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*The Commission Strongly Urges You
to Provide Copies of The REC News
to ALL licensees and Instructors..*



In providing brokerage services, licensees generally operate as fiduciaries of their clients. As such, among the legal duties they owe to their principals is the obligation to exercise due diligence in handling their business operations. For years now the potential problems which may result when early generation computers are confronted with the date "1/1/00" have been extensively publicized in print and broadcast media.

Brokers and individual licensees who utilize computers in discharging their duties should have heeded these reports and already taken the necessary steps to ensure that their clients will suffer no undue disruptions and their interests will not be adversely affected when the new millennium arrives. Certainly, the requirements imposed by the Commission's rules will remain in effect after the new year commences. Thus it can be maintained that, for several reasons brokers whose escrow or trust account ledgers and/or other records are computerized have a clear duty to provide for the continued viability of those systems after January 1. Other functions performed by many brokers are also fraught with the potential for significant problems. As a result, brokers who may be affected have similar duties to anticipate and avoid such problems. Among these are shore-area brokers whose records on seasonal rentals are computerized and property managers whose rental accounts are maintained electronically.

If you are unsure whether the steps you've taken are sufficient to preserve the integrity of your records and ensure the smooth transition of your computer systems to the next century or, worse yet, if to date you have not taken any steps to identify and prevent Y2K problems, TAKE ACTION NOW!! The "worst case scenario" is worse than a crash of one or more computer systems. It may also include civil liability and disciplinary action by the Commission.



If you haven't done so yet, you should **IMMEDIATELY** return to the Commission the previously supplied survey gathering the Social Security Numbers and Dates of Birth of yourself and all persons licensed with your firm. Notices were mailed in February to brokers who have not yet supplied this data on themselves. **IF YOU RECEIVED ONE OF THESE NOTICES, YOU SHOULD EITHER RETURN THE SURVEY FORM OR CALL ASSISTANT DIRECTOR THOMAS A. CARUSO NOW.** Forms can be mailed or FAXED to 609-292-0944. Mr. Caruso can be reached at 609-292-8291.

As amended, New Jersey's Child Support Enforcement Law provides that the Commission, and all other occupational licensing agencies, cannot issue a new or renewed license to a person who has not provided this information.



PROOF OF U.S. CITIZENSHIP OR LEGAL PRESENCE REQUIRED FOR LICENSURE

A recently enacted federal law (the "Personal Responsibility and Work Opportunity Act," 8 U.S.C. 1621) provides that persons who are not U.S. citizens or legally present in this country shall be ineligible for state and local public benefits. The definition of the term "public benefit" includes any professional license.

To comply with this law, the Commission is compelled to require that every applicant for an initial or renewed license produce documentation confirming their citizenship or legal presence in the U.S. Accordingly, as part of the process for renewing real estate licenses for the 1999-2001 license term brokers will be asked to confirm that they have been presented with documentation verifying the U.S. citizenship or legal presence of all persons making application to renew their licenses through that broker.

Acceptable documentation to establish U.S. citizenship includes:

1. A copy of a birth certificate evidencing birth within the U.S. or one of its territories or outlying possessions.
2. A certificate of U.S. birth abroad.
3. A U.S. Passport (expired or unexpired)
4. A Certificate of Naturalization
 - (N-550, N-57, N-578)
5. A Certificate of U.S. Citizenship
 - (N-560, N-561, N-645)
6. U.S. Citizen Identification Card
7. An individual Fee Register Receipt (Form G-711) showing that the person has made application for a new Naturalization or Citizenship paper (Form N-565)
8. Any other document which establishes a U.S. place of birth or indicates U.S. citizenship.

Acceptable Documents to Establish Legal Alien Status

An alien lawfully admitted for permanent residence in the United States must submit documentation under one of the following categories:

1. An alien lawfully admitted for permanent residence under the Immigration and Naturalization Act (INA). Evidence includes:

- **INS Form I-551 (Alien Registration Receipt Card, commonly known as a "green card") or**
- **Unexpired Temporary I-551 stamp in foreign passport or on INS Form I-94**

2. An alien who is granted asylum under Section 208 of the INA. Evidence includes:

- **INS Form I-94 annotated with stamp showing grant of asylum under Section 208 of the INA;**
- **INS Form I-688B (Employment Authorization Card) annotated "274a.12(a)(5)";**
- **INS Form I-766 (Employment Authorization Document) annotated "A5";**
- **Grant Letter from the Asylum Office of INS: or**
- **Order of an immigration judge granting asylum.**

3. A refugee admitted to the United States under Section 207 of the INA.

Evidence includes:

- **INS Form I-94 annotated with stamp showing admission under Section 207 of the INA;**
- **INS Form I-688B (Employment Authorization Card) annotated "274a.12(a)(3)";**
- **INS Form I-766 (Employment Authorization Document) annotated "A3"; or;**
- **INS Form I-571 (Refugee Travel Document).**

4. An Alien paroled into the United States for at least one year under Section 212(d)(5) of the INA. Evidence includes:

- **INS Form I-94 with stamp showing admission for at least one year under Section 212(d)(5) of the INA.**

5. An alien whose deportation is being withheld under Section 243(h) of the INA (as in effect immediately prior to September 30, 1996) or Section 241(b)(3) of the INA (as amended by Section 305(a) of Division C of Public Law 104-208). Evidence includes:

- **INS Form I-668B (Employment Authorization Card) annotated "274a.12(a)(10)";**
- **INS Form I-766 (Employment Authorization Document) annotated "A10"; or**
- **Order from an immigration judge showing deportation withheld under Section 243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under Section 241(b)(3) of the INA.**

6. An alien who is granted conditional entry under Section 203(a)(7) of the INA as in effect prior to April 1, 1980. Evidence includes:

- **INS Form I-94 with stamp showing admission under Section 203(a)(7) of the INA;**
- **INS Form I-668B (Employment Authorization Card) annotated "274a.12(a)(3)"; or**
- **INS Form I-766 (Employment Authorization Document) annotated "A3".**

7. An alien who is a Cuban or Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980). Evidence includes:

- **INS Form I-551 (Alien Registration Receipt Card, commonly known as a "green card") with the code CU6, CU7, or CH6;**
- **Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with code CU6 or CU7; or**
- **INS Form I-94 with stamp showing parole as "Cuban/Haitian Entrant" under Section 212(d)(5) of the INA.**

8. An alien paroled into the United States for less than one year under Section 212(d)(5) of the INA. Evidence includes:

INS Form I-94 showing this status.

9. An alien who has been declared a battered alien. Evidence includes:

- INS petition and supporting documentation.

It is not anticipated that there will be a need to include this inquiry on renewals in future years. However, to adequately prepare for the 1999-2001 renewal term brokers are strongly advised to commence the process of compelling the production of, and reviewing an appropriate document from their renewing licensees immediately. **Brokers will be required to certify to the Commission that they have done so on their renewal application form.** An inability to so certify will prevent your application from being processed and a knowingly false certification on the form will subject the broker to sanctions.



It's been two years since real estate licensees were last renewed. Consequently, the process of renewing the approximately 83,000 active real estate licenses is again in full swing.

To assist brokers in understanding the procedures, reprinted below is a summary of the 1999 renewal instructions. Broker are urged to make the required inquiries and document inspections, complete and sign the forms and return them to the Commission as soon as possible. The sooner the complete and correct application and fee payment are received by the Commission, the greater the chances the application will be processed smoothly and new licenses issued in a timely manner.

SUMMARY OF 1999 RENEWAL INSTRUCTIONS

- 1. RENEWAL FEES FOR THE 1999-2001 LICENSE TERM ARE \$50.00 FOR A SALEPERSON; \$100.00 FOR BROKER; \$100.00 BROKER-SALESPERSON; \$100.00 FOR CORPORATION OR PARTNERSHIP; AND \$50.00 FOR BRANCH OFFICE. SUBMIT ONLY ONE MONEY ORDER OR BROKER BUSINESS ACCOUNT CHECK MADE PAYABLE TO THE STATE TREASURER OF NEW JERSEY.**
- 2. BROKERS MUST VERIFY THAT THE RENEWAL APPLICATION CORRECTLY IDENTIFIES ALL PERSONS WHOSE LICENSES ARE TO BE RENEWED. INDIVIDUAL LICENSEES HAVE THE SAME OBLIGATION TO CONFIRM THAT THEIR LICENSE IS BEING RENEWED.**
- 3. BROKERS MUST NOTIFY IN WRITING ANY LICENSEE WHOSE LICENSE THEY HAVE NOT RENEWED. THE BROKER MUST ALSO DELETE THE LICENSEE'S NAME FROM THE RENEWAL LIST AS INSTRUCTED BELOW.**
- 4. EACH EMPLOYING BROKER OR BROKER OF RECORD MUST ASK EVERY RENEWING LICENSEE ALL QUESTIONS IN PART II OF THE FORM.**
- 5. RENEWAL FEES MUST BE PAID BY ONE MONEY ORDER OR BUSINESS ACCOUNT CHECK OF THE BROKER. PERSONAL CHECKS WILL NOT BE ACCEPTED AND WILL RESULT IN ALL SUBMISSIONS BEING RETURNED TO THE SENDER. PENALTIES ARE ASSESSED IF CHECKS ARE WRITTEN ON INSUFFICIENT FUNDS.**
- 6. DO NOT ADD THE NAME OF ANY LICENSEE TO THE RENEWAL LIST. COMMUNICATE WITH MARY VARGAS AT 609-292-3706 OR VIA MAIL TO THE COMMISSION FOR FURTHER INFORMATION.**

FAILURE TO COMPLY WITH THE ABOVE WILL CAUSE THE COMMISSION TO REJECT YOUR RENEWAL APPLICATION

- 7. TO EXPEDITE YOUR RENEWALS, PLEASE SUBMIT YOUR RENEWAL FORMS AND LICENSE RENEWAL FEES AS QUICKLY AS POSSIBLE.**

PLEASE MARK "RENEWAL" ON FACE OF ENVELOPE

- **ON ALL RENEWAL APPLICATIONS RECEIVED AFTER JULY 1, 1999, THE COMMISSION'S RECORDS WILL REFLECT A BREAK IN LICENSURE BETWEEN JUNE 30, 1999 AND THE DATE THE RENEWAL IS RECEIVED. BY LAW, YOU CANNOT SUE FOR COMPENSATION EARNED UNLESS YOU CAN PROVE THAT YOU WERE DULY LICENSED WHEN THE ALLEDGED CAUSE OF ACTION AROSE. FURTHERMORE, YOU ARE SUBJECT TO FINES IF YOU ENGAGE IN THE BROKERAGE BUSINESS AT A TIME WHEN YOU WERE NOT LICENSED TO DO SO. THE FINES MAY RANGE UP TO \$5,000.00 FOR THE FIRST VIOLATION AND UP TO \$10,000.00 FOR SUBSEQUENT VIOLATIONS.**
- **FOR PERSONS WHO PASSED THEIR EXAM IN APRIL THRU JUNE 1999 AND WHO DO NOT WANT THEIR ORIGINAL LICENSE TO BE EFFECTIVE PRIOR TO JULY 1, 1999, BROKERS SHOULD DATE THE TEMPORARY AUTHORIZATION AND THE PASS NOTICE/LICENSE APPLICATION JULY 1, 1999. BY DOING SO, SUCH A**

LICENSEE WILL SAVE A RENEWAL FEE OF \$50.00 FOR SALESPERSON OR \$100.00 FOR BROKER-SALESPERSON. HOWEVER, IN DECIDING WHETHER TO DELAY THE EFFECTIVE DATE OF AN APPLICATION UNTIL JULY 1, 1999, CONSIDERATION MUST BE GIVEN TO N.J.A.C. 11:5-3.5 AND 11:5-3.8. THESE RULES REQUIRE CANDIDATES TO APPLY FOR AND REQUEST THE ISSUANCE OF THEIR LICENSE WITHIN ONE YEAR OF THE DATE ON WHICH THEY COMPLETED THEIR PRELICENSURE EDUCATION COURSE(S).

- o **THE PASS NOTICES FOR NEW LICENSEES WHO WISH TO BE LICENSED PRIOR TO JULY 1, 1999 MUST BE SIGNED AND DATED BY THE BROKER AND IMMEDIATELY FORWARDED TO THE COMMISSION, ALONG WITH THE REGULAR FEE FOR A NEW SALESPERSON'S OR BROKER-SALESPERSON'S LICENSE. SUCH PERSONS WILL BE CHARGED RENEWAL FEES AND INCLUDED ON A SUPPLEMENTAL RENEWAL FORM SUPPLIED BY THE COMMISSION AT A LATER DATE.**



In 1998 the Ohio Real Estate Commission fined two licensees for misrepresentations in their advertisements. What was unique about the case was that the advertisements were disseminated through each licensee's website via the Internet.

The key fact in the cases was that a listing continued to be advertised on both websites for some seven months after it had expired. In addition, the website of the licensee who had not taken the listing and who was not licensed with the listing firm, did not indicate that the property was listed with another broker when information about the property, including a photo, the list price, number of bedrooms and baths, other features, and its location was displayed. The Ohio Commission fined the listing salesperson \$1,000.00 for continuing to advertise the expired listing. The other salesperson was fined \$1,500.00 for that offense, and the additional violation of advertising another broker's listing as if it were his own.

In addition to the general statutory prohibition against misrepresentations, in New Jersey we too have a rule that addresses the situation where one licensee advertises the exclusive listing of another broker. N.J.A.C. 11:5-6.1(n) provides:

(n) No licensee shall publish or cause to be published any advertisement or place any sign which makes reference to the availability of a specific property which is exclusively listed for sale by another broker unless the licensee obtains the prior written consent of the broker with whom the property is exclusively listed. Such consent shall not be given or withheld by the listing broker without the knowledge of the owner.

The Commission is currently considering amending this rule to address questions raised by the common Internet practice of licensees with websites establishing "links" to the websites of other brokers, or general real estate information sites such as Realtor.com and Microsoft's Home Advisor, and "framing" the information in such sites. "Framing" is a technique a website creator or designer uses to separate regions on a website. Often, the side or top frames are used to advertise services or provide a menu of features within the site. The center or largest frame can be used to display information contained in another site by "linking" to it. The question of whether Rule 6.1(n) applies to the "framing" of a list of listings found in another licensee's website is under review. However, a situation such as that which occurred in Ohio, where detailed information about a listing and a photograph were supplied without attribution to the listing broker, clearly would trigger application of the rule.

Licensees who maintain a webpage or website or who, directly or through their MLS, place their listings on a general real estate information site such as REALTOR.com are urged to use common sense when posting listings on the Internet. Given the potential for any unprotected site to be accessed by others who maintain a presence on the web, confirming an owner's authorization to have their listing posted on a website appears to be a logical and prudent step to take to ensure you are marketing a property in accordance with an owner's wishes. While giving a property the broadest possible exposure is generally considered desirable, in some exceptional situations owners may prefer that their listing not be posted on a website. The potential for operators of other websites to link to the broker's website should be explained to the seller. If the seller then authorizes the advertising of their property on the Internet, and the listing broker (or salesperson) proceeds to do so having taken no steps to prevent others from linking to his or her website, or places the listing on a general site like Realtor.com either through an MLS or by directly downloading the listing to such a site, it can be reasonably concluded that the intent of Rule 6.1(n) with respect to securing the seller's and listing broker's authorization for other licensees to display the listing information through their websites has been realized. However this does not mean that another licensee can misrepresent that the property is listed by them or with their firm when in reality it is not. Licensees who maintain websites have various means available to prevent the "misappropriation" of their data. One of these is to have their website designer programmatically force a page to open in it's own frame, thereby not displaying the frames of others when a consumer accesses a licensee's site via a link.

Licensees are reminded that the Commission rules and license law provisions applicable to other advertising media apply to the Internet as well. With regard to ads by individual agents, recent amendments to Rule 11:5-6.1 require the brokerage firm's name

to appear in larger print, or be displayed in a more prominent manner, than that of the licensee who placed the advertisement. With respect to websites, if an individual licensee's site is not linked to the website of the broker, the home page of that site must contain the phone number, and may contain the street address of the office from which the individual works. If a licensee's website is linked to the broker's, it must clearly indicate how to make that link in wording as large as the predominant size wording on the homepage.

Finally, as in all advertising, any information disseminated by licensees via the Internet must be truthful and accurate. Ample opportunity exists to have websites display many attractive features, but licensees must control the content and visual impact of their advertising and are responsible for keeping the information on the site up to date. As occurred in Ohio, misrepresentation violations will be prosecuted in cases where stale information remains, or erroneous information is posted on the websites of licensees.

(Diane K. Disbrow, broker-salesperson with and co-owner of Bayshore Agency in Ocean County contributed to this article.)



PERMISSABLE AND PROHIBITED ACTIONS OF UNLICENSED ASSISTANTS AND SUPPORT STAFF

Recently the Commission had occasion to review actions which unlicensed persons in the employ of brokers or salespersons can and can't do, given the licensure requirements imposed by the license law at N.J.S.A. 45:15-1 and 15-3. The Commission reexamined the list of "do's and don'ts" which was published, with its approval, in the 3rd Quarter 1992 edition of the REC News. It was determined that all of the guidelines mentioned in that article were correct and should continue to be observed. The article stated the parameters in the following manner:

While the following lists do not define every permitted or prohibited activity, they should offer reasonable guidelines for licensees to follow. An unlicensed assistant or secretary CAN:

- o Answer phones and forward calls.
- o Process and submit listings and changes to an MLS system.
- o Follow-up on loan applications after contracts have been fully executed.
- o Set up file procedures, track and secure documents, etc.
- o Have keys made for company listings at the direction of a licensee.
- o Write ads for approval of a licensee, place ads as directed.
- o Keep records of, and deposit payments of earnest money, security deposits and rent.
- o Type contract forms for approval by a licensee.
- o Monitor files and report findings to a licensee.
- o Compute commission checks.
- o Place signs on properties.
- o Order items or inspections as directed by a licensee.
- o Prepare flyers and promotional material for approval by a licensee.
- o Act as a courier for delivering documents or picking up keys etc. (Licensee is responsible for delivery of contracts or closing materials). Schedule appointments with the seller or seller's agent in order for a licensee to show listed property.

An unlicensed assistant or secretary CANNOT:

- o Make cold calls by telephone or in person to potential listers, purchasers, tenants or landlords.
- o In the absence of a licensee, host open houses, booths at home shows, malls or fairs, or distribute promotional material at such locations.
- o Prepare promotional material or ads without the review and approval of a licensee.
- o Show property.
- o Answer any questions on listings, title, financing or closings from either the public or other licensees.
- o Discuss or explain a contract, listing, lease agreement or other real estate document with anyone outside the firm.
- o Work as a licensee/secretary in one firm and do real estate-related activities with that firm, while licensed with another firm.
- o Negotiate or agree to any commission, commission split, management fee or referral fee on behalf of a licensee.

In addition, the compensation of a personal assistant or secretary should not be based on the success of their activity, i.e. a percentage of commission, but should be directly related to the duties the non-licensee is performing. If a licensee is using another licensee to act as their personal assistant/secretary, both should be aware that they are employees or independent contractors of their broker and compensation must be paid by the broker.

All licensees are cautioned to research and adhere to Federal and State Income Tax and Employment requirements.

In the course of revisiting this issue the Commission considered additional tasks performed by unlicensed persons which were not previously addressed. These included the placing of routine calls on late rent payments and being present at inspections for security reasons.

Pursuant to N.J.S.A. 45:15-3, the actions which require licensure as a real estate broker include "collecting, or offering or attempting to collect rent for the use of real estate." On the basis of this statutory provision the Commission concluded that only licensed individuals may make telephone calls for the purpose of collecting or attempting to collect late rent payments.

With regard to inspections, because it is highly likely that during the course of an inspection questions will be raised by the prospective purchaser and/or the owner of the property which only a licensee would be qualified to answer, it was determined that an unlicensed individual should not be present during such inspections in the absence of a licensee. There would clearly be no impropriety where, for security reasons, a licensed individual requested their unlicensed assistant to accompany them to an inspection.

A final issue reviewed involved to what extent, if at all, unlicensed persons present at open houses may respond to questions that may be answered with objective responses gleaned from preprinted objective information, for example, how many bedrooms or bathrooms a home has. The 1992 list of functions which unlicensed individuals may not perform contained the following item: "Answer any questions on listings, title, financing or closings from either the public or licensees." (emphasis added). It remains the position of the Commission that unlicensed individuals should not answer any questions on listings, even if the questions only inquire about objective information which is contained in preprinted material about the listed property. It is helpful to recall that unlicensed persons may not host open houses in the absence of a licensee. Therefore, the unlicensed individual can refer the person making the inquiry to the written material wherein the answer is contained, or to the licensee in attendance.

Adhering to these guidelines will enable licensees and unlicensed individuals to avoid potential violations.



CLARIFICATION ON HOME INSPECTOR LICENSES

An article in the previous edition of the REC News indicated that, based upon legislation enacted in 1998, home inspectors in New Jersey were required to be licensed by the Board of Professional Engineers and Land Surveyors in the Division of Consumer Affairs. However, because that Board has not yet adopted implementing regulations the licensure requirement has not yet gone into effect. The Commission staff regrets any confusion which may have resulted from the prior article.

As the Board moves forward with the rulemaking process, the Commission will provide updates on the status of the licensing of home inspectors in future editions.



REFERRAL FEE REBATE PROGRAMS PROHIBITED

In the last year or so the Commission has responded to several inquiries about the legality of New Jersey brokers paying referral fees to non-New Jersey brokers under the following circumstances:

The out-of-state broker refers a prospect to a New Jersey firm after having made a commitment to pay to the prospect at or after closing a portion of the referral fee it will receive on the transaction. The New Jersey firm provides brokerage services to the prospect which result in a transaction closing and a commission being paid to the New Jersey broker. A portion of that commission is then paid to the non-New Jersey broker as a referral fee. A portion of that fee is then paid by the referring firm to the client or customer of the New Jersey broker or to that individual's employer.

