Multiple broker license | \$270.00 |

Renewal Fees:

| <u>License</u> | <u>Fee</u> |
|--|------------|
| Corporations, partnerships and other business entities | \$200.00 |
| Broker of record | \$200.00 |
| Sole proprietor broker | \$200.00 |
| Broker-salesperson | \$200.00 |
| Salesperson | \$100.00 |
| Branch office | \$100.00 |

Late Renewal Fees:

| <u>License</u> | <u>Fee</u> |
|--|------------|
| Corporations, partnerships and other business entities | \$ 40.00 |
| Broker | \$ 40.00 |
| Broker-salesperson | \$ 20.00 |
| Salesperson | \$ 20.00 |
| Branch office | \$ 10.00 |

Transfers:

| <u>License</u> | <u>Fee</u> |
|--------------------|------------|
| Broker-salesperson | \$ 25.00 |
| Salesperson | \$ 25.00 |

Reinstatements of unexpired licenses (amounts include \$50.00 application fee):

| <u>License</u> | <u>Fee</u> |
|--|------------|
| Corporations, partnerships and other business entities | \$250.00 |
| Broker of record | \$250.00 |
| Sole proprietor broker | \$250.00 |
| Broker-salesperson | \$250.00 |
| Salesperson | \$150.00 |
| Branch office | \$150.00 |

Changes:

| <u>Type</u> | <u>Fee</u> |
|---|------------|
| Name change | \$ 50.00 |
| Change of business address: sole proprietor brokers and corporations, partnerships or other business entities (plus \$10.00 for each individual licensee) | \$ 50.00 |
| Change of status—sole proprietor, broker, broker of record or broker-salesperson | \$ 50.00 |
| Change of branch office supervisor | \$ 50.00 |

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

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

11:5-5.2 Funds of others; safeguards

(a) No licensee shall accept funds or deposits from a prospective purchaser without ascertaining that there have been established by escrow, or otherwise, adequate precautions to safeguard such funds or deposits where the licensee knows, or conditions are such as to palpably give him reason to know, any facts which would tend to reasonably create a doubt:

1. As to the ability of the seller to perform his contractual obligations; or

2. As to the ability of the seller to return such funds or deposits in the event of the failure of a contingency contained in a real estate contract.

(b) The provisions of subsection (a) shall not apply to a licensee who, before accepting such funds or deposits, has adequately informed the prospective purchaser of any risk entailed and has secured from him a separate signed writing in which the purchaser has acknowledged:

1. His awareness of any risk or contingency;

2. The disposition of his funds or deposits; and

3. The absence of any representations by the licensee as to the solvency of the seller and his ability to return such funds.

(c) Funds or deposits placed in escrow pursuant to this regulation may be held by any person or entity legally authorized to hold funds in that capacity, such as, but not limited to, the real estate broker himself, lawyers or banks.

Case Notes

Real estate guaranty fund held liable for misconduct of broker in sale of his own property, where purchaser relied on broker's licensed status in depositing money in broker's escrow account; purchaser required to exhaust writ of execution remedies against broker before executing judgment against fund. *Brody v. Alfieri*, 179 N.J.Super. 485, 432 A.2d 567 (Ch.Div.1981).

Relationship between listing broker and selling broker under multiple listing arrangement held not to constitute a joint venture so as to provide a basis for holding listing broker liable for selling broker's defalcation. *Sullivan v. Jefferson, Jefferson & Vaida*, 167 N.J.Super. 282, 400 A.2d 836 (App.Div.1979).

11:5-5.3 Advance fees; accounting

(a) Any broker who charges or collects an advance fee in excess of \$25.00 for services to be rendered, such as, but not limited to advertising costs, under an advance fee agreement, shall within 90 days after such charge or collection furnish his principal with an accounting as to the use of such moneys.

(b) Such accounting shall set forth the actual amount of each individual expenditure, including date of insertion and name of newspaper or periodical, and similarly detail any other type of promotional expenditure if the funds are spent for other than newspaper or periodical advertising.

