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CHRISTINE TODD WHITMAN, Governor

ELIZABETH E. RANDALL, Commissioner of Banking and Insurance

REAL ESTATE COMMISSION

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



New Jersey Real Estate Commission News

Fall, 1996



MESSAGE FROM THE GOVERNOR

1996 was a banner year for the Real Estate industry in New Jersey and the New Jersey Real Estate Commission.

Like many sectors of New Jersey's economy, the housing market is on an upswing. During the second quarter of 1996 sales of single family homes rose 12.6% climbing to 44,700 actual units sold. This is the highest level since 1987. A strong real estate market bodes well not only for real estate licensees and home owners but also for New Jersey's overall economy.

Upon becoming Governor, I declared that New Jersey was open for business. I believe government has a responsibility to insure that its policies encourage business development. That is why I was pleased to sign legislation sponsored by Assemblymen Russo and Cohen creating a two year license for real estate brokers and salespersons. Biennial licensing will cut down on the amount of work and time expended by brokers and salespersons when preparing for license renewals.

To truly be open for business, government must listen carefully to its constituents. Under the leadership of Director Gloria Decker and Deputy Director Gail Iammatteo, the Real Estate Commission has undertaken several initiatives to open dialogue and improve communication. In one of her first acts as Director, Ms. Decker formed a "Directors Task Force" to meet periodically for round table discussions on matters which impact on the real estate industry.

But, you don't have to travel to Trenton to have your voice heard. The Real Estate Commission is now on-line. You can access the Real Estate Commission through the Internet address of the New Jersey Department of Banking and Insurance, which is <http://www.naic.org/nj/NJHOMEPEG.HTML> and then following the prompts for the Real Estate Commission.

This administration is committed to open government. I hope you will take the opportunity to share your views with us.

Christine Todd Whitman

Governor

RELIEF ON THE WAY FOR COASTAL PURCHASERS OF HOMEOWNERS INSURANCE

The governing committee of the Windstorm Market Assistance Program (WindMAP), together with Banking and Insurance Commissioner Elizabeth Randall, recently announced that 22 insurance companies, which collectively insure 70 percent of the state's homeowners, are voluntarily participating in an insurance program designed to assist homeowners in New Jersey coastal areas to obtain the coverage they need.

"The governing committee has been working with the industry and the department to encourage insurance companies to voluntarily share the risk of insuring coastal properties," said Leonard Guarini, co-chair of the governing committee.

WindMAP will be offered in 92 coastal zip codes to homeowners whose policies have been canceled or not renewed, or who need to obtain a policy for a newly acquired coastal property. The program is not open to those who currently have a regular homeowners policy.

WindMAP insurers will charge their usual premiums, but are permitted to apply a minimum \$1,000 deductible to any property damage claim instead of the usual \$250 or \$500.

Under the program, at least three participating companies will review each eligible WindMAP application. If none agrees to provide coverage, the consumer then will be referred to the FAIR Plan--a residual market, or insurer of last resort--to obtain a policy. The FAIR Plan offers policies only for basic property damage rather than the more comprehensive voluntary market policy which typically includes replacement cost, theft and liability.

This is a key change to the current coastal homeowners market, where there has been no mechanism to request that the insurance industry "reconsider" an application that was declined in the open market.

"With the implementation of this program, coastal homeowners will be given a second chance to find voluntary coverage," said Commissioner Randall.

The program will allow those coastal homeowners who are in the FAIR Plan a second chance to get back into the voluntary market, as they renew their policies.

Randall stressed her commitment to homeowners. "We will monitor the progress of the WindMAP and I will not hesitate to recommend alternatives if we find that insurers are not doing their fair share," she said.

WindMAP applications will be accepted beginning in January 1997 and will be available through insurance agents or brokers or by contacting the WindMAP Administrator directly. The Administrator can be reached at:

**New Jersey Insurance Underwriting Association
Attn: WindMAP Administrator
744 Broad Street
Newark, New Jersey 07102-3381
or by calling 1-201-622-3838**

"Shopping for insurance is always important and homeowners should allow enough time to be prepared at renewal time or for a closing. WindMAP adds additional time to the application review process which should be taken into account when planning a homeowner insurance purchase," co-chair Len Guarini said.

