REGULATIONS FOR THE NEW JERSEY REAL ESTATE COMMISSION

N.J.A.C. 11:5-1.1 et seq.

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TITLE 11. INSURANCE

CHAPTER 5. REAL ESTATE COMMISSION

Chapter Authority

N.J.S.A. 45:15-6, 45:15-10.4, 45:15-16.2g, 45:15-16.49, 45:15-16.82, 45:15-17.t, 45:15-17.4, and 45:15-42.

Chapter Source and Effective Date

Effective: February 24, 2016.

See: 48 N.J.R. 493(b).

Chapter Expiration Date

Chapter 5, Real Estate Commission, expires on February 24, 2023.

Chapter Historical Note

Chapter 5, Real Estate Commission, was filed and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Chapter 5 expired on August 2, 1983.

Chapter 5, Real Estate Commission, was adopted as new rules by R.1983 d.471, effective November 7, 1983. See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).

Pursuant to Executive Order No. 66(1978), Chapter 5, Real Estate Commission, was readopted as R.1988 d.555, effective October 28, 1988. See: 20 N.J.R. 2184(a), 20 N.J.R. 3019(a).

Subchapter 2, Organizational Rules, was adopted as R.1989 d.258, effective April 19, 1989. See: 21 N.J.R. 1364(a).

Subchapter 3, Petitions for Rulemaking, Subchapter 4, Proceedings before the Commission, and Subchapter 5, Appeals of Initial Denials of Licensing Applications, were adopted as R.1989 d.429, effective August 21, 1989. See: 21 N.J.R. 1315(a), 21 N.J.R. 2524(a).

Subchapter 6, Rules Interpreting and Implementing the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq., was adopted as R.1990 d.455, effective September 17, 1990. See: 22 N.J.R. 1421(a), 22 N.J.R. 2969(d).

Pursuant to Executive Order No. 66(1978), Chapter 5, Real Estate Commission, was readopted as R.1993 d.552, effective October 15, 1993. See: 25 N.J.R. 3597(b), 25 N.J.R. 5229(a).

Pursuant to Executive Order No. 66(1978), Chapter 5, Real Estate Commission, was readopted as R.1998 d.497, effective September 14, 1998. As a part of R.1998 d.497, effective October 5, 1998, sections 1.1 through 1.44 of Subchapter 1, Rules and Regulations, were recodified as Subchapter 2, Education; Subchapter 3, Licensing; Subchapter 4, Employment Practices/Office and Licensee Supervision; Subchapter 5, Trust Accounts/Records of Brokerage Activity; Subchapter 6, Conduct of Business; Subchapter 7, Prohibited Activities; and Subchapter 8, Disciplinary Actions/Conditions for Restoration of License/Real Estate Guaranty Fund Claims. Also as a part of R.1998 d.497, effective October 5, 1998, Subchapter 2, Organizational Rules, was recodified as Subchapter 1; Subchapter 6, Rules Interpreting and Implementing the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq., was recodified as Subchapter 9; Subchapter 3, Petitions for Rulemaking, was recodified as Subchapter 10; Subchapter 4, Proceedings before the Commission, was recodified as Subchapter 11, Procedures on Disciplinary Actions, Contested Applications, Declaratory Ruling Requests; and Subchapter 5, Appeals of Initial Denials of Licensing Applications, was recodified as section 11.10. See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

Chapter 5, Real Estate Commission, was readopted as R.2004 d.130, effective March 5, 2004. See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).

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

Chapter 5, Real Estate Commission, was readopted as R.2009 d.287, effective August 27, 2009. See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).

Subchapter 12, Continuing Education, was adopted as new rules by R.2011 d.184, effective July 18, 2011. See: 43 N.J.R. 369(a), 43 N.J.R. 1592(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 5, Real Estate Commission, was scheduled to expire on August 27, 2016. See: 43 N.J.R. 1203(a).

Chapter 5, Real Estate Commission, was readopted, effective February 24, 2016. See: Source and Effective Date.

SUBCHAPTER 1. ORGANIZATIONAL RULES

11:5-1.1 Commission responsibilities

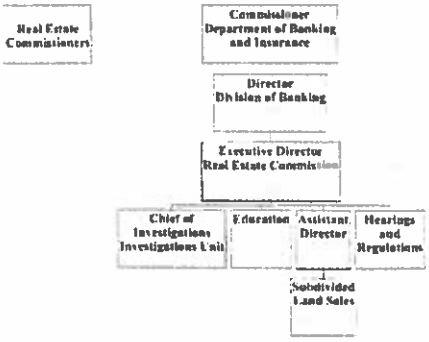
The Real Estate Commission is responsible for the supervision and regulation of the education, examination and licensing of real estate brokers, broker-salespersons, salespersons, and referral agents; the regulation of the sale or lease of out-of-State properties to New Jersey residents through promotional activities in New Jersey, the investigation and adjudication of disciplinary actions against licensees; and the administration of the Real Estate Guaranty Fund.

Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
Substituted ", broker-salespersons," for "and" following "brokers", "State" for "state" and a semicolon for a comma following the second occurrence of "New Jersey" and following "licensees", and inserted "and referral agents,".

11:5-1.2 Organization of the Commission

The organizational chart of the Division of the Real Estate Commission is as follows:

Organizational Chart of The New Jersey Real Estate Commission



Amended by R.1989 d.324, effective May 24, 1989.
See: 21 N.J.R. 1364(a), 21 N.J.R. 1709(a).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
Updated the Commission Organization Chart.
Amended by R.1999 d.15, effective December 15, 1998.
See: 31 N.J.R. 544(a).
Updated the Commission Organization Chart.
Amended by R.2004 d.130, effective April 5, 2004.
See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).
Updated the Commission Organization Chart.
Amended by R.2009 d.287, effective September 21, 2009.
See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).
In the introductory paragraph, inserted "Division of the"; and amended the Commission Organization Chart.

11:5-1.3 Functions of the Commission

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

1. The Investigations Section is responsible for investigating the qualifications of applicants for licensure, and for investigating complaints against licensed brokers, broker-salespersons, salespersons or referral agents or individuals who have allegedly engaged in the business of a real estate broker, salesperson or referral agent without being licensed to do so.

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

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

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

Amended by R.1989 d.324, effective May 24, 1989.
See: 21 N.J.R. 1709(a).
At (a)3, reference to Education Subsection added to end of sentence.
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
Rewrote (a).
Amended by R.2004 d.130, effective April 5, 2004.
See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).
In (a)4, rewrote the first sentence.
Amended by R.2009 d.287, effective September 21, 2009.
See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).
In the introductory paragraph of (a), substituted "four" for "six"; deleted former (a)1 and (a)5; and recodified former (a)2 through (a)4 as (a)1 through (a)3, and former (a)6 as (a)4.
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In (a)1, substituted ", broker-salespersons," for "or" following "brokers" and a comma for "or a" following "broker", and inserted "referral agents or" and "or referral agent".

11:5-1.4 Information available to the public

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

Amended by R.1998 d.497, effective October 5, 1998.
See: 30 New Jersey Register 2333(a), 30 New Jersey Register 3646(a).
Rewrote the section.
Administrative correction.
See: 36 New Jersey Register 4318(a).

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

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

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

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

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

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

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

3. Real Estate Commission meeting minutes;

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

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

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

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

2. Annual reports submitted by a subdivider pursuant to N.J.S.A. 45:15-16.40;

3. Public offering statements and amended public offering statements prepared pursuant to N.J.S.A. 45:15-16.38;

4. Orders to Show Cause and other pleadings charging violations of N.J.S.A. 45:15-16.27 et seq. and the final disposition of such orders, including Orders to Cease and Desist and/or imposing penalties or sanctions; documents accepted into the agency record in any such proceedings; and

5. Applications for exemption of a subdivision filed with the Bureau pursuant to N.J.S.A. 45:15-16.32(c) and N.J.A.C. 11:5-9.18 and the final disposition of any such exemption application.

(f) The following records are maintained pursuant to the Real Estate Guaranty Fund Act, N.J.S.A. 45:15-34 et seq.:

1. Court orders for payment from the Real Estate Guaranty Fund; and

2. Pleadings served upon the Commissioner of Insurance or any duly authorized agent or employee of the Department of Insurance pursuant to N.J.S.A. 45:15-39.

(g) The following licensee records are nonpublic in accordance with N.J.S.A. 47:1A-1 et seq.:

1. Criminal complaints, indictments, judgments of conviction and other separate documents submitted in connection with a license application concerning whether an applicant is disqualified by reason of indictment for or conviction of a crime;

2. Criminal history records obtained as the result of any criminal history check;

3. Petitions or discharges in bankruptcy, complaints, orders or other pleadings in actions for assignment to creditors and other separate documents submitted in connection with a license application concerning whether the applicant is disqualified by reason of unworthiness;

4. Copies of orders of suspension or revocation issued by professional or occupational licensing authorities, and other separate documents submitted in connection with a license application concerning whether the applicant is disqualified from licensure;

5. Records concerning the medical disability of any licensee;

6. Investigative files in any matter pending investigation, or in any completed investigation in which no formal disciplinary action was taken;

7. Personal data on a licensee such as home address, home telephone number and date of birth;

8. The Social Security numbers of any applicants or licensees which were submitted to the Commission on a license application or otherwise obtained by the Commission; and

9. Purchaser information submitted pursuant to N.J.S.A. 45:15-16.38.

New Rule, R.1994 d.269, effective June 20, 1994 (operative July 1, 1994).
See: 26 N.J.R. 736(a), 26 N.J.R. 1222(a), 26 N.J.R. 2585(b).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (d)2 and (e)5, changed N.J.A.C. references.
Amended by R.2004 d.130, effective April 5, 2004.
See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).
Added (g)9.
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In (d)2, inserted "referral agent".

SUBCHAPTER 2. EDUCATION

11:5-2.1 Educational requirements for salespersons, referral agents and brokers in making application for licensure examination

(a) All applicants for a salesperson's, referral agent's or broker's license shall present with their license application evidence of their satisfactory completion of a course of education in real estate subjects taught in accordance with N.J.S.A. 45:15-10.1 and as required by this section.

1. This requirement shall also apply to disabled veterans making application for licensure pursuant to N.J.S.A. 45:15-11. However, the Commission shall approve a program of studies in real estate completed by such a veteran offered by a provider other than a licensed school if the program consisted of at least 75 hours in the case of an applicant for a salesperson's or referral agent's license, or 225 hours in the case of an applicant for a broker's license and the program was offered by an accredited college or university for credit.

2. No person shall receive credit toward the fulfillment of the salesperson or referral agent prelicensure education requirement for attendance at a broker's prelicensure course and no person shall receive credit toward the fulfillment of the broker's prelicensure education requirements for attendance at a salesperson's or referral agent's prelicensure course.

(b) To qualify to challenge the examination for licensure as a real estate salesperson or referral agent, a candidate must first successfully complete a course of study in real estate at a school licensed by the Commission pursuant to N.J.S.A. 45:15-10.4 consisting of a minimum of 75 hours as specified in (f) below. To qualify to challenge the real estate broker's license exam, a candidate must first successfully complete courses of study in real estate consisting of a minimum of 150 hours as specified in (g) below, offered by a licensed school or, with respect to those certain courses specified in (g)5 below, offered by some other Commission-approved provider.

(c) No person with the exception of qualified disabled veterans shall receive credit for satisfactory completion of the prescribed 150 hours of broker's courses unless that person was the holder of a salesperson's license at the time of enrollment in said course.

(d) The time allotted by any school for a final examination covering real estate subjects shall be applicable toward the minimum hours of course study. No more than five minutes of each course hour may be utilized for breaks in the actual classroom instruction being conducted at any given session of a pre-licensure course. During the time in which actual classroom instruction is conducted, in addition to covering the substantive material mandated by (f) and (g) below, instructors are to provide thorough instruction on the State license examination and license issuance procedures for salesperson, referral agent and broker license candidates, as applicable, and to perform all reasonably required administrative functions such as taking attendance and making announcements of general interest.

(e) The requirements that broker license candidates complete the general 90 hour broker prelicensure education course and that salesperson or referral agent license candidates complete the 75 hour salesperson prelicensure education course shall not apply to:

1. Applicants for licensure as a broker, salesperson or referral agent who have held a real estate broker's license issued by another state and who were actively engaged in the real estate brokerage business for three years or more immediately preceding the date of application;

2. Applicants for licensure as a broker who are attorneys at law admitted to the practice in the State of New Jersey and applicants for licensure as a salesperson or referral agent who are attorneys at law admitted to practice in New Jersey or in any other state at the time of making application;

3. Applicants for licensure as a salesperson or referral agent who have earned a college degree from any accredited institution of higher education, provided that:

i. The total number of college level classroom hours devoted to real estate and related subjects was 75 or more, and such courses were completed within three years of making application;

ii. The applicant received a bachelor or associate degree in real estate regardless of how long prior to their application for a waiver they received that degree; or

iii. The applicant satisfactorily completed 75 or more classroom hours of course work in real estate or related subjects, at least 45 hours of which consisted of instruction on real estate conducted as part of a post-graduate program and that such post-graduate studies were completed within three years of making application.

4. Applicants for licensure as a salesperson or referral agent who hold or held a real estate license issued by another state, provided that:

i. The applicant has satisfactorily completed a prelicensure course of real estate education at a proprietary school, college or university in that other state;

ii. The prelicensure course was sanctioned by the real estate licensing authority of that state;

iii. The total number of classroom hours included in the course was 75 or more;

iv. The applicant qualified for licensure in that state by examination; and

v. The applicant was actively licensed in that state within three years of applying for the waiver.

5. Applicants for licensure as a salesperson or referral agent who previously held a license as a New Jersey real estate broker and whose last license expired more than two but less than five years prior to making application.

(f) The salesperson's prelicensure course shall consist of 75 hours of education. Subject to (e) above, applicants for licensure as a salesperson or referral agent shall complete the 75 hour salesperson prelicensure course that shall include:

1. Property rights (9 hours);

2. Contracts and other property instruments (12 hours);

3. Leases and landlord-tenant relations (6 hours);

4. Mortgages and other liens (12 hours);

5. Business opportunity sales (2 hours);

6. The laws of agency (12 hours);

7. Appraising (2 hours);

8. License Act and regulations (9 hours);

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. Salesperson duties and pitfalls in the real estate business (3 hours);

11. Quizzes and final examination (3 hours).

(g) The 150 hours of prelicensure education required of candidates for licensure as a broker or broker-salesperson by N.J.S.A. 45:15-10 shall be acquired as provided in this subsection. A 90 hour general broker's prelicensure course shall first be completed in accordance with the following syllabus and directives. Thereafter, two 30 hour broker courses as described in (g)5, 6 and 7 below shall be completed. All three courses, totaling 150 hours of instruction, must be successfully completed within a period of two years. Where the three courses are not so completed, a candidate must again successfully complete any previously taken course and all courses not previously taken within the two year time frame, and again fulfill the experience requirement established at N.J.S.A. 45:15-9 and N.J.A.C. 11:5-3.8 in order to qualify to challenge the broker license examination.

1. The 90 hour general broker's prelicensure course may be taught in blocks or modules of material. The maximum number of modules into which the course may be divided is 23, with their content corresponding to the 23 subject matter areas identified in the syllabus below. Schools offering courses in modules may include more than one subject matter in a given module. No student may commence a course which is offered in modules on a date other than the starting date of any module. No student shall be given credit for the successful completion of a 90 hour general broker's prelicensure course unless and until they have received instruction in all of the subject matter areas identified below for approximately the number of hours indicated, and passed a comprehensive final examination. The 90 hour general broker's prelicensure course shall be conducted in accordance with the following syllabus and directives. Substantive instruction shall be provided on the following topics for approximately the number of hours indicated:

i. Review license laws and regulations including provisions of the Real Estate Sales Full Disclosure Act and N.J.A.C. 11:5-9 (six hours);

ii. Listing contracts—sales and rentals (three hours);

iii. Sale contracts (three hours);

iv. Deeds and real property rights and interests including nature of ownership, legal description, chain of title, restrictions, consideration, various types, acknowledgments and recording, land and land elements, water rights (including riparian rights), state claims regarding tidelands estates and other interests, methods of ownership, dower and curtesy, wills and descent, adverse possession and fixtures (three hours);

v. Advanced financing techniques including qualification formulae, various types, typical prerequisites (insurance, flood insurance, if applicable, certificate of occupancy, etc.) and income tax ramifications (six hours);

vi. Liens, foreclosures and redemptions (one hour);

vii. Easements, restrictions, etc. (one hour);

viii. Condemnation (one hour);

ix. Zoning, including non-conforming uses, variances, subdivisions, planning, zoning issues raised by condominium construction or conversion and other types of real estate development (five hours);

x. Surveys (non-government type) and legal descriptions (one hour);

xi. Property taxes, assessment, re-valuations, assessment appeals and special appeals (three hours);

xii. Real estate valuation including techniques and distinctions between comparative market analyses and formal appraisals (three hours);

xiii. Settlement/closing procedures, RESPA forms (six hours);

xiv. Mathematics relative to real estate (six hours);

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. Business and management practices (total of six hours for (g)1xvi(1) through (6) below), including:

(1) Company structure including single ownership, partnership, corporate, requirements to establish, employees vs. independent contractors;

(2) Office management including bookkeeping and accounting relative to real estate, escrow responsibilities, company dollars, ledgers, records and computers;

(3) Personnel management including recruiting, hiring, training, supervising, compensation and termination;

(4) Advertising and promotions;

(5) Community involvement by the company, broker, salespersons and referral agents; and

(6) Insurance including errors and omissions, etc.

xvii. Principles of agency including ethics and legal liability, disclosure requirements and case studies (six hours);

xviii. Commercial and industrial real estate including small scale, large scale, leasing, financing, site analysis, advertising, remuneration, bulk sales, U.C.C., considerations in franchise transactions, E.C.R.A., BOCA Code, construction financing and other commercial construction concerns (three hours);

xix. Property management including responsibilities and information regarding repairs and maintenance, public relations, collection of rents, government regulations, business trends, personnel, recordkeeping, advertising, etc. (three hours);

xx. Residential real estate development including requirements of New Jersey's Planned Real Estate Development Act including time-sharing, the Home Owner's Warranty program and other concerns regarding single-family and condo/co-op development, conversion, marketing and financing (two hours);

xxi. Leases and landlord/tenant laws including Truth in Renting Law (four hours);

xxii. Real estate investments, syndications, REIT's, limited partnerships and S.E.C. licensing requirements (two hours); and

xxiii. Income tax considerations and ramifications of various real estate transactions (three hours).

2. Within the 90 hour general broker prelicensure course instruction will also be provided on the following topics for the hours indicated. These topics shall be taught in such a manner as to familiarize students with the basic elements of the listed topics and to impart to students an awareness of their scope and effect. The coverage on these topics will also inform students of the sources which can be contacted in order to obtain additional general information and/or specific data concerning the topics' applicability to or impact upon particular locations, and to educate students on their obligations and responsibilities as licensees to ascertain and disclose such information. The topics to be taught are:

i. Radon contamination, which instruction shall also include testing techniques, remediation techniques and the New Jersey DEP confidentiality statute (one hour);

ii. Ground water contamination, which instruction shall also include testing and remediation techniques (one hour);

iii. Problems posed by a property's proximity to solid waste disposal and/or toxic waste sites (one hour);

iv. Ground water percolation and private sewage disposal systems, which instruction shall also include testing methods (one hour);

v. Problems posed by lands officially designed as Wetlands, Pinelands, or within any other special classifications (one hour); and

vi. New Jersey's Coