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



Commission Proposes Readoption of Rules with Amendments and Recodification

In early June, 1998 a Notice sent to all licensed offices, instructors and other interested parties notified the

recipients that the Commission was proposing the readoption of its entire chapter of administrative rules, N.J.A.C. 11:5-1 et seq. with certain amendments.

Most of the amendments are technical in nature, such as correcting obsolete references in the rules to the formerly separate Departments of Banking and Insurance and to the Commission's former street address.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 11:5 expires on October 15, 1998. As required by the Executive Order, the Real Estate Commission reviewed the rules and determined that they are necessary, reasonable and proper for the purposes for which they were promulgated.

The readoption of N.J.A.C. 11:5 is necessary because it contains real estate broker, salesperson, school and instructor licensing qualification requirements and standards of conduct for real estate licensees which implement the Real Estate Brokers and Salesmen Act (N.J.S.A. 45:15-1 et seq.). The chapter also contains rules implementing the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq.

In addition, the Commission determined to organize the rules by subject matter, thereby necessitating the recodification of the chapter.

As recodified, subchapter 1 (formerly subchapter 2) sets forth the responsibilities, organization and functions of the Commission, the information available to the public and those records which are not open to the public.

Recodified subchapter 2 contains the rules which implement the educational requirements for licensure, establish the criteria for the issuance of education waivers, and set forth the licensure qualifications and operating standards of schools and instructors.

Recodified subchapter 3 prescribes the application procedures and qualifications for licensure as a real estate broker or salesperson, and the license transfer and office closing procedures.

Recodified subchapter 4 sets forth the requirements applicable to employment agreements between brokers and salespersons, the supervisory responsibilities of brokers, and the standards applicable to the maintenance of main and branch offices.

Recodified subchapter 5 now contains the rules applicable to broker's trust or escrow accounts and prescribes the business records licensees must maintain.

Recodified subchapter 6 sets forth the standards for conducting brokerage activity including advertising, contracts and brokerage agreements, property condition disclosure obligations and broker cooperation, the operation of rental referral agencies, the disclosure requirements applicable to licensees who also provide mortgage financing or other services, and licensees' obligations to disclose in what business relationship they are operating when providing brokerage services.

New subchapter 7 contains rules which prohibit certain conduct.

New subchapter 8 contains substantive rules relevant to Commission disciplinary actions, including the rule implementing the Real Estate Guaranty Fund.

New subchapter 9 (formerly subchapter 6) contains the rules implementing the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq.

New subchapter 10 (formerly subchapter 3) contains the rules on rulemaking petitions.

New subchapter 11 (formerly subchapter 4) contains the rules on the procedures applicable to disciplinary actions, contested applications and declaratory ruling requests.

As a result of the recodification, amendments have been proposed to all of the rules which contain cross-

references to the current citations of other rules in the chapter.

(All of the numeric citations which follow should be understood to refer to rules within chapter 5 of Title 11. Thus the complete citation for each rule would be "N.J.A.C. 11:5-" followed by the indicated numbers.)

The Commission concluded that numerous amendments to the readopted rules are necessary. Some amendments are needed to make references in the rules to the individual Departments of Banking and Insurance consistent with the enactment of P.L. 1996, c.45 which merged those Departments into one Department of Banking and Insurance (current rules 1.38(f) and (g), 1.40(c), 2.2, 2.3(a)5, and 2.4, recodified as 7.1 (f) and (g), 6.6(c), 1.2, 1.3(a)5, and 1.4, respectively.) Other changes are needed to update references to the repealed Mortgage Bankers and Brokers Act and the rules (now repealed) which had been promulgated thereunder by the former Department of Banking (current rules 1.38(f) and (g) and 1.40(c), recodified as 7.1(f) and (g) and 6.6, respectively.) Still other revisions are needed to correct erroneous references to the Commission's street address. (Current rules 1.32(b)6, 2.4 and 6.1(b), recodified as 6.5(b), 1.4 and 9.1(b), respectively.) Amendments are also needed to delete wording which was intended as editorial directions to the Office of Administrative Law on how to print the text of notices contained in several rules when the rules were adopted, but which now appears as part of the text of the rules in question (current rules 1.40(b)3, (d) and (e) and 1.41(a), recodified as 6.6(b)3, (d) and (e) and 6.7(a), respectively). Additional amendments are needed to delete references to the invalidated "Land Sales Full Disclosure Act" (N.J.S.A. 45:15-16.3 et seq.) and replace them with references to its successor, the "Real Estate Sales Full Disclosure Act", N.J.S.A. 45:15-16.27 et seq.

Other amendments are needed to update several rules. A cross reference in current rule 1.23 (h)1 to preceding subparagraph (d) is being changed to refer to subparagraph(g). Subparagraphs (c) through (i) were recodified upon the adoption of amendments to this rule in July, 1997 (see 29 NJR 2849). However, through an oversight this cross-reference was not revised at that time. As recodified, this rule will appear as rule 6.4(h)1. Current rules 5.1(a)1, 3 and 4 (recodified as 10.1(a) 1, 3 and 4) now contain references to the "apprenticeship" requirement for licensure as a real estate broker. Through the enactment in 1993 of P.L. 1993, c.51 references to such an "apprenticeship" were deleted from the Licensing Law. Consequently, these rules are being amended to establish consistency between their text and the terminology which now appears in the governing statute. Current rule 1.13(b) (recodified as 5.5(b)) is being amended to delete the phrase "in addition to other powers conferred upon it by the Act" which precedes text referring to the Commission's authority to issue subpoenas, administer oaths or affirmations to any persons and conduct hearings. In fact, these powers are conferred upon the Commission in the Licensing Law at N.J.S.A. 45:15-16.41(h) and 45:15-17. Finally, an erroneous citation to a rule of the Office of Administrative Law which is cross-referenced in current rule 4.4(a) (recodified as 11.4(a)) is being corrected.

Several other textual revisions are being made through these proposed amendments. Current rule 1.5(b) (recodified as 3.4(b)) now describes the criteria applicable to requests from disabled individuals for special accommodations so as to enable them to challenge a real estate license exam. As revised, the text will refer to persons who qualify for such special consideration as provided in the Americans With Disabilities Act or any other applicable law. Current rules 1.8(c) 1 and 3 and 1.12 (recodified as 5.1(c) 1 and 3 and 5.4, respectively) refer to brokers holding the "property" of others in trust or in escrow. As amended through P.L. 1993, c.51, the licensing law now mandates that brokers may only hold in trust or escrow the funds of others paid in the form of cash or a negotiable instrument payable to the broker's trust or escrow account. Thus the amendments to these rules are needed to render them consistent with the governing law.

Changes to clarify certain rules, so as to render them more easily understandable by licensees and the public, are also being proposed. The affected rules are 1.2(d) (recodified as 3.6), 1.8(d) (recodified as 5.1(d)), and 1.21(a) (recodified as 3.7). The Commission has also determined that certain rules are unnecessary or redundant and should therefore be repealed. These are N.J.A.C. 11:5-1.2(e) and (f), 1.10(c), 1.17(b), 1.27(j), 6.17 and 6.19(b) 13.

Changes are also being proposed to the Commission's organizational rules. Current rule 2.2 (recodified as 1.2) which depicts the Commission's organization chart, and current rule 2.3 recodified as 1.3) which describes the functions of the various sections within the Commission are being amended to reflect the existence of the

Hearings and Regulatory Affairs Section and indicate the functions it performs.

Amendments are being proposed to current rule 2.4 (recodified as 1.4) to delete the word "complete" from its text and to have it clearly indicate that information on the Commission's functions, other than that designated as non-public records by current rule 2.5(g), may be obtained by the public.

Current procedural rules 4.2(d) and (e) and 4.3 (b) (recodified as 11.2(d) and (e) and 11.3 (b)) are being amended to refer to the deputy attorney general "or staff member" representing the complainant in disciplinary actions. A regulatory officer on the Commission's staff frequently represents the complainant in such cases. In order to render it consistent with the other rules on these matters, a further revision is proposed to current rule 4.2 (e) (recodified as 11.2(e)). This rule now refers to the deputy attorney general who represents "the commission". It is proposed to replace the word "commission" in this sentence with a reference to the "complainant", which is the term used to describe the charging party in the other rules referenced above.

The Commission has concluded that current rule 4.5(a) (recodified as 11.5(a)) is also in need of revision. This rule specifies those violations which the Commission may hear on an expedited basis through the "Conference Hearing" procedure. The rule currently refers to "violations of N.J.S.A. 45:15-17(d), 17(o) and/or 19.1... or where there is a danger of imminent harm to the public." The Commission is proposing to add violations of N.J.S.A. 45:15-17(n) to the list of such violations. N.J.S.A. 45:15-17(n) subjects licensees to sanctions for having procured a real estate license by fraud, misrepresentation or deceit. It is most frequently utilized in cases where an applicant falsely indicates that they have not been recently convicted of a crime, is issued a license on the basis of that misrepresentation, and the Commission subsequently obtains information establishing the falsity of that statement. In situations where the conviction was for a theft or related offense, or of a nature which would indicate that the person's licensure poses a threat to the public, the Commission's need to hear the matter on an expedited basis is manifest. To avoid disputes on that issue, the Commission believes it is preferable to have its authority to do so explicitly set forth in the rule.

The final revision proposed for the procedural rules affects current rule 4.8 (recodified as 11.8). This rule now refers to the final decisions of the Commission in enforcement actions. The proposed amendment would add text to this provision indicating that unless the Commission directs otherwise, all fines imposed by Commission order 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.

The Commission also concluded that it was appropriate to amend current rule 1.10(a) (recodified as 4.1(a)) so as to establish some flexibility in the requirement regarding the payment of compensation by brokers to their salespersons. This amendment implements a recommendation made by a Task Force on Short Term Rentals convened by the Commission to address the regulatory burdens imposed by the current rules on coastal-area brokers whose business primarily involves a high volume of seasonal rentals. The amendment would allow brokers and salespersons to utilize a compensation payment schedule other than that specified in the rule, so long as the schedule was explicitly set forth in their employment agreement.

The Commission determined an amendment to current rule 1.15(g) (recodified as 6.1(g)) was needed in order to make the first two sentences of the rule consistent. The rule's first sentence provides that any advertisement which set forth the amounts of certain payments "shall contain appropriate qualifying words...". The second sentence then begins with the phrase: "If such amounts are mentioned without qualification...". The Commission has determined to delete the words "without qualification" from that sentence, so as to have the rule now require that where such ads are used, brokers will be required to maintain written proof of the validity of the representations of the amounts made in the ads for the 12 month period currently referenced in the rule.