**HAPPY NEW YEAR TO ALL
FROM THE MEMBERS AND STAFF OF
THE NEW JERSEY REAL ESTATE COMMISSION**

COMMISSION ADOPTS RULE AMENDMENTS

On January 21, 1997 amendments to the Commission's rules on advertising and free offerings went into effect. On the same date changes addressing the brokering of resale transactions involving mobile or manufactured homes were made to the Commission's rules on licensees' obligations to the public and the syllabi for prelicensure education courses.

The rules, as revised, now read as follows.

11:5-1.15 -- Advertising Rules

(a) through (k) - No change

(l) Any home warranty offer contained in any advertisement shall comply with all Federal and State warranty legislation, including the New Home Warranty and Builder's Registration Act, c.467, L.1977, N.J.S.A. 46:3B-1, et seq., and the Magnuson-Moss Warranty Act, P.L. 93-637, 15 U.S.C. 2301 et seq. Such advertising shall specify clearly whether the warranty is by inspection or non-inspection of the premises, whether the warranty is mandatory, and whether the purchaser or the seller is responsible for payment for the warranty. No advertisement shall contain an offer for a warranty unless a warranty may be secured for the property being advertised.

(m) Except as herein provided, no free offering, including the offering of a free appraisal, shall be made in any advertisement or promotional material. "Appraisal" as used herein is given its technical meaning as a complete study and analysis by a specialist or expert to ascertain fair market value by using a process in which all factors that would fix price in the market place must be considered.

1. Nothing herein shall be construed as prohibiting the use of such words as "included" or "included in the purchase price" in reference to items included by the owner in the sale of any real property or interest therein.
2. Free offerings ancillary to the real estate transaction process and that are informational or educational in nature, including but not limited to offerings of market studies or seminars, and offerings in the nature of promotional items of token value, such as calendars or pens, are not prohibited. A market study is not an appraisal as herein defined.

i. The prohibition upon licensees from making free offerings of items of more than token value applies to all offerings which confer upon consumers a monetary benefit of a value of more than \$5.00 retail. Examples of prohibited free offerings include free or subsidized homeowners warranties, property, radon and pest inspections, surveys, mortgage fees and other costs typically incurred by parties to real estate transactions.

(n) - No change.

11:5-1.23 Obligations of licensees to the public and to each other

(a) - (h) (No change.)

(i) 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 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).

11:5-1.27 Education requirements for salespersons and brokers in making application for licensure examination

(a) - (e) (No change.)

(f) The salesperson's course of 75 hours shall include:

1-8. (No change.)

9. Other state, federal and municipal laws and regulations, including N.J.S.A. 17:16C-1 et seq., 39:1-1 et seq., 46:8-43 et seq. and 46:8C-1 et seq. as they pertain to the resale of mobile and manufactured housing units which bear or are required to bear motor vehicle titles (5 hours);

10-11. (No change.)

(g) 1.i. through xiv. (No change)

xv. Laws: Federal Fair Housing and the New Jersey Law Against Discrimination, New Jersey "Mount Laurel" requirements, RESPA, Truth in Lending, rent control, New Jersey Land Use Law, New Jersey's Truth in Renting Law, and the provisions in that law, in N.J.S.A. 17:16C-1 et seq., in N.J.S.A. 39:1-1 et seq. and in N.J.S.A. 46:8C-1 et seq. which pertain to the resale of mobile and manufactured housing units which bear or are required to bear motor vehicle titles (total three hours).

xvi. (No change.)

(h)-(j) (No change.)

RULE AMENDMENTS PROPOSED

On January 21, 1997 the Commission formally proposed amendments to several rules, and two new rules. One of the new rules establishes the start and end dates of the two year license terms which, as the result of recently enacted legislation, will apply to broker, broker-salesperson, salesperson and branch office licenses commencing July 1, 1997.

The other proposed new rule would replace the Commission's rule on the collection of social security numbers. Again, due to a recent act of the legislature, the disclosure of those numbers is now mandatory for child support enforcement purposes. Consequently, it is necessary to repeal the current rule and promulgate a new rule which is consistent with the new law.

Changes to Rule 11:5-1.23 are also being proposed. These amendments address licensees' obligations to disclose various types of information including off-site conditions, social conditions and psychological impairments, and information which may be obtainable pursuant to "Megan's Law."

Three other proposed rule amendments address the marketing practices of registrants under the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq. It has become increasingly common for some registrants to advertise in languages other than English. The proposed amendments would require registrants who do so to make available to prospective purchasers Public Offering Statements and Contracts translated into whatever languages they advertise in.

With the exception of the proposed amendments to N.J.A.C. 11:5-1.23, the full text of the proposals follow (additions to current rules are indicated in boldface thus; deletions to current rules are indicated in brackets {thus}.)

N.J.A.C. 11:5-1.4A - 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.

N.J.A.C. 11:5-1.44 {Collection of Social Security number of licensees

(a) All application forms for licensure or relicensure, including the forms utilized to register for a license examination, shall include a request that each applicant voluntarily submit his or her Social Security number to the Commission. The Commission shall include on all forms containing that request the following information:

- 1. That disclosure of the Social Security number is voluntary, not mandatory;**
- 2. That the Social Security number will be used as an internal identifier so as to enhance the Commission's ability to correctly identify applicants for licenses and current licensees; and**
- 3. A specific reference to this rule as the legal authority on the basis of which the Commission is making the request.}**

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.

N.J.A.C. 11:5-6.5 PUBLIC OFFERING STATEMENTS

(a) - (h) No Change.

(i) Prior to distributing a Public Offering Statement as required by N.J.A.C. 11:5-6.14(i) written in a language other than English, registrants who advertise in a language other than English shall file with the Commission copies of the Public Offering Statement approved by the Commission printed in both English and in the language in which the advertising appears. That filing shall be accompanied by a certification attesting to the accuracy of the translation of the text of the Public Offering Statement. The certification shall be in a form as specified by the Commission and signed by an authorized representative of the Registrant and a qualified translator.

N.J.A.C. 11:5-6.14 ADVERTISING AND SALES PROMOTIONS WITH RESPECT TO THE SALE OR MARKETING OF REGISTERED PROPERTIES

(a) - (h) No Change.

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

N.J.A.C. 11:5-6.18 CONTRACTS FOR THE PURCHASE OF AN INTEREST IN A REGISTERED PROPERTY

(a) - (d) No change.

(e) Prior to using a contract or an agreement for the disposition of a lot, parcel, unit or interest in a registered subdivision that is written in a language other than English as required by N.J.A.C. 11:5-6.14(i), registrants who advertise in a language other than English shall file with the Commission copies of the contract accepted by the Commission that are printed in both English and in the language in which the advertising appears. That filing shall be accompanied by a certification attesting to the accuracy of the translation of the text of the contract. The certification shall be in a form as specified by the Commission and signed by an authorized representative of the Registrant and a qualified translator.

N.J.A.C. 11:5-1.23 currently requires licensees to "reveal all information material to any transaction to his client or principal and when appropriate to any other party." The Commission has concluded that this general standard does not provide licensees with sufficient guidance on their disclosure obligations with regard to the various types of information that can relate to a real estate transaction. The proposed amendments specify these types of information and the disclosure obligations that apply to each category.

The first proposed change is to section (b) of the rule. Under the revised rule licensees would be required to make a reasonable effort to ascertain all "material" (rather than "pertinent") information concerning the

"physical condition" of every property for which their firm accepts an agency or is retained to market as a transaction broker. Currently, the rule does not describe what information licensees are required to attempt to ascertain about such properties.

Similarly, Section (c) as amended would require licensees to disclose (rather than "reveal") all information material to the "physical condition" of a property. New text added to section (c) then specifies how that obligation is to be fulfilled with regard to off-site conditions that may affect a property being sold as new residential construction or sales of other residential real estate that do not qualify as "new" construction.