All New Jersey licensees, and particularly all brokers whose business includes assisting relocating buyers, should be aware that they cannot participate in such a referral program. N.J.S.A. 45:15-17(k) prohibits New Jersey licensees from "paying any rebate, profit, compensation or commission to any unlicensed person." The Commission has informally considered this question and concluded that licensees cannot do indirectly what the license law prohibits them from doing directly.

This position is consistent with that taken by the Mississippi Real Estate Commission on a similar program which, for a time, was

implemented in that state. After it had enacted a rule explicitly prohibiting Mississippi brokers from paying such referral fees, its action was challenged in the U.S. District Court for the Southern District of Mississippi. The rule was based upon a provision in the Mississippi Real Estate licensing law which is almost identical to N.J.S.A. 45:15-17(k). Both the rule and statute were challenged on the grounds that they were preempted by federal law and violated the Commerce Clause of the United States Constitution.

In its ruling in PHH Real Estate Services Corp. v. Mississippi Real Estate Commission the District Court upheld the validity of the law and the rule, and affirmed the Commission's application of them to preclude Mississippi brokers from participating in such referral fee programs.

New Jersey licensees should always be cognizant of the restrictions on their operations imposed by the law. In addition, it must be recognized that when applying laws and rules which are regulatory in nature, courts and agencies will attempt through their decisions to implement the intent of the provision being applied, and may not be bound by a strict and literal reading of the text.



STATUTE OF FRAUDS NOW APPLICABLE TO THE BROKERING OF ALL LEASES

New Jersey's Statute of Frauds (N.J.S.A. 25:1-1 et seq.) was amended in 1996. As amended the law now provides that, in order for a broker to successfully sue for a commission on a lease transaction, the broker's authorization to act as an agent or broker for a principal must be given or recognized in a writing signed by the principal or their authorized agent before or after the transfer of the leasehold interest. The writing must also state the amount or rate of the commission. **THE REQUIREMENT FOR SUCH A WRITING APPLIES REGARDLESS OF THE LENGTH OF THE TERM OF THE LEASEHOLD INTEREST BEING TRANSFERRED.**

The revised statute, like its predecessor, provides a means by which the broker can satisfy the written authorization requirement in circumstances where the broker initially relies on an oral agreement. Section 7.(d) of the amended law provides that:

A broker who acts pursuant to an oral agreement is entitled to a commission only if:

- (1) within five days after making the oral agreement and before the transfer or sale, the broker serves the principal with a written notice which states that its terms are those of the prior oral agreement including the rate or amount of commission to be paid; and
- (2) before the principal serves the broker with a written rejection of the oral agreement, the broker either effects the transfer or sale or, in good faith, enters into negotiations with a prospective party who later effects the transfer or sale.

All notices must be served either personally or by registered or certified mail.

All licensees whose firms provide brokerage services on rental transactions of any kind should be cognizant of, and adhere to the requirements imposed by the Statute of Frauds.



Formal Disciplinary Actions (Dec., 1998-Mar 1999)

Judith Kelly Dempsey, salesperson (inactive), Morris County, December 1, 1998. At a full hearing the Commission revoked Ms. Dempsey's eligibility to hold a real estate license for a period of five years pursuant to N.J.S.A. 45:15-19.1 because she had been convicted of three counts of theft. The Commission further imposed a fine of \$2,000 for violations of N.J.S.A. 45:15-17(a), (e), (h) and (n) because she not only failed to report the convictions to the Commission, but when asked on a salesperson's license application whether or not she had been convicted of a criminal offense, she answered in the negative.

William R. Grayson, salesperson (inactive), Gloucester County. On January 12, 1999 after a full hearing, the Commission found Mr. Grayson guilty of violations of N.J.S.A. 45:15-1 and 45:15-3, unlicensed activity, N.J.S.A. 45:15-17(c), (d), (e), (f) and (o). The Commission revoked Mr. Grayson's eligibility to hold a real estate license and imposed a fine of \$25,000. He was also ordered to make restitution to several victims. At a time when Mr. Grayson was not licensed with an employing broker, he represented himself to be a licensed real estate salesperson, obtained deposit monies on real estate transactions and converted those deposit monies to his own use.