Case Notes

Failure to list default judgment in Office Closing Affidavit not violation of law but real estate company's failure to defend against action legally deficient. *New Jersey Real Estate Commission v. Burke*, 97 N.J.A.R.2d (REC) 4.

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

11:5-5.4 Records to be maintained by broker

(a) Every broker shall keep records as prescribed herein of all funds of others received by him or her for not less than six years from the date of receipt of any such funds. All such funds shall be deposited by the broker in accordance with the requirements of N.J.A.C. 11:5-5.1.

1. Whenever a broker receives funds to be held in trust in cash, a written receipt signed by the licensee to whom the funds were paid and specifying the date, amount, purpose and from whom those funds were received shall be issued to the payor of the funds. A copy of that receipt shall be retained by the broker as prescribed in this section.

(b) The records required to be kept pursuant to (a) above shall include:

1. Written references on the checkbook stubs or checkbook ledger pages to all deposits into and withdrawals from the account(s) maintained by the broker in accordance with N.J.A.C. 11:5-5.1, which shall specifically identify the date, amount and payor of each item deposited, the property to which the monies pertain and the reason for their being held by the broker. Such records shall also specify the date, amount, payee and purpose of each disbursement. All trust or escrow account withdrawals shall be only by authorized intrastate or interstate bank transfer or by check payable to a named payee and not to cash;

2. In appropriate ledger book for all trustee accounts or escrow accounts showing, in one location in that ledger book for each separate trust transaction, the payor of all funds deposited in such accounts, the date of deposit, the names of all persons for whom the funds are or were held, the amount of such funds, the amounts and dates of all disbursements of such moneys, and the names of all persons to whom such funds were disbursed. The Commission will not deem a regular checkbook ledger as sufficient to constitute an appropriate ledger book. Such a ledger book may be maintained in a computer or similar device, so long as it is capable of reproducing the electronically stored data on paper so as to depict the complete history of all activity in each separate trust

transaction, and the data can be maintained in an easily accessible form for the required six year period. A regular running balance of the individual transaction ledger sheets shall be maintained. The total of the running balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust on that transaction, and deducting the total of all moneys disbursed;

i. Brokers who accept credit card charges on short term rental transactions and who maintain a reserve in their special trust or escrow account to which funds received through such charges are credited as provided in N.J.A.C. 11:5-5.1(j) shall record in one location in their ledger book, entries specifying deposits made to establish, replenish, and increase the reserve amount and all withdrawals made to reduce the reserve amount. Brokers who maintain reserves in such special escrow or trust accounts shall not be required to make an entry in their ledger for each transaction fee debited from the said account as a result of their acceptance of a payment through a charge on a credit card.

3. Copies of all records, showing that at least quarterly a reconciliation has been made of the checkbook balance, the bank statement balance and the client trust ledger sheet balances;

4. All bank statements, cancelled checks, duplicate deposit slips and, if the broker accepts credit card charges on short term rental transactions as provided in N.J.A.C. 11:5-5.1, all confirmation slips or other written material reflecting the broker's acceptance of such payments;

5. Copies of all offers, contracts of sale and sale or rental listing agreements;

6. Copies of all leases and property management agreements;

7. Copies of all statements to owners, sellers, purchasers and tenants showing the disbursement of funds to them or on their behalf, which statements shall identify the property and unit, if applicable, for which the disbursement was made and the reason for the disbursement;

8. Copies of all bills paid for owners, sellers, purchasers or tenants by the broker from escrowed funds, which payments may only be made pursuant to written authorization;

9. Copies of all records showing payments to persons licensed with the paying broker and to cooperating brokers, which records shall contain all information required by N.J.A.C. 11:5-5.1(d); and

10. Copies of all receipts issued for all security deposits accepted from tenants, and of checks for and letters accompanying the release of such funds, and/or the duplicate deposit slips evidencing the deposit of such funds by the broker.