The new text is proposed in order to conform the regulation with the required language of the "New Residential Construction Off-Site Conditions Disclosure Act", P.L. 1995 c. 253 (C. 46:3c-1 et seq.) That law requires real estate licensees to include in all contracts they prepare a "Notification Regarding Off-Site Conditions" that notifies purchasers about lists maintained by the clerk of every municipality of certain off-site conditions in the municipality. These lists are available from the municipality where the residential real estate is located and from municipalities located within one half mile of the real estate. The proposed rule would include the notice requirement with respect to new residential construction and impose a similar requirement for licensee-prepared resale contracts on other residential real estate.

The proposed amendments also add two new sections to the rule codified as new sections (d) and (e). New Section (d) would provide that information about "social conditions" or "psychological impairments" of the property is not considered information that affects the physical condition of a property. Consequently, licensees are not required to disclose that information pursuant to section (c) of the rule. Examples of "social conditions" and psychological impairments are then provided.

New Section (d) provides that, with two exceptions, when a specific inquiry is made about whether a property is affected by a social condition or psychological impairment, licensees must respond by providing whatever information they know concerning such matters that might affect the property. The first exception to this requirement involves inquiries about neighborhood composition that implicate New Jersey's Law Against Discrimination, N.J.S.A. 10:5-1 et seq. Licensees are required by the rule to refrain from responding to such inquiries and to inform the persons making such an inquiry that they may conduct their own investigation.

The second exception relates to information about notifications from a County Prosecutor issued pursuant to "Megan's Law", N.J.S.A. 2C:7-6 through 11. Under Megan's Law and Guidelines developed thereunder by the Attorney General, the County Prosecutor has the responsibility to assess the risk of re-offense of convicted sex offenders and then, if necessary for persons likely to encounter a high risk offender, to provide appropriate notification. The purpose of Megan's Law is not to inhibit the sale of real estate, to affect property values or to impose a disclosure duty on real estate licensees. Rather, in certain circumstances where a sex offender is in the neighborhood, Megan's Law requires the County Prosecutor (and only the County Prosecutor) to provide appropriate notice of the offender's presence which may include some form of notice to the community that is narrowly tailored to reach only those persons likely to encounter the sex offender.

In response to inquiries about such notification, licensees are required to explain that information about sex offenders in the area is maintained by the County Prosecutor, whose office may be contacted regarding Megan's Law. Further, the rule requires licensees to include in all contracts and leases on residential real estate that they prepare a statement setting forth that the County Prosecutor determines whether and how notice about the presence of a convicted sex offender in an area is to be provided. That statement further provides that, in their professional capacity, real estate licensees are not entitled to notification under Megan's Law from the County Prosecutor and are unable to obtain such information for their clients and customers. The required statement concludes by stating that the County Prosecutor should be contacted for further information as may be discloseable.

Due to the length of the proposed changes to this rule, they are not reprinted here in their entirety. Persons who wish to receive a copy of the proposed amendments to N.J.A.C. 11:5-1.23 may do so by sending a stamped, self-addressed envelope to the Commission at the address indicated below. Please type the words "Disclosure

Amendments" on your envelope. The full text of the proposed amendments can also be viewed on line by accessing the Commission's home page on the Internet at <http://www.naic.org/nj/NJHOMEPEG.HTML>.

Interested parties may comment on some or all of the proposals by February 20, 1997. Comments may be mailed to:

**Gloria A. Decker, Executive Director
New Jersey Real Estate Commission
CN 328
Trenton, New Jersey 08625-0328**

Comments may also be faxed to the Executive Director at 609-292-0944 or E-Mailed to usnac633@ibmmail.com.

DIRECTOR'S TASK FORCE ADDRESSES AGENCY DISCLOSURE

Executive Director Gloria A. Decker recently reconvened the diversified group of real estate professionals, representing various disciplines and drawn from throughout the State, which comprises the Director's Task Force on issues of major concern to New Jersey real estate licensees. The Task Force held its first substantive meeting with Ms. Decker on September 19, 1996. In addition to the industry members the Commission's senior staff also attended the meeting.

Prior to gathering, the group was asked to consider how the Commission Rule which addresses agency disclosure (N.J.A.C. 11:5-1.43) might be improved and simplified. Their discussions focused on the problems created in the field by brokers who do not have an office policy on agency and by licensees who are not attuned to the significance of establishing and adhering to a business relationship with buyers. The difficulties which can result from licensees attempting to practice buyer-brokerage in the absence of a signed written agreement with the purported buyer-client were also mentioned.

Some of the suggestions raised for improving and simplifying the rule included eliminating the options now offered to brokers to secure the signatures of recipients and declare their intended business relationship on the Consumer Information Statements they deliver, and eliminating the requirement to discuss the four available business relationships during preliminary telephonic conversations with buyers. Clarifying what licensees can and cannot do as transaction brokers was also discussed. It was suggested that the rule be revised to more clearly indicate that a firm can work as the seller's agent on in-house listings and work with buyers as a transaction broker on the listings of other firms.

A second area of uncertainty involving transaction brokerage was also noted. It arises where a firm practices seller agency on its listings and does not offer buyer-brokerage. It was suggested that the rule more clearly indicate that on in-house sales of those listings, all of the licensees with the firm would be seller's agents and none could operate as transaction brokers.

These concerns and recommendations were considered by the Commission at its November 13, 1996. In the near future the Commission will formally propose several amendments to Rule 1.43 based, in part, upon the input provided by the Task Force.

At its next meeting the Task Force will consider how new technologies are affecting the real estate brokerage business, the ability of regulators to apply existing law to the new ways of doing business, and what new approaches might be taken to regulatory concerns raised by the enhanced independence which these technologies afford to salespersons. Issues to be considered include unlicensed electronic listing services, the Internet and salespersons' use of E-mail from their homes.

NEW ATTORNEY GENERAL'S MEMO ON DISCRIMINATION ISSUED

On August 29, 1996, Peter Verniero, who succeeded Hon. Deborah L. Poritz as Attorney General upon the latter's appointment as Chief Justice of the New Jersey Supreme Court, issued a new Memorandum on New Jersey's Law Against Discrimination and the Federal Fair Housing Laws over his signature. Pursuant to Commission Rule 11:5-1.23(g) when taking any listing on a residential property, licensees shall furnish to the owner a copy of this Memorandum. If the owner indicates an unwillingness to abide by, or an intention to violate the law, the licensee shall decline to accept the listing on that owner's property.

Since copies of the memo were disseminated by the Commission a number of questions have arisen about its use. The most frequently asked questions were:

1. Why is the new memo on two pages, rather than one? Answer: When it was generated at the Attorney General's office, a larger font size was used, so as to make it easier for owners to read the text of the memo. This caused the memo to extend to two pages. Licensees can reproduce the memo on one legal-sized sheet, so long as by doing so they do not delete any text.
2. Is the text of the new memo the same as that in the prior memo issued over the signature of then Attorney General Poritz? Answer: The new memo contains a few minor revisions to the text of the prior memo.
3. Must the memo be supplied to the owners of commercial properties? Answer: No. As noted above, the applicable Commission rule requires licensees to provide the memo to the owners of residential property at the time of taking a sale or rental listing.
4. Must the memo be supplied to residential builder/developers at the time a listing is taken to sell new residential construction? Answer: Yes - see 3 above.
5. Can licensees continue to use form listing agreements that have the old memo reprinted on the form, usually on the reverse side of a page? Answer: Yes, but the new memo should be stapled to the listing agreement, preferably at the same location where the old memo appears.

In response to licensees' concerns about the two-page memo being difficult to reproduce, at some point in the next few months another memo will be issued on one page. That memo may include a further clarification of the applicability of the Federal Civil Rights Act of 1866 to transactions which are exempt from the New Jersey Law Against Discrimination.

COMMISSION DENIES PETITION TO AMEND RULE 11:5-1.42

At its meeting on September 24, 1996 the Commission determined to deny a petition to amend N.J.A.C. 11:5-1.42. The petition had been filed in January, 1996 by the Mortgage Bankers Association of New Jersey. Rule 1.42 prohibits broker licensees who provide in-house mortgage financing services, either through computerized loan origination systems or affiliated mortgage brokers or bankers, from limiting buyers' choices by denying outside lenders "reasonable access" to solicit mortgage loans in their real estate offices. The rule provides that the reasonableness of a broker's policy concerning rate sheets, and access by outside lenders, other visitors and solicitors, will be considered.

The petition sought to add text to the rule which would indicate that real estate licensees have a duty to provide homebuyers with alternative sources of mortgage loans so that homebuyers can compare mortgage products and have direct input from persons representing different mortgage lenders. The petition also requested that text be added to the rule to provide that real estate licensees could not "preclude or prevent representatives of unaffiliated mortgage lenders from entering a realty office to meet with homebuyers, real estate brokers or real estate salespersons except if such entry would cause disruption or overcrowding in the office, in which case, the representatives shall be offered an opportunity to enter the office on the following day."

After considering the arguments made in support of the petition, the viewpoints of several interested parties who opposed it, and information provided by its staff the Commission determined to deny the petition. The Commission's primary reason for doing so was its conclusion that no showing had been made that undue steering to affiliated mortgage service providers was occurring or that the public was being harmed as a result of the absence of the requested additional language from the rule as it currently reads. Absent such a showing, the Commission declined to further consider the requested amendments because to adopt them would significantly infringe upon the property rights of brokers who are affected by this rule.

NUMBERS OF LICENSEES AND SUCCESSFUL FIRST-TIME EXAM TAKERS DIP SLIGHTLY

Between July 1, 1995 and June 30, 1996 the number of initial salesperson licenses issued was 4975. This is a small decrease from the 5225 individuals initially licensed as salespersons during the preceding license term.

As of September 30, 1996 the total number of licenses renewed for the 1996-97 license term was 77,602. This also represents a slight decline from the total of 78,258 licenses renewed for the 1995-96 license year.

Finally, of the 5,522 persons who initially challenged the salesperson's license examination between July 1, 1995 and June 30, 1996, 4,238 candidates passed the exam. Consistent with the other numbers, this too reflected a slight decline from the 4982 candidates who passed the exam on their first attempt during the 1994-95 license year.

Of the 214 first time broker candidates who tested during the last license year, 117 candidates were successful.

SENIOR INVESTIGATORS ATTEND FRAUD EXAMINERS SEMINARS

Recently, two separate groups of senior Commission investigators attended educational seminars conducted by the Association of Certified Fraud Examiners.

Chief of Investigations Nicholas Roon and Investigator Kenneth Stout attended a three day program at the

Association's Eastern Regional Fraud Conference held in June in Washington, D.C. In August, Bureau of Subdivided Land Sales Chief Robert Carter and Investigators Daniel Rodgers, Steven Sgourakis, Lisette Mann and Charlene Overcash participated in a two day program offered in Philadelphia.

Both programs provided instruction on the latest techniques for investigating and documenting fraudulent business practices. Topics examined included the Internet and ways to obtain information from various public and private sources.

By attending the more extensive program in Washington, D.C. Messrs. Roon and Stout earned sufficient course attendance credits to qualify as Certified Fraud Examiners.

RECENT DISCIPLINARY ACTIONS

- **John B. Hesser, formerly licensed salesperson with United Coast Realty, Rio Grande, N.J.**

At a Commission hearing on July 9, 1996, John B. Hesser was found guilty of making substantial misrepresentations and procuring a license by fraud and deceit by failing to disclose a criminal conviction in 1994 and a pending criminal indictment in 1995, both of which arose out of his activities as a real estate salesperson. Hesser had been convicted of theft by deception and issuing bad checks, for which N.J.S.A. 45:15-19.1 mandates revocation of his real estate license. He was also found to be subject to sanctions pursuant to N.J.S.A. 45:15-17(h) in that he was convicted of crimes, knowledge of which the Commission did not have at the time he was last issued a real estate license. Mr. Hesser was fined \$500 and, having previously surrendered his license, his eligibility for relicensure was revoked until January 11, 1999.

- **Joseph Mastropole and Best Choice Realty Associates, Inc., real estate brokers, formerly of Clifton, N.J.**

On July 30, 1996, Joseph Mastropole was found guilty of violations of N.J.S.A. 45:15-17(o) (commingling) and N.J.A.C. 11:5-1.12 (failing to maintain trust account records and ledgers and failing to make quarterly reconciliations of his trust accounts.) The Commission's audit of Best Choice Realty uncovered extensive and continuous churning of escrowed funds, i.e. disbursing funds which were to have been held in trust on transaction C to a party to transaction B, whose funds were previously disbursed to a party to transaction A, etc. In addition, the audit disclosed over \$14,000 in shortages in the escrow accounts. Mastropole's broker's license was revoked for ten years. After July 1, 1997, he will be eligible to hold a salesperson's license. However, he must first requalify for same by completing the salesperson pre-licensure education requirement and passing the state license examination. Mr. Mastropole was also fined \$20,000, which must be paid before any license is issued.

REINSTATEMENT ALERT

In an effort to avoid the requirement to requalify in order to reinstate a license which has been inactive for more than two years from the expiration date of the last license held (N.J.S.A. 45:15-9) many individuals apply to reinstate their licenses in June of each year. The Commission will no longer process such reinstatement applications with an effective date of July 1. Rather, the applications need to reflect an effective date no later than June 30 of the year in which they are submitted and will be processed accordingly. Additional reminders of this policy will appear in future editions.

COMMISSION SUPPORTS BILL TO AMEND THE CONSUMER FRAUD ACT

In a recent ruling, the Appellate Division of the Superior Court of New Jersey held that real estate licensees violate the Consumer Fraud Act (N.J.S.A. 56:8-2) if they make a material misrepresentation about a property, with no need for a showing that the licensee knew the representation was false or made it with the intention to deceive. Such violations subject licensees to treble damages.

In response to that ruling, Senators Ciesla, Matheussen, Singer and Palaia introduced a bill (S-1474) to change the law. The bill seeks to add text to the CFA providing that it would not apply to:

The communication by a real estate salesperson, broker-salesperson or broker licensed under R.S.45:15-1, et seq. of any false, misleading or deceptive information provided to that real estate salesperson, broker-salesperson or broker by or on behalf of the seller of real estate located in New Jersey, unless the real estate salesperson, broker-salesperson or broker has actual knowledge, after making reasonable inquiry, of the false, misleading or deceptive character of the information. Nothing in this subsection shall be interpreted to affect the obligations of a real estate salesperson, broker-salesperson or broker pursuant to the "New Residential Construction Off-Site Conditions Disclosure Act," P.L. 1995 c.253, et seq. (C.46:3C-1 et seq.) or any other law or regulation.

The Commission supports the enactment of S-1714. Readers who also feel that this change to the Consumer Fraud Act is desirable might consider contacting their local State legislators and urging them to support this bill.

PRELICENSURE COURSE INSTRUCTORS ATTEND COMMISSION EDUCATION SEMINARS

Recently, some 160 licensed instructors attended the two seminars presented by the Commission to update them on recent developments affecting the real estate brokerage profession in New Jersey. The all-day seminars were held on September 16, 1996 at the Landmark Inn in Woodbridge and on November 7, 1996 at the Ramada Inn in Bordentown. Those in attendance heard a three hour presentation on agency which focused on the issues and concerns raised by licensees working as buyers' brokers. This portion of the seminar was conducted by Joseph Marovich, a New Jersey broker-salesperson licensee and recognized expert in this field. Mr. Marovich has previously conducted numerous seminars and training courses on buyer-brokers.

In addition, the attendees heard a presentation on the new disclosure requirements imposed upon licensees with regard to lead-based paint. Recently adopted rules of the federal Environmental Protection Agency and the U.S. Department of Housing and Urban Development establish these disclosure requirements. At the Woodbridge site, this part of the program was presented by Joseph Eldridge, a Research Scientist with New Jersey's Department of Health. Louis Bevilacqua, the Regional Lead Coordinator with the U.S. Environmental Protection Agency made this presentation at the Bordentown Seminar.

The programs concluded with discussions by Special Assistant to the Director Robert J. Melillo addressing recent rulemaking by the Commission and other topics. This was followed by lively question and answer sessions between the attendees and Mr. Melillo and Nicholas Roon, the Commission's Chief of Investigations.