John G. Bocchino, salesperson, Mercer County. On February 23, 1999, the Commission approved a settlement whereby Mr. Bocchino admitted to violations of N.J.S.A. 45:15-19.1 and N.J.S.A. 45:15-17(a) and agreed to the revocation of his license until

November 12, 2003 and to pay a \$1,000 fine for making a substantial misrepresentation to the Commission regarding his criminal conviction on his application for licensure.

Royal West Properties, Inc., registered out of state developer. On February 23, 1999, the Commission approved a settlement whereby Royal West agreed to a six month suspension of its registration and agreed to pay a \$7,500 fine for improperly marketing its properties in New Jersey at a time when its registration was not in effect.

Evan Linchon, broker, Bergen County and Ichiro Makino, salesperson, Bergen County. On January 12, 1999 after a full hearing, the Commission revoked Mr. Linchon's license for five years, barred him from obtaining an instructor's license and imposed a fine of \$10,000 for violations of N.J.S.A. 45:15-17(a), (c), (e) and (n) as well as N.J.A.C. 11:5-4.4. Mr. Makino's license was revoked and he was declared to be ineligible to apply for a license until July 1, 2001. Mr. Linchon lied on his application for a broker's license by indicating that he was not licensed in another state when he was in fact licensed in New York, did not reveal that his license in New York had been suspended in 1986, attempted to procure a real estate instructor's license by fraud, misrepresentation and deceit by cheating on the examination, and impersonated Mr. Makino during an examination to assist Mr. Makino in obtaining a salesperson's license. Mr. Linchon also failed to maintain a bona fide real estate broker's office in New Jersey. Mr. Makino obtained a real estate license by fraud because he allowed Mr. Linchon to take the salesperson's licensing examination in his place.

Peter Walton, salesperson (inactive), Monmouth County. On January 5, 1999, the Commission approved a settlement whereby Mr. Walton agreed to surrender his license with prejudice in lieu of prosecution on charges alleging a violation of N.J.S.A. 45:15-17(h).

Donna M. Cialella, salesperson, Burlington County. On February 9, 1999, after a full hearing at which Ms. Cialella did not appear, the Commission found her guilty of N.J.S.A. 45:15-17(a), (h) and (n). The Commission also found that pursuant to N.J.S.A. 45:15-9, Ms. Cialella lacked the requisite good character, honesty, integrity and trustworthiness needed to qualify to hold a salesperson's license. Prior to her applying for a salesperson's license, Ms. Cialella had been convicted of theft. Ms. Cialella made a substantial misrepresentation to the Commission on her license application regarding her criminal conviction. The Commission revoked Ms. Cialella's license for five years and imposed a fine of \$5,000.

Michael A. Uhde, broker, Good Neighbor/Uhde Realty, Essex County. On March 2, 1999, the Commission issued an Order temporarily suspending the licenses of Michael Uhde and Good Neighbor/Uhde Realty for violations of N.J.S.A. 45:15-17(d) and (o). On March 23, 1999, the Commission permanently revoked the licenses of Michael Uhde and Good Neighbor/Uhde Realty and imposed a fine of \$65,000. The Commission further ordered that the Essex County Prosecutor be notified of the details of the Commission's case against Mr. Uhde and that his bank accounts be frozen. Mr. Uhde collected escrow deposits totaling over \$60,000 from purchasers of real estate in numerous transactions and misappropriated them to his own use. Mr. Uhde did not comply with subpoenas that were served on him by the Commission in the course of the investigation. Uhde was also found to be in violation of N.J.S.A. 45:15-17(e). (See related article that follows.)



\$65,000 FINE AND LIFETIME REVOCATION ORDERED FOR MICHAEL A. UHDE AND GOOD NEIGHBOR/UHDE REALTY

In March, the Commission acted swiftly to temporarily suspend, and then to revoke the real estate broker licenses of Michael A. Uhde and Good Neighbor/Uhde Realty, L.L.C. This action became necessary after the Commission received several complaints alleging that Mr. Uhde had taken escrow deposit monies and either failed to turn over those deposits at closing or failed to return the money to the buyers when their contracts were cancelled. Pursuant to N.J.S.A. 45:15-17.1, the Commission temporarily suspended the licenses after a hearing on March 2, 1999 at which proof was produced that at least \$36,000 in deposit monies was missing from the escrow account of Good Neighbor/Uhde Realty. After additional investigation, that figure grew to \$60,000. On March 23, 1999, the Commission held a full hearing on the charges and permanently revoked Uhde's license and imposed a \$65,000 fine. Uhde was found to be in violation of N.J.S.A. 45:15-17(o), commingling escrow funds and 45:15-17(d), failing to account for or pay over escrow funds. Uhde failed to appear at the hearing. With the Real Estate Guaranty Fund at risk, the Commission also ordered the Staff to notify the Essex County Prosecutor of its findings in the case.