(c) With the exception of the materials described in (d) below, on transactions where a broker has not received the property or funds of others, the following records shall be maintained for six years from the earlier of the date of the listing or property management agreement or of the contract or lease:

1. Copies of all fully executed leases, contracts of sale, property management and listing agreements;

2. Copies of bills for brokerage services rendered in such transactions;

3. Copies of all records showing payments to persons licensed with the paying broker and to co-operating brokers; and

4. Copies of all bank statements, cancelled checks and duplicate deposit slips pertaining to the broker's general business account.

(d) Unaccepted offers and expired listing agreements during the term of which no contract of sale was executed or no tenancy was entered into shall be maintained for six months from the date of the offer or the expiration date of the listing agreement.

(e) The financial books and other records as described in (a), (b), (c) and (d) above shall be maintained in accordance with generally accepted accounting practice. They shall be located at the main New Jersey office of each broker or, in situations where separate general business and/or trust or escrow accounts are maintained at licensed branch offices, either at that branch office or at the main office of the broker. Paper copies of all items designated as records in (a) through (d) above shall be maintained by brokers as provided in this section. This requirement shall apply to all such records, including any items generated through E-mail or any other means which does not require the creation of a paper document. All such records shall be available for inspections, checks for compliance with this section and copying by a duly authorized representative of the New Jersey Real Estate Commission.

Amended by R.1989 d.425, effective August 21, 1989 (operative November 19, 1989).

See: 21 N.J.R. 1310(a), 21 N.J.R. 2520(a).

Clear specifications added regarding the type of business records brokers are required to maintain, new (a)1, new (b)1-10, and new (c)-(e).

Amended by R.1998 d.246, effective May 18, 1998.

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

In (e), inserted new third and fourth sentences.

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 and deleted references to property; and in (b), changed N.J.A.C. references.

Amended by R.1999 d.444, effective December 20, 1999.

See: 31 N.J.R. 2675(a), 31 N.J.R. 4282(a).

In (b), inserted 2i, and rewrote 4.

Petition for Rulemaking.
 See: 25 N.J.R. 4523(c), 26 N.J.R. 505(b).
 Petition for Rulemaking.
 See: 32 N.J.R. 850(a), 32 N.J.R. 1085(b).
 Petition for Rulemaking.
 See: 40 N.J.R. 3758(b), 40 N.J.R. 4361(a).

Case Notes

For purposes of the rule-mandated three-workday escape period, within which the attorney for each party to a real estate sales contract prepared by a real estate agent or broker may disapprove of the contract, the onus is on the agent or broker to deliver any fully executed contract to the parties. *Peterson v. Estate of Pursell*, 771 A.2d 666 (2001).

In all real estate sales contracts prepared by real estate agents and brokers, a clause must provide that the three-day review period begins to run from the date of delivery of the signed contract to the buyer and the seller, that Saturdays, Sundays, and legal holidays are to be excluded in counting the three-day period, and that the contract will be legally binding at the end of the three-day review period unless an attorney for the buyer or seller disapproves of the agreement. *Peterson v. Estate of Pursell*, 771 A.2d 666 (2001).

In calculating the rule-mandated three-workday escape period, within which the attorney for each party to a real estate sales contract prepared by a real estate agent or broker may disapprove of the contract, the date of delivery to the parties is not counted. *Peterson v. Estate of Pursell*, 771 A.2d 666 (2001).

Listing real estate brokerage was not vendor's fiduciary for purposes of the attorney review period, rule-mandated three-workday escape period within which vendor's attorney could disapprove of real estate sales contract prepared by an agent of the brokerage, and thus, attorney review period began to run when the fully executed contract was delivered to vendor herself, not when prospective purchaser delivered it to the brokerage's agent. *Peterson v. Estate of Pursell*, 771 A.2d 666 (2001).

Prospective purchaser had no right to enforce real estate sales contract during the rule-mandated three-workday escape period, within which vendor's attorney could disapprove the contract, and thus, purchaser could not recover on tortious interference claim against the listing real estate brokerage and an agent of the brokerage who negotiated a contract with another purchaser. *Peterson v. Estate of Pursell*, 771 A.2d 666 (2001).