By law, to qualify to renew their licenses, all of which expire on February 28, 1997, every instructor had to attend one of these seminars. Any instructor who did not do so and who desires to continue to teach prelicensure courses after their current license expires in February, 1997 should immediately contact the Commission's Education Section. Questions on how to requalify for another instructor license can be directed to Ms. Ann Marie Agoes or Ms. Linda Pica at 609-292-8579 or 609-633-0514.

STAFF SPOTLIGHT

In addition to licensing and regulating persons and firms involved in real estate brokerage in New Jersey the Commission also administers the Real Estate Sales Full Disclosure Act. This law requires owners of residential real estate situated outside of New Jersey, including lots, timeshares, condos, and interests subject to mandatory homeowners associations, who wish to sell their product in New Jersey through a "common promotional plan" to first register their project with the Commission. The Bureau of Subdivided Land Sales Control within the Commission is responsible for reviewing registration applications and enforcing the provisions of the Act. This article focuses on the group of dedicated State employees who comprise the Bureau of Subdivided Land Sales Control which was created in 1977 by the Act's predecessor, the Land Sales Full Disclosure Act.

The Bureau is lead by Robert Carter. He has been the Bureau's Chief since 1991 and an investigator with the Commission since 1985. Prior to joining the Commission he worked as a State Parole Officer in Essex and Mercer Counties for seven years.

Mr. Carter's job functions include reviewing registration applications and addressing deficiencies therein, conducting on-site inspections of registered projects, addressing marketing efforts by unregistered developers and investigating consumer complaints. In reviewing registration applications, Mr. Carter determines whether registrants have demonstrated that they can convey good title to the real estate interests they wish to market in New Jersey, that there are adequate assurances that they can deliver on promised improvements, and that they have designated a duly licensed New Jersey broker as the Broker of Record for the project. Further, full and fair disclosure of information material to these offerings must be made in Public Offering Statements which are submitted for the Bureau's approval as part of a registration application. The Bureau's investigations frequently require him to coordinate his efforts with regulators from other State and federal agencies.

Investigator II Daniel Rodgers is also assigned to the Bureau of Subdivided Land Sales Control. Mr. Rodgers has been a Commission investigator for 11 years. Prior to joining the Commission he had a distinguished 25 year career in the East Windsor Police Department, retiring in 1986 with the rank of Lieutenant. While with the East Windsor Police he was directly involved in a hostage rescue situation, which incident was featured in an episode of the television series Rescue 911. Mr. Rodgers' primary duties with the Bureau involve investigating consumer complaints and marketing activity by unregistered developers. He also conducts on-site inspections of conditionally registered projects. It must be noted that by law all costs of the inspections are paid by the registrants. No taxpayer dollars or licensing fees are expended to defray the costs of inspecting registered projects.

For 12 years Mr. Carter and his predecessors as Bureau Chief have been ably supported by Ms. Jackie Ferri. Ms. Ferri began her assignment to the Bureau as a secretary. However, over the years her responsibilities have expanded to the point where, in addition to secretarial duties, she now conducts preliminary reviews of registration applications and fields inquiries from registrants, applicants, attorneys, brokers and consumers. Since 1993 she has held the title of Technical Assistant I. She and her husband Scott welcomed the arrival of their first child, Jenna Elizabeth in November.

Donna Sutton, a 19 year veteran of the Commission's staff completes the staff of the Bureau. Ms. Sutton began her career with the Commission as a license processor. In 1990 she was reassigned to the Bureau and was promoted to the position of Technical Assistant I in 1993. She provides most of the voluminous clerical support which is required to keep the Bureau's operations running smoothly and in accordance with the statutorily established time frames for responding to registration applications.

There are currently some 480 projects registered through the Bureau with the Commission. An average of 6 new applications are received and processed each month. In addition, each registration must be renewed annually and any material change in previously reviewed information must be immediately reported to the Bureau. Clearly, the public, registrants and New Jersey licensees are well served by the dedicated and conscientious quartet of public servants who comprise the Bureau of Subdivided Lands Sales Control.

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