The Commission has also proposed amendments to current rule 1.26(b) (recodified as 7.4(b)). This rule imposes significant recordkeeping requirements upon every broker who solicits the sale, lease or listing for sale or lease of three or more residential properties in the same street block or a similarly circumscribed area. The records are to include the name and address of each person so solicited. This rule was last amended in 1972 and was

intended to address the evil of blockbusting. Since 1972 it has become a common practice for real estate licensees to send out blanket direct mailings and inserts in bulk mailings to entire neighborhoods. The Commission has concluded that there is no need to impose the substantial recordkeeping requirements specified in this rule upon these types of solicitations because, by its nature, blockbusting is a secretive activity which would not be attempted in a writing or broadcast delivered to residents of a given area. Accordingly, the Commission is proposing to amend subsection (b) of this rule so as to have it only apply to in-person solicitations by licensees.

The final amendment being proposed to the Commission's rules implementing the licensing law affects current rule 1.8 (recodified as 5.1). The Commission proposes adding a new subparagraph to this rule to require that all signatories on broker's trust or escrow accounts must be actively licensed individuals. In recent years, the Commission has disciplined several brokers who had delegated responsibility for their trust accounts to unlicensed persons who, through dishonesty or ignorance, failed to properly maintain the funds of others in those accounts. Because these bookkeepers were unlicensed, they had never received instruction at a prelicensure school on the legal requirements and restrictions applicable to brokers' escrow and trust accounts, and the Commission lacked the authority to impose any sanctions directly upon them at the time their employing brokers were disciplined. Requiring that only actively licensed persons may sign checks drawn on such accounts will ensure that all signatories have received instruction on the laws and rules applicable to them. It will also enable the Commission to impose fines on, and to suspend or revoke the licenses of such persons. The Commission believes that this will have a deterrent effect upon illegal activity involving escrowed funds.

The Commission has also proposed revisions to the rules implementing the Real Estate Sales Full Disclosure Act ("The Act").

The qualifying term "land" in the reference to sales contracts is being deleted from the definition of advertising in current rule 6.2 (recodified as 9.2) because the act applies to the sale and marketing of other types of interests in real estate, including condominiums and timeshares. Thus the reference to "the land sales contract" in this definition is too narrow given the scope of the Act.

Subparagraph (a)6. ix. of current rule 6.3 (recodified as 9.3) is being deleted as unnecessary, as it requires the submission of a proposed New Jersey Public Offering Statement from those applicants for registration who are requesting approval to use the federal equivalent of a public offering statement (a certified property report filed with and approved by the Office of Interstate Land Sales Registration in the Department of Housing and Urban Development) in lieu of a New Jersey Public Offering Statement.

The three lengthy and redundant descriptions of requirements for securing deposits paid by New Jersey purchasers for registered properties are also being revised. The text of current rule 6.4(a)3 (recodified as 9.4(a)3) is being deleted and replaced by the text which now appears in rule 6.5(e)17. That text is being deleted from current rule 6.5(e)17 (recodified as 9.5(e)17) and replaced with a brief statement which refers to the requirements imposed by recodified 9.4(a)3 as amended. Finally, the text of current rule 6.18(d) (recodified as 9.18(d)) is being deleted and also replaced with text that refers to the requirements established at recodified rule 9.4(a)3 as amended.

Amendments are also proposed for subparagraph (a)21. of current rule 6.4 (recodified as 9.4). The requirement that registrants include in the cover letter accompanying their application for registration information on the number of lots or units in the project (21.i.) is being deleted as unnecessary, since the registration application itself contains this information. The requirement that the cover letter also contain a certification that the filing and other fees are correct is also being deleted, since the Commission's review of every registration application always includes confirmation that the correct fees have been submitted.

In an effort to make these rules more easily accessible and understandable, the Commission determined to delete references to the standards and procedures applicable to amendments to applications for registration and public offering statements which appear at various locations throughout the rules and to recodify all of these provisions under current rule 6.10, which is entitled Amendments to Registration Applications and Public

Offering Statements. Accordingly, the Commission is proposing to delete subparagraph (e)5 from current rule 6.5 (recodified as 9.5) and subparagraph (c)3 in current rule 6.7 (recodified as 9.7). As a result of the latter amendment, the cross-reference to rule 6.7(c) which appears in current rule 6.5(f) is also being deleted from this rule.

Other amendments are also being proposed to rule 6.10 (recodified as 9.10). In subsection (b), the definition of "material change" is being amended. The new definition is consistent with that which appears in the Planned Real Estate Development Full Disclosure Act, N.J.S.A. 45:15-22a-21, et seq., which is the companion statute to the Real Estate Sales Full Disclosure Act, regulating the sale and marketing of in-state residential real estate projects. When implementing the Real Estate Sales Full Disclosure Act, constitutional considerations compel the Commission to maintain as much consistency as possible with the in-state regulatory scheme. In addition, the Commission concluded that the Planned Real Estate Development Full Disclosure Act's definition is adequate for the Commission's purposes and significantly more clear and concise than the current definition. Given the relocation of other provisions to rule 6.10 (recodified as 9.10) as described above, the Commission is proposing to delete the current text of subparagraph (c) in this rule as redundant.

Current rule 6.5 (recodified as 9.5) is entitled Public Offering Statements. The Commission has concluded that the text of rule 6.6 (e), which compels registrants to maintain receipts for New Jersey Public Offering Statements when sales to New Jersey residents are made in the situs state, with no involvement by the registrant's New Jersey broker, is more appropriately codified in this rule. Accordingly, the Commission has proposed to delete that text from current rule 6.6 (e) (recodified as 9.6(e)) and to incorporate it into rule 6.5(a) (recodified as 9.5(a)) as new subparagraph (a)1.