The Commission's investigation revealed that Uhde had "churned" the escrow account over at least a two year period of time. That is, as monies were deposited on real estate transactions, almost immediately they were withdrawn to cover Uhde's other expenses and obligations. Withdrawals were sometimes made with an ATM card. Uhde also deposited commission checks into the escrow account in an attempt to cover the shortages. When he was no longer able to cover his actions by reimbursing people with the proceeds of newly received deposits, those buyers filed complaints with the Commission. Because Uhde ignored subpoenas served on him ordering the production of his business records, Commission investigators subpoenaed records directly from the banking institutions involved and reconstructed the transactions. The Commissioners took note of those facts at the hearing and also imposed sanctions on Uhde for his failure to cooperate with the investigation. Uhde had also failed to notify the Commission that he

closed the firm's escrow account in 1998 and was using a commercial checking account for deposit monies on real estate transactions.

The Commission and Staff deem such cases a top priority and, to the extent permitted by law, act with all due speed to close the offices of unscrupulous brokers so that harm to the public is minimized. However, this case brings out a point for all salespersons to note. For several months, salespersons in the Good Neighbor/Uhde office had difficulty collecting their commissions from Uhde, and were aware that calls were coming into the office on their deals from disgruntled buyers requesting that their deposit money be returned. Yet no one filed a complaint with, or even made a call to the Commission! A pattern of undue delay in a broker meeting his or her financial obligations should send up red flags of warning to salespersons and should be immediately reported to the Commission. (See article on this scenario in the [Summer, 1998 REC News](#) entitled "An Ounce of Prevention - Must Reading for all Salespersons".)



CHANGING BROKERS?

CONSIDER THIS

When a licensed individual moves their affiliation from one broker to another, the move can be accomplished in one of two ways. How it happens will determine when the licensee may legally commence brokerage activity through the new broker.

If a salesperson or broker-salesperson resigns or is terminated by his former broker and that broker delivers his license, properly endorsed for termination, to him, he may then take the license document to his new broker. Upon that person signing and dating the "New Broker" Section on the back of the license, the individual is authorized, pursuant to N.J.A.C. 11:5-3.11, to engage in brokerage activity for and through that broker for 45 days. After signing the back of the license, the new broker is to immediately submit it with a \$25.00 transfer fee to the Commission. If that is done in the proper form and on a timely basis, the new license will be issued and mailed long before the 45 day period of temporary authorization expires. If the license is not received by the broker within that time frame, the person's legal authority to act as a licensee will expire. It is up to BOTH the licensee and the broker to monitor this time frame and to follow up with the Commission staff if the license is not received on a timely basis.

If a resigning or terminated person does not obtain their license, properly endorsed for termination, from their former broker, **THEY CANNOT WORK** as a salesperson or broker-salesperson until their license is reinstated with another broker. Pursuant to N.J.S.A. 45:15-14, a terminated licensee is entitled to receive from their former broker written notice of the termination and of its effective date. A resigning licensee must give written notice of their resignation and of its effective date to the broker. In either case if thereafter the license is not given to the departing licensee the broker must deliver the license, properly endorsed for termination, to the Commission. The license must be delivered within 5 business days of the effective date of the resignation or termination and the broker must simultaneously notify the licensee in writing of having sent the license to the Commission.

Unlike the case where a transfer application on the back of a license is completed and submitted for processing, in this case no temporary authorization to work is conferred upon the person whose terminated license was returned to the Commission by their former broker. In order to have their license reissued the resigning or terminated licensee and their new broker must submit a reinstatement application with the required fee to the Commission. **HOWEVER, THE MERE SUBMISSION OF A REINSTATEMENT APPLICATION THROUGH A NEW BROKER DOES NOT CONFER ANY AUTHORITY ON THE LICENSEE TO COMMENCE OR CONTINUE BROKERAGE ACTIVITY.** It is only upon the issuance of the reinstated license to the new broker that the individual may again legally engage in activity as a licensee.

All individual licensees, regardless of the type or level of license they hold, should be familiar with the license transfer and reinstatement procedures, and with the difference between them vis-a-vis when they can legally commence operations through a new employing broker.



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