The attorney review period, the rule-mandated three-workday escape time period within which the attorney for each party to a real estate sales contract prepared by a real estate agent or broker may disapprove of the contract, begins to run when a conforming contract is delivered to a party. *Peterson v. Estate of Pursell*, 771 A.2d 666 (2001).

Purchaser's attorney's letter to vendors stating that attorney did not approve of residential sales contract in its present form, but that he would approve it with specified modifications, was sufficient to terminate contract under its attorney review clause; thus, purchasers were thereafter free to show and sell property in question to third party. *Gaglia v. Kirchner*, 317 N.J.Super. 292, 721 A.2d 1028 (A.D.1999).

Statute giving terminated agents full commission rights if they continued to service policies would prevail over strict terms of contract settlement between insurance company and terminated agents. *Matter of Terminated Aetna Agents*, 248 N.J.Super. 255, 590 A.2d 1189 (A.D.1990), certification denied 126 N.J. 319, 598 A.2d 880.

Regulation requiring that all real estate contracts subject to attorney review contain an "agreement to honor," was void. *Carmagnola v. Hann*, 233 N.J.Super. 547, 559 A.2d 478 (A.D.1989).

11:5-6.3 Broker insurance placement provision

Where a contract provided by a real estate broker contains a provision to the effect that such broker, in his capacity as a licensed insurance agent or broker, is authorized to place or procure insurance on the property being sold, the licensee benefitting by such a provision shall obtain separate written reaffirmation of such provision by the prospective insured not less than five days prior to the closing of title.

11:5-6.4 Obligation of licensees to public and to each other

(a) All licensees are subject to and shall strictly comply with the laws of agency and the principles governing fiduciary relationships. In accepting employment as an agent, the licensee pledges himself to protect and promote, as he would his own, the interests of the client or principal he has undertaken to represent; this obligation of absolute fidelity to the client's or principal's interest is primary but does not relieve the licensee from the obligation of dealing fairly with all parties to the transaction.

(b) Every licensee shall make reasonable effort to ascertain all material information concerning the physical condition of every property for which he or she accepts an agency or which he or she is retained to market as a transaction broker, and concerning the financial qualifications of every person for whom he or she submits an offer to his or her client or principal. Information about social conditions and psychological impairments as defined in (d) below is not considered to be information which concerns the physical condition of a property.

1. A reasonable effort to ascertain material information shall include at least:

- i. Inquiries to the seller or seller's agent about any physical conditions that may affect the property; and
- ii. A visual inspection of the property to determine if there are any readily observable physical conditions affecting the property.

2. As used in this section, information is "material" if a reasonable person would attach importance to its existence or non-existence in deciding whether or how to proceed in the transaction, or if the licensee knows or has reason to know that the recipient of the information regards, or is likely to regard it as important in deciding whether or how to proceed, although a reasonable person would not so regard it.

(c) Licensees shall disclose all information material to the physical condition of any property which they know or which a reasonable effort to ascertain such information would have revealed to their client or principal and when appropriate to any other party to a transaction. Licensees shall also disclose any actual or potential conflicts of interest which the licensee may reasonably anticipate.

1. With respect to off-site conditions which may materially affect the value of the residential real estate, in all sales contracts involving newly constructed residential real estate they prepare, licensees shall include a statement as set forth below. By including this statement in a contract of sale prepared by the licensee, the licensee shall be deemed to have fulfilled his or her disclosure obligations under (c) above with respect to such off-site conditions. The statement shall be in print as large as the predominant size print in the document and shall read as follows:

“NOTIFICATION REGARDING OFF-SITE CONDITIONS

Pursuant to the New Residential Construction Off-Site Conditions Disclosure Act, P.L. 1995, c.253 (C.46:3C-1 et seq.), sellers of newly constructed residential real estate are required to notify purchasers of the availability of lists disclosing the existence and location of off-site conditions which may affect the value of the residential real estate being sold. The lists are to be made available by the municipal clerk of the municipality within which the residential real estate is located and in other municipalities which are within one-half mile of the residential real estate. The address(es) and telephone number(s) of the municipalities relevant to this project and the appropriate municipal offices where the lists are made available are listed below. Purchasers are encouraged to exercise all due diligence in order to obtain any additional or more recent information that they believe may be relevant to their decision to purchase the residential real estate. Purchasers are also encouraged to undertake an independent examination of the general area within which the residential real estate is located in order to become familiar with any and all conditions which may affect the value of the residential real estate.

The purchaser has five (5) business days from the date the contract is executed by the purchaser and the seller to send notice of cancellation of the contract to the seller. The notice of cancellation shall be sent by certified mail. The cancellation will be effective upon the notice of cancellation being mailed. If the purchaser does not send a notice of cancellation to the seller in the time or manner described above, the purchaser will lose the right to cancel the contract as provided in this notice.

Municipality _____
Address _____
Telephone Number _____ ”

The statement shall either be included in the text of the contract itself or attached to the contract as an Addendum.

2. In all residential real estate sale contracts they prepare except contracts for newly constructed residential real

estate, licensees shall include a statement as set forth below. The statement shall be in print as large as the predominant size print in the document and shall read as follows:

“NOTICE ON OFF-SITE CONDITIONS

Pursuant to the New Residential Construction Off-site Conditions Disclosure Act, P.L. 1995, c.253 the clerks of municipalities in New Jersey maintain lists of off-site conditions which may affect the value of residential properties in the vicinity of the off-site condition. Purchasers may examine the lists and are encouraged to independently investigate the area surrounding this property in order to become familiar with any off-site conditions which may affect the value of the property. In cases where a property is located near the border of a municipality, purchasers may wish to also examine the list maintained by the neighboring municipality.”

The statement shall either be included in the text of the contract itself or attached to the contract as an Addendum.

i. Licensees who possess actual knowledge of an off-site condition which may materially affect the value of residential real estate other than newly constructed properties shall disclose that information to prospective purchasers of such residential real estate affected by the condition. That disclosure shall be made prior to the signing of the contract by a prospective purchaser.

ii. In cases where the licensee did not possess actual knowledge of the presence of an off-site condition which might materially affect the value of the residential real estate, by virtue of including the foregoing statement in a contract of sale prepared by him or her, the licensee shall be deemed to have fulfilled his or her disclosure obligations under (c) above with respect to such off-site conditions.

3. As used in this subsection, the following words and terms shall have the following meanings:

i. “Newly constructed” means any dwelling unit not previously occupied, excluding dwelling units constructed solely for lease and units governed by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §§ 5402 et seq.

ii. “Off-site conditions” refers to the following conditions as set forth in the New Residential Construction Off-Site Conditions Disclosure Act, N.J.S.A. 46:3C-3 (P.L. 1995 c.253), or as amended:

(1) The latest Department of Environmental Protection listing of sites included on the National Priorities List pursuant to the “Comprehensive Environmental Response, Compensation and Liability Act of 1980,” 42 U.S.C. §§ 9601 et seq.;

(g) If any offer on any real property or interest therein is made orally, the licensee shall advise the offeror that he is not obligated to present to the owner or his authorized representative any offer unless the offer is in writing. Unless a writing containing or confirming the terms of the listing agreement otherwise provides, the licensee shall transmit every written offer on any real property or interest therein presented to or obtained by the licensee during the term of the listing to the owner or his authorized representative within 24 hours of receipt of the written offer by their firm. For the purposes of this section, the term of a listing shall be deemed to expire either on the termination date established in the listing agreement, or upon the closing of a pending sale or lease. If any acceptance of an offer is given orally, the licensee shall secure the acceptance in writing within 24 hours.

(h) Back-up offers shall be handled as follows:

1. As used in this subsection, the term "back-up offer" shall mean a written and signed offer to purchase or lease an interest in real estate which is received by a licensee at a time when a previously executed contract or lease pertaining to the same interest in real estate is pending and in effect, having survived attorney review if it was subject to such review. Offers obtained while a previously executed contract or lease is still pending attorney review are not considered back-up offers and must be presented as provided in (g) above.

2. Whenever a licensee transmits a back-up offer to an owner, the licensee shall advise the owner in writing to consult an attorney before taking any action on the back-up offer, and shall retain a copy of such written notice as a business record in accordance with N.J.A.C. 11:5-5.4.

3. Whenever a licensee receives a back-up offer, the licensee shall notify the offeror in writing that the property to which the offer pertains is the subject of a pending contract of sale or lease and, in the event that the licensee receiving the back-up offer is not licensed with the listing broker, a copy of that notice shall be delivered to the listing broker at the time the offer is presented. The said notice shall not disclose the price and terms of the pending contract or lease. A copy of such written notice shall be retained by the licensee as a business record in accordance with N.J.A.C. 11:5-5.4.

(i) It shall be the duty of a licensee to recommend that legal counsel be obtained whenever the interests of any party to a transaction seem to require it.

(j) At the time of the taking of any listing of residential property, a licensee shall furnish to the owner a copy of a summary of the New Jersey Law Against Discrimination N.J.S.A. 10:5-1 et seq. which summary shall have been prepared and furnished by the Attorney General of the State of New Jersey, shall state the provisions of the Law Against Discrimination, and shall state which properties are covered by this law and which properties are exempt from

this law. Should the owner profess an unwillingness to abide by or an intention to violate this law then the licensee shall not accept these listings.

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

(l) Licensees may engage in brokerage activity in transactions involving the resale of mobile and manufactured homes as provided in N.J.S.A. 39:10-19. Licensees who do so shall be familiar with all laws applicable to such transactions. These laws include N.J.S.A. 39:1-1 et seq. as it applies to the resale of and the transfer of the titles to such motor vehicle units, N.J.S.A. 46:8C-1 et seq., as it applies to the resale of such units when situated in Mobile Home Parks, N.J.S.A. 17:16C-1 et seq., as it applies to the financing of purchases of personal property and New Jersey's Truth in Renting Act, N.J.S.A. 46:8-43 et seq. Licensees who, when involved in transactions of this type, evidence a lack of familiarity with these laws either through acts of omission or commission shall be subject to sanctions by the Commission for having engaged in conduct demonstrating incompetency, in violation of N.J.S.A. 45:15-17(e).

As amended, R.1975 d.260, effective August 28, 1975.

See: 7 N.J.R. 333(d), 7 N.J.R. 469(c).

As amended, R.1976 d.10, effective January 13, 1976.

See: 7 N.J.R. 567(e), 8 N.J.R. 70(e).

As amended, R.1979 d.461, effective November 26, 1979.

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

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

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

Statutory cite added.

Amended by R.1988 d.69, effective February 16, 1988 (operative March 1, 1988).

See: 19 N.J.R. 1621(a), 20 N.J.R. 402(a).

Amended to clearly define full cooperation.

Amended by R.1988 d.412, effective September 6, 1988.

See: 20 N.J.R. 725(a), 20 N.J.R. 2295(b).

Added text to (g) that is favorable to handicapped individuals.
 Amended by R.1993 d.365, effective July 19, 1993.
 See: 24 N.J.R. 3486(a), 25 N.J.R. 3219(a).
 Amended by R.1994 d.266, effective June 20, 1994 (operative July 1, 1994).
 See: 26 N.J.R. 729(a), 26 N.J.R. 1194(a), 26 N.J.R. 1222(a), 26 N.J.R. 2581(b).
 Amended by R.1997 d.27, effective January 21, 1997.
 See: 28 N.J.R. 3065(a), 29 N.J.R. 366(a).
 Added (i).
 Amended by R.1997 d.275, effective July 7, 1997.
 See: 29 N.J.R. 300(a), 29 N.J.R. 2849(a).
 Substantially amended (b); recodified former second sentence of (b) as (c) and amended; added (c)1 through 3, (d) and (e); and recodified former (c) through (i) as (f) through (l).
 Administrative correction.
 See: 29 N.J.R. 3260(a).
 In (c)1, in the second paragraph, inserted "shall be sent by certified mail. The cancellation".
 Amended by R.1998 d.497, effective October 5, 1998.
 See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
 In (f) and (h), changed N.J.A.C. references.
 Amended by R.2001 d.237, effective July 16, 2001.
 See: 32 N.J.R. 2207(a), 33 N.J.R. 2533(a).
 Rewrote (f) and (g).
 Amended by R.2004 d.130, effective April 5, 2004.
 See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).
 In (g), deleted "forthwith" following "shall secure" and inserted "within 24 hours" following "in writing".

Case Notes

Builder-developer of residential real estate or broker representing it may be liable for nondisclosure of off-site physical conditions known to it and unknown and not readily observable by purchaser if the existence of those conditions is of sufficient materiality to affect the habitability, use, or enjoyment of the property. *Strawn v. Canuso*, 140 N.J. 43, 657 A.2d 420 (1995).

Transaction where vendor and purchaser are not represented by counsel; broker required to identify when independent counsel needed; duty to inform either vendor or purchaser of that fact; same duty applies to title officer. In re Opinion No. 26 of Committee on Unauthorized Practice of Law, 139 N.J. 323, 654 A.2d 1344 (1995).

Purchasers of new homes stated cause of action against home builders and selling brokers for violation of Consumer Fraud Act. *Strawn v. Canuso*, 271 N.J.Super. 88, 638 A.2d 141 (A.D.1994), leave to appeal granted 137 N.J. 303, 645 A.2d 134, affirmed 140 N.J. 43, 657 A.2d 420.

Real Estate broker who receives a commission from a seller for negotiating a sale held statutorily barred from also earning a consideration from the buyer in the same transaction for assistance and obtaining the necessary financing. *Mortgage Bankers Ass'n of New Jersey v. New Jersey Real Estate Commission*, 200 N.J.Super. 584, 491 A.2d 1317 (App.Div.1985), reversed 102 N.J. 176, 506 A.2d 733 (1986).

Real estate agent held not liable for damages for any tortious interference with vendors' existing or prospective contracts where agent transmitted to vendor each bidder's offer on property as they were submitted to her, and secured for vendors a purchaser at the highest price obtainable through competitive bidding. *Melveney v. McCrane*, 138 N.J.Super. 456, 351 A.2d 385 (App.Div.1976).

Real estate broker's license; revocation for failure to file federal tax returns. N.J.S.A. 45:15-17. *New Jersey Real Estate Com'n v. McLeod*, 93 N.J.A.R.2d (REC) 9.

Failure to disclose material information; license of broker revoked; fines imposed on both broker and salesperson. *New Jersey Real Estate Commission v. Hunt*, 93 N.J.A.R.2d (REC) 1.

Broker's failure to pay commission after receiving advice of legality to pay it constituted bad faith; penalty imposed. *New Jersey Real Estate Commission v. Latour*, 92 N.J.A.R.2d (REC) 50.

Developer's failure to submit annual reports; registration revoked, fine imposed, order to cease and desist marketing of project issued. *New Jersey Real Estate Commission v. Cepco, Inc.*, 92 N.J.A.R.2d (REC) 49.

Misrepresentations, misappropriation of monies, unlawful taking of monies, and other violations, warranted broker/salesperson license revocation, restitution, and fine. *New Jersey Real Estate Commission v. Allen*, 92 N.J.A.R.2d (REC) 45.

Improprieties regarding deposit monies and mortgage application; suspension of broker's license and imposition of fine. *New Jersey Real Estate Commission v. Daniel Mullen and Holly Beach Realty, Inc.*, 92 N.J.A.R.2d (REC) 38.

Salespersons' misrepresentations regarding offer warranted license revocations and assessment of fines. *New Jersey Real Estate Commission v. Ahuja*, 92 N.J.A.R.2d (REC) 7.

11:5-6.5 Residential rental referral agencies

(a) Every person engaged in the business of referring, for a fee, prospective residential tenants to possible rental units shall be licensed in accordance with the New Jersey Real Estate License Act, N.J.S.A. 45:15-1 et seq., and shall comply with the provisions of this section in addition to the obligations imposed by the Act, and other rules contained in this chapter.

(b) Every licensee subject to this section shall enter into a written contract with the prospective tenant and give such person a copy of the contract. The contract shall accurately state:

1. The services to be performed by the agency;
2. The fee charged;
3. The date and duration of the contract;
4. The affirmative actions required of the prospective tenant to utilize the service;
5. The refund policy; and
6. A statement that the business is licensed by the New Jersey Real Estate Commission.

(c) No licensee shall advertise or refer to a prospective residential tenant to:

1. A non-existent address;
2. A property not verified as available as provided in (e) below;
3. A possible rental unit or location for which the licensee does not have the lessor's, or the duly authorized agent of the lessor's, oral or written consent to refer prospective tenants.

(d) Oral consent of the lessor or his duly authorized agent to refer prospective tenants to a possible rental unit or location shall be confirmed by the licensee in writing within 24 hours of the licensee's receipt of such consent.

“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.

“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, and any community trust or other trust device.

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”.

Amended by R.2009 d.222, effective July 6, 2009.

See: 40 N.J.R. 3944(a), 41 N.J.R. 2663(a).

Deleted definition “Time-share estates”; and in definition “Subdivision”, inserted “and” following “cooperative,” and deleted “and any form of time-sharing” following “device”.

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

1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking action 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) A petitioner shall submit a petition to the following address:

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

(c) A petitioner shall file a petition by forwarding an original and two copies to the Commission at the address indicated in (b) above.

(d) Any submission by a petitioner which is not in substantial compliance with the requirements specified above shall not be considered a petition for rulemaking requiring further Commission action pursuant to N.J.S.A. 52:14B-4(f).

(e) Within 30 days of receiving a petition for rulemaking the Commission shall review the same to ascertain if the submission is in substantial compliance with the requirements set forth above. In the event that the Commission determines that the submission is not in substantial compliance with those requirements, the Commission shall notify the petitioner of such noncompliance and of the particular deficiency or deficiencies in the submission upon which the Commission's determination was based. The Commission shall also advise the petitioner that any deficiencies may be corrected and that the corrected petition may be resubmitted for further consideration.

Recodified from N.J.A.C. 11:5-10.2 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.

11:5-10.7 Procedure for the consideration and disposition of rulemaking petitions

(a) Subsequent to making a determination that a petition is in substantial compliance with N.J.A.C. 11:5-10.6, the Commission shall file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register. The Commission's notice shall 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 that the petition was received.

(b) Within 60 days of receiving a petition which is in substantial compliance with N.J.A.C. 11:5-10.6, the Commission shall consider the petition and decide upon an action to be taken on the petition. During that time period the petitioner may be requested to attend a public meeting of the Commission and answer questions concerning the petition. The Commission shall 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 shall 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 shall either:

1. Deny the petition, and give a written statement of the Commission's reasons for such denial;
2. Grant the petition and file a notice of proposed rule or a notice of preproposal with the Office of Administrative Law within 90 days of granting the petition; or
3. Refer the matter for further deliberations, the nature of which shall be specified to the petitioner and in the notice of action and which deliberations shall be concluded within 90 days of referring the matter for further deliberations. Upon conclusion of such further deliberations, the Commission shall either deny the petition and provide a written statement of its reasons for such denial or grant the petition and initiate a rulemaking proceeding within 90 days.

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.
Recodified from N.J.A.C. 11:5-10.3 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.

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, 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.