Rule 6.14 (recodified as 9.14) addresses advertising by registrants and their agents. Subsection (g) now requires all ads which reach New Jersey to include the registration number of the project, the letters "NJREC", and statements on the registered status of the project, affirming that registration is not an endorsement of its merits or value, and advising consumers to obtain and read the New Jersey Public Offering Statement before signing anything. The subsection then provides for the use of any abbreviated legend with the Commission's approval. The Commission has concluded that the requirement that such language appear in all advertisements of registered projects is unnecessary and overly burdensome upon registrants. The ads of registrants which generate a high volume of complaints and inquiries to the Commission are those which offer premiums, including free travel or the reimbursement of travel expenses to visit the project in the situs state. Therefore, the Commission has concluded to delete the current introductory text of rule 6.14(g), with subparagraph 1. being recodified as subsection (g) of the rule, and subparagraph (2) recodified as subparagraph (1).

Amendments to subsection (h) of the rule, which specifically deals with offers of premiums and travel cost reimbursement, are also being proposed. The scope of the subsection is being clarified by the addition of text to the first sentence. A new subparagraph, 1.i., is also being added to require that ads which include such offers contain statements informing consumers that the promotion is a solicitation for the purchase of an interest in real estate, the name of the project, and the registration number assigned by the Commission preceded by "NJ Reg. No." The inclusion of this information in these ads will address a common complaint by consumers i.e. that the literature they receive containing offers of premiums or travel reimbursement frequently contains no indication that the offers is a solicitation for the purchase of real estate. Finally, subparagraph 3 of rule 6.14(h) (recodified as 9.14(h)) is being amended through the addition of text clarifying its scope.

To render the requirements on the ads of developers who have received limited exemptions from the registration requirements consistent with those applicable to ads of fully registered projects, the Commission is also proposing to amend rule 6.19 (recodified as 9.19). Subparagraph (b) 5 of the rule is being revised to require the inclusion of the exemption number assigned to the project by the Commission only in those ads which contain offers of premiums or reimbursement of expenses. Additional minor grammatical corrections are also being made.

Finally, paragraph (b) 13 of this rule is being revised through the deletion of its final sentence, which the Commission concluded was surplussage which merely restated the obvious.

The June, 1998 Notice from the Executive Director contained the text of the entire chapter of Rules as proposed for readoption with amendments and recodification. That Notice invited licensees and other interested parties to submit written comments on the Proposal by on or before August 5, 1998.

The Commission will review and consider all comments submitted and take action to readopt the rules in September. It is anticipated that updated Statute and Rules manuals, containing the readopted and recodified rules, will be available by the end of this year.



SENATE TO VOTE ON BILL AMENDING THE CONSUMER FRAUD ACT

In the fall of 1998 it is anticipated that S-1064, co-sponsored by Senators Andrew R. Ciesla and Diane Allen will be voted out of the New Jersey Senate. The bill amends the Consumer Fraud Act by exempting real estate licensees from its punitive (treble) damages and attorneys fees provisions. Specifically, the bill provides that licensees are exempt from liability for those damages and fees for communicating false, misleading or deceptive information provided to the licensee by, or on behalf of a seller of New Jersey real estate if the licensee: 1.) had no actual knowledge of the false, misleading or deceptive character of the information; and 2.) made a reasonable and diligent inquiry to ascertain the accuracy of this information.

The "reasonable and diligent inquiry" requirement may be satisfied by communications by licensees which include, but are not limited to, communications which disclose information:

- provided in a report or upon a representation of a licensed appraiser, home inspector, plumber or electrical contractor; or
- in a report or upon a representation of a governmental official or employee if the information of a physical condition is likely to be within that official or employee's knowledge; or
- that the licensee obtained from the seller in a property condition disclosure statement, provided that the licensee informed the buyer that the seller is the source of that information and that prior to providing the property condition statement to the buyer, the licensee visually inspected the property with reasonable diligence to ascertain the accuracy of the information disclosed by the seller.

In its original form, the bill provided that the property condition disclosure statement had to be in a form which complied with regulations promulgated by the Director of the Division of Consumer Affairs. However, the Commission succeeded in having the bill amended in the Senate Commerce Committee to provide that those regulations would be promulgated by the Director "in consultation with the New Jersey Real Estate Commission". It was this version of the bill which will be voted on by the Senate. The Commission believes the addition of that amendment has enhanced the likelihood that the rules specifying the form of the property condition disclosure statement which may be utilized by licensees will address all material factors in a comprehensive manner.

It is hoped that the bill will be approved by the Assembly later this year. Because the Division of Consumer Affairs had substantial input into the text of the bill and did not oppose the amendment requested by the Commission, presuming it is voted out of the Senate and the Assembly it is anticipated that the bill will be signed into law by the Governor.



OPEN HOUSE THEFTS



Recently, a report appeared in the Newsletter of another state's Real Estate Commission reporting that jewelry and blank checks were stolen during an open house. According to the report, two suspects distracted the salesperson by splitting up, one talking to the salesperson while the other used the restroom. When he returned, the other suspect left to wander through the house. The sellers reported the missing items later that evening.

Open houses are prime targets for this type of crime. Here are some tips that may help you avoid a theft at the next open house you hold:

1. Enlist the sellers' help in avoiding thefts. Let them know thefts have happened during open houses and tell them you need their cooperation. Make sure you have their permission to hold the open house.
2. Tell your sellers to put all their valuables out of sight, including check books, credit cards, prescription drugs, jewelry and guns.
3. If possible walk through the home with the sellers before the open house begins. You might spot a valuable item that needs to be moved that the sellers overlooked. Take note of what items are left in plain view. You'll be in a better position if something is reported missing after the open house.
4. Work the open house with another licensee, particularly if you anticipate a lot of traffic.
5. Get the names of prospects as they arrive.
6. Stay with prospects as they inspect the premises. Don't let them wander alone.
7. Show the property to one group of prospects at a time.
8. Lock all doors when you leave the area.
9. Be observant. Write down a description of the vehicle and the license plate number of anyone who arouses your suspicions.
10. If possible, walk through the property with the sellers after the open house. Tell them to let you know immediately if anything seems to be missing.
11. Report thefts immediately to the police and your broker and, if they were not present when the open house concluded, to the sellers.

Reducing risk is essential to minimizing your potential liability and maximizing the level of service provided to your clients.



LICENSEE ALERT

As a real estate licensee, you may prepare contracts for the sale of improved residential properties containing one to four dwelling units or for vacant one-family lots where you have a commission or fee interest in the transaction. The preparation of contracts for the sale of commercial or other non-residential property in transactions in which a licensee has a fee or commission interest is deemed to be the unauthorized practice of law and will subject licensees to sanctions by the Administrative Office of the Courts as well as the Commission.



IMPORTANT NOTICE

ALL LICENSED INSTRUCTORS

School, instructor, and additional teaching location licenses will expire on February 1, 1999. Pursuant to N.J.A.C. 11:5-1.28 (l)2 "As a prerequisite for the renewal of an instructor license, an instructor must attend a Commission sponsored seminar updating them on recent developments affecting the real estate brokerage business in New Jersey".

Any instructor who does not attend a continuing education seminar for the current licensing period will not qualify to renew his/her license. Consequently, in order to teach a course after February 28, 1999, such persons would need to again fulfill all requirements for initial licensure as an instructor. Requirements may include taking the 30 hour courses on Agency/Ethics and Office Management and in all cases to pass the instructor license examination, attend a new licensee seminar and pay the instructor licensing fee of \$140.00 prior to the issuance of a license.

The instructor seminar will be held on October 2, 1998 at the Pines Manor , Route 27, Edison, New Jersey between the hours of 9:00 a.m. and 5:00 p.m.

A second seminar will be held on November 6, 1998, at the same location, for those instructors who absolutely cannot attend the first seminar. Seating will be limited and on a first come, first serve basis.



PROTECT YOUR INSTRUCTOR LICENSE

PLAN TO ATTEND THE OCTOBER 2, 1998 SEMINAR

Seminar registration information was sent to all instructors on or about June 15, 1998.

Instructors who have any questions regarding this notice should contact the Commission's Education Bureau at 609-292-8579.



THE DOWNSIDE OF TWO YEAR LICENSES

Well, for the first time in recent memory we've gone through a July without brokers having to prepare and submit, and the Commission staff having to process applications to renew 75,000 or more real estate licenses. Wasn't it a relief not to have to complete the forms, ask the screening questions of all licensees and collect the renewal fees?

(Yes, we know that many licensees may feel the recent survey requiring the submission of the home address, date of birth and social security number of all licenses may have been just as burdensome as the renewal process. However, the gathering of that information was required by recent legislation applicable to the holders of all professional licenses issued by the state and intended to enhance child support enforcement efforts. And remember, at least you weren't required to pay fees with your responses to the survey!)

In any event, the purpose of this article is to remind brokers that, because they were not submitted this year the

opportunity for them to use the renewal application to notify the Commission about such things as a change of business address or phone number, the closing of an existing escrow account or the opening of a new or additional escrow account was missed. However, the fact that their current licenses do not expire until 1999 does not relieve brokers of the obligation to inform the Commission about such changes. Change of address forms can be requested through the Commission's automated application request system by calling 609-292-7053, or via FAX at 609-292-0944, or by E-mail at inndeck@superlink.com Information about changes in a firm's escrow or trust accounts should be submitted in letter form and may also be Faxed, E-mailed or sent to:

**New Jersey Real Estate Commission
P.O. Box 328
Trenton, New Jersey 08625-0328
Attn: Licensing Section**

The most important information supplied on renewal applications is the identification of all persons on record with the Commission as licensed with a particular firm. The list of licensees supplied with the Child Support Enforcement Information survey is an excellent substitute. Bearing in mind that it may not be 100% comprehensive since licensing transactions have been processed since those lists were generated, all brokers should use that list as an aide to assist them in verifying that they are in possession of a valid, current license for each salesperson and broker-salesperson licensed with their firm. If one or more licenses have not been received and any temporary authorization period has expired, the broker should immediately contact the Commission's licensing section at 609-292-3500 to rectify the situation.

While we've all realized substantial benefits by avoiding the renewal process in 1998, the downside was a missed opportunity to confirm the accuracy of significant data as it appears on the Commission's records and to inform the Commission about changes. Brokers are urged to act on this reminder in lieu of their being required to submit a renewal application this year.



IT'S A FEDERAL OFFENSE



Did you know that certain actions by real estate licensees may subject them to liability under federal law as well as state laws and Commission rules? For example, if a buyer or licensee has made or aided in the falsification of a loan application to a federally insured lender, including misstatements of purchase price, amount of down payment, or credit-worthiness of the loan applicant, those involved may be charged with felonies punishable by up to five (5) years in prison and a \$10,000 fine. (See 18 U.S.C. Section 371.)



REMINDER: THE COMMISSION MUST BE NOTIFIED IMMEDIATELY WHEN THERE IS ANY CHANGE IN

- a business address;
- legal or "doing business as" name;
- business telephone number;
- branch officer supervisor, AND OF

- the closing of a main or branch office,
- the opening of a new escrow account.



HELPFUL HINTS FOR LICENSEES*

By following the suggestions listed below, licensees can avoid potential problems.

FOR BROKERS

- Keep organized, detailed records regarding real estate transactions and the actions of your licensees in the transactions.
- Don't depend on anyone to do your job. It's okay to delegate as long as you remember that you are responsible for everything that goes on in your office.
- Make sure that you have all escrow or trust account records required by the Rules of the commission.
- Don't market a property for sale or lease unless you have written authorization from *all* owners.
- Remove your sign from listed property when the listing expires and discontinue advertising the property in any way.
- Have regular meetings with your licensees and oversee what they are doing. Establish specific office policies and make sure that all licensees and employees understand and comply with them.
- Unless the escrow provision in a contract or lease otherwise provides, do not refund any deposit without first obtaining the written consent of *all* parties who have an interest in the funds.

FOR SALESPERSONS AND BROKER-SALESPERSONS

- Get or confirm everything in writing, especially directions from a client or customer that appear contrary to their interests, such as significantly under-pricing a listing in order to make a quick sale. Don't give or rely on verbal statements that are inconsistent with what the written documents provide.
- Only take deposits in the form of cash or a negotiable instrument payable to your broker's escrow or trust account. If a deposit is taken in cash, provide a receipt to the payor and keep a copy in the file on the transaction.
- Turn over deposits to your broker as soon as you get them. Never convert them to your own use.
- Explain everything to your clients and customers.
- Document all activities regarding a real estate transaction.
- Date all offers and contracts and have all counter-offers acknowledged in writing by all parties. If it gets to the point where there have been so many counter-offers that a reasonable person could not understand the proposed transaction, write a new contract.

FOR ALL LICENSEES

- Utilize the Consumer Information Statement in all transactions where its use is required.
- Learn the difference between the Commission and the Board of Realtors
- Keep abreast of changes in the Real Estate License Law and the Rules and Regulations of the Commission.

*Portions of this article previously appeared in a recent edition of "Boundary Lines," the Newsletter of the Louisiana Real Estate Commission



RECENT DISCIPLINARY ACTIONS

- **Jeraldean Lucas, broker, Bergen County, March 17, 1998.** At a full hearing, the Commission found Ms. Lucas to be in violation of N.J.S.A. 45:15-12.8, and 45:15-17(o) by receiving the funds of others in one real estate rental transaction in the form of a check payable to a payee other than her employing broker, and depositing same into a personal or other business account which she had maintained. The Commission imposed a fine of \$2,000 and her license was placed on probation for two years during which time she must submit escrow ledgers and bank statements quarterly to Commission.

- **Sandra Ross Harper, salesperson, Bergen County, March 17, 1998, N.J.S.A. 45:15-12.8, 45:15-17(o),** receiving funds of others in one real estate rental transaction payable to a payee other than her employing broker, and depositing same into a personal or other business account which she maintained. The Commission imposed a \$500 fine, and placed Ms. Harper's license on probation for two years during which time her employing broker must submit to the Commission quarterly reports on her activities.

- **Anthonette Diamond, broker-salesperson, Burlington County, April 7, 1998.** In a settlement approved by the Commission, Ms. Diamond admitted to violations of N.J.S.A. 45:15-1 in that over a period of some six years and on numerous occasions she conducted real estate brokerage activity through an unlicensed entity while she was licensed as a broker-salesperson; N.J.S.A. 45:15-16 and 45:15-17(m) in that she accepted a commission or valuable consideration for the performance of real estate brokerage and/or property management activities from persons other than her employing broker; N.J.S.A. 45:15-12.8 in that she received monies as the temporary custodian of the funds of others in real estate transactions in the form of cash or other negotiable instruments payable to a payee other than the broker with whom she was licensed and, upon her receipt of the said funds failed to account for and deliver them to her broker for deposit into an escrow account maintained by her broker; and, while licensed as a broker salesperson, she independently maintained an escrow account into which she placed security deposits collected from tenants of properties she did not own in violation of N.J.A.C. 11:5-1.3(c). Ms. Diamond agreed to a three year revocation of her broker-salesperson's license, a two month period of ineligibility to hold a salesperson's license, and a \$20,000 fine.

- **Ahmed S. Abu-Lebda, former salesperson, Bergen County, April 21, 1998.** The Commission received notification from the Division of Insurance that Mr. Abu-Lebda had signed a consent order suspending his insurance producer's license for two years and imposing a fine of \$4,000 for submitting false applications for insurance coverage to the Personal Automobile Insurance Plan (PAIP). Mr. Abu Lebda failed to disclose to the Commission the suspension of his insurance producer's license on a license reinstatement application in violation of N.J.S.A. 45:15-17(a), (e), (l), (n). Mr. Abu-Lebda's eligibility to hold salesperson's license was revoked for five years and a \$2,000 fine was imposed.

- **Joseph Sinisi, broker-salesperson, Union County, May 5, 1998.** A settlement was approved by the Commission wherein Mr. Sinisi admitted an unintentional violation of N.J.S.A. 45:15-17(s) in failing to notify the Commission within 30 days of an arrest or of the filing of criminal charges. He agreed to pay a fine in the amount of \$1,000, agreed to withdraw his application for a real estate instructor's license and further agreed not to re-submit same until October 9, 1998.

- **Rose Russo, salesperson, Passaic County, May 5, 1998.** A settlement was approved by the Commission wherein Ms. Russo admitted that she had violated N.J.S.A. 45:15-17(m) by accepting a commission for real estate brokerage activity from someone other than her employing broker. She agreed to re-take the salesperson prelicensure education course and to pay a \$1,000 fine.

- **Lisa M. Tortora, salesperson, Essex County, May 12, 1998.** A settlement was approved by the Commission

wherein Ms. Tortora admitted that she violated N.J.S.A. 45:15-17(n), obtaining a real estate license by misrepresentation, in that she failed to disclose to the Commission that she had been convicted of the offense of theft by deception within the five years immediately preceding her application for a salesperson's license. Her license was revoked for five years and she agreed to pay a \$1,000 fine.

■ **Joseph Sidoti, salesperson, Monmouth County, June 23, 1998.** After a full hearing, the Commission found that Mr. Sidoti had violated N.J.S.A. 11:5-1.23(a) and (b) in that he failed to ascertain material information and failed to deal fairly with the sellers when he failed to inform the sellers that two deposit checks had been returned unpaid because the buyers' bank account had been closed. The Commission also found that he had violated N.J.S.A. 45:15-17(e) when he accepted and failed to question a third deposit check drawn on the same bank account which he had been previously notified was closed. Mr. Sidoti's license was suspended for six months, he was ordered to re-take the salesperson's prelicensure education course and a \$1,000 fine was imposed.

■ **Nicholas Gallo, broker-salesperson, Monmouth County, June 23, 1998.** After a full hearing, the Commission found that Mr. Gallo, who was a branch office supervisor, had violated N.J.A.C. 11:5-1.19(c) failing to properly supervise the actions of salesperson Joseph Sidoti, and N.J.S.A. 45:15-17(e) incompetency in failing to question a deposit check which was drawn or to otherwise verify the negotiability of those funds after he had received notice that the bank account on which that check was drawn had been closed. A \$2,000 fine was imposed.



AN OUNCE OF PREVENTION

(Must Reading For All Salespersons)

Unfortunately, for a variety of reasons brokers occasionally succumb to the temptation to misappropriate funds from their escrow or trust accounts. When serious violations of this nature occur, all too frequently the ultimate victims of the broker's defalcations are not the parties to the contracts but THE SALESPERSONS whose hard work generated the transactions to which the stolen monies pertained.

Several years ago a well respected, apparently successful broker overextended himself. When the volume of business he anticipated failed to materialize he began removing deposit monies from escrow to cover the operating expenses. When the sales closed he prevailed upon his salespersons (who considered themselves his friends as well as his co-workers) to allow him to delay paying their commissions, thereby enabling him to apply the firms' entire commission to cover all or most of the misappropriated deposits. This went on for a period of months, with several salespersons eventually being owed more than \$10,000.00 in commissions. Ultimately the scheme failed, and criminal charges and numerous civil suits were filed against the broker.

To a great extent, the Guaranty Fund covered the losses suffered by the consumers whose misappropriated deposits were not fully repaid from the firm's commissions. The broker declared bankruptcy and ended up in jail. As for the loyal salespersons, who had initially believed they were merely helping the broker through a temporary cash-flow problem, they got next to nothing. Because the Guaranty Fund is only available to consumers whose deposit monies have been misappropriated by licensees, in the suits the salespersons ultimately filed to recover their unpaid commissions they could not successfully claim they were entitled to reimbursement from the Fund. Consequently, even though some salespersons were able to secure judgments before the bankruptcy was declared, they were left in the status of unsecured creditors, entitled only to a small percentage of what remained in the bankrupt's estate after all of the secured creditors had been paid.

These sad truths were explained to about six of the broker's former salespersons when they appeared at the

Commission offices shortly after the broker had abruptly closed his doors and days before his arrest. They described how they "knew" or "sensed" or "felt" that something was seriously wrong, but that out of loyalty to the broker they refrained from alerting the Commission to any potential problems. As a result, the brokers' problems grew, along with the total amount of the commissions he owed to his salespersons. When the staff had concluded its explanation of the reality of their situations, the look of utter dismay on their faces was unforgettable.

The purpose of this article is to inform salespersons of these "facts of life". Surely the current good times will not last forever. If there comes a time when your broker begins to display a pattern of questionable behavior, such as withholding or bouncing commission checks, your antennae should go up. Such red flags should not go unheeded. Trust your instincts.

Remember that, as with many other types of problems, it may be best to have the condition examined early and cured with some minimal discomfort, rather than let it fester to the point where it ends up costing an arm and a leg - YOURS!



ONE SALES COMMISSION, OR YOUR LICENSE AND LIVELIHOOD - WHICH IS MORE IMPORTANT TO YOU?

In the Disciplinary Action Reports which appear elsewhere in this issue, the case of salesperson Joseph Sidoti is discussed. Mr. Sidoti was the victim of apparent con-artists who, for some as yet undetermined reasons, posed as serious buyers of a \$505,000 property in Brick Township. The buyers delivered 3 checks totaling \$72,500 in deposit monies to Sidoti. Unfortunately, the checks were all drawn on a closed account and were never honored after being deposited into his broker's trust account.

Like other licensees who have made the same mistake, upon learning that the first two checks totalling \$42,500.00 were dishonored Sidoti got his priorities mixed up. Instead of immediately informing the seller, or listing salesperson, or seller's attorney that, contrary to the terms of the contract, the deposits which were to have been paid to and held in trust by his broker had in fact not been paid, he attempted to keep the deal together by hounding the buyers to make good on the deposits. Despite their repeated verbal assurances that they would do so, they never did.

All licensees are reminded that when their firms act as an escrow agent or trustee, they owe fiduciary duties to **both** parties to the escrow arrangement. Among those are the duty to make full disclosure of all information material to the escrow transaction. It cannot seriously be argued that notification that the checks paying the deposit monies were dishonored is not material to the interests of the seller. If payment of the deposit was not a material obligation on the part of the buyers, it would not be required by the terms of the contract! Consequently, in all cases such information should immediately be conveyed to the seller, either directly or through the listing salesperson or the sellers' attorney. When doing so, the best practice would be for the notice to either be delivered or confirmed in writing.

In the case where a salesperson and selling broker are operating as buyers agents and holding deposit monies paid by their client in trust or in escrow, their fiduciary duties to the buyer are not superseded, but rather are qualified by their obligations to the seller which flow from the broker's assuming the role of escrow agent.

It seems safe to say that most objective persons would conclude that the delivery of bad checks in payment of deposit monies constitutes a material breach of the contract by the buyer. Whether to arrive at that conclusion,

and what steps to take after doing so are decisions for the principal in the relationship, not the agent, to make . But if the sellers are not informed that the check or checks paying the deposit were dishonored they are deprived of the opportunity to evaluate the situation and decide upon a course of action. It is not for the agent to decide: (1) that the only course of action to be followed is to attempt to keep the deal together; and (2) that they alone, and not the sellers and their attorney, should pursue that objective.

Clearly, if a deposit check is dishonored through no fault of a buyer, the bank error or other problem can be swiftly rectified, truthful explanations provided to all concerned , and the transaction can move forward. Where the buyer has not acted in bad faith, the potential down-side of prompt and full disclosure to all parties is minimal. However, the potential for catastrophe is so great where sellers and licensees encounter scam artists like those with whom Mr. Sidoti dealt, the dictates of common sense as well as those of the Commission's Rules and the laws of agency compel prompt and full disclosure.

As Mr. Sidoti and other licensees who found themselves in similar situations have learned, the price of disregarding those dictates can be high.



APPRAISER LICENSING LAW AMENDMENTS EFFECTIVE JULY, 1998

On July 18, 1998 recently enacted amendments to New Jersey's appraiser licensing/certification law (N.J.S.A. 45:14F-1, et seq.) went into effect. The amendments to Section 21 of the law (N.J.S.A. 45:14F-21) may be of great interest to real estate licensees.

Subsection c. of this law now provides:

Except as otherwise provided in subsection f. of this section, no person other than a State licensed real estate appraiser, a State certified real estate appraiser or a person who assists in the preparation of an appraisal under the direct supervision of a State licensed or certified appraiser shall perform or offer to perform an appraisal assignment in regard to real estate located in this State including, but not limited to, any transaction involving a third party, person, government or quasi-governmental body, court, quasi-judicial body or financial institution. Nothing in P.L. 1991, c. 68 (C.45:14F-1 et seq.) shall be construed to preclude a person not licensed or certified pursuant to this act from giving or offering to give, for a fee or otherwise, counsel and advice on pricing, listing, selling and use of real property, directly to a property owner or prospective purchaser if the intended use of the counsel or advice is solely for the individual knowledge of or use by the property owner or prospective purchaser.

New Section (f) of the law reads as follows:

f. A State or federally chartered bank, savings bank or savings and loan association may obtain and use appraisals made by a person who is not certified or licensed pursuant to the provisions of P.L. 1991, c. 68 (C.45:F-1 et seq.) in any circumstance where the underlying transaction is a federally related transaction for which federal law and regulation do not require that a certified or licensed appraiser be used. For the purposes of this subsection, "federal law" means Title XI of Pub. L.101-73 (12 U.S.C. s. 3331 et seq.); and "federally related transaction" has the meaning as set forth in section 1121 of Title XI of Pub. L101-73 (12 U.S.C. s. 8850).

For a complete understanding of this law it is necessary to be familiar with the statutory definitions of the terms "appraisal" and "appraisal assignment." As provided in N.J.S.A. 45:14F-2:

"Appraisal" or "real estate appraisal" means an unbiased analysis, opinion or conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of, real estate. An appraisal may be classified by subject matter into either a valuation or an analysis. A "valuation" means an estimate of the value of real estate or real

property other than a valuation.

"Appraisal assignment" means an engagement for which an appraiser is employed or retained to act or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased appraisal.

The effect of these amendments was to revise the statutory description of those appraisals which may be performed by persons who are not state certified or licensed appraisers. Prior to the effective date of these amendments, New Jersey real estate with a value of less than \$150,000.00 or real estate which was the subject of a transaction other than a federally related transaction could be appraised by unlicensed or uncertified persons if the party for whom the appraisal was performed was using it as information in making their own personal or business decisions. The new description is that which is explicitly set forth in new subsection (f) as quoted above, which incorporates by reference, the standard established by federal law.

Licensees should also be aware of the provisions in the Appraiser statute which govern advertising. The law provides that persons cannot assume or use the titles or designations "State certified general real estate appraiser" or "State certified residential real estate appraiser" (N.J.S.A. 45:14F-5) or "State licensed real estate appraiser" (45:14F-6) unless the person holds a current valid certification or license, as applicable.

The Commission staff is aware that it is common for many brokerage firms to include in their general advertisements, such as those which appear in "Yellow Pages", indications that they also offer appraisal services. Brokers who advertise in this fashion and/or offer to perform appraisals should be thoroughly familiar with the legal authorities which govern such practices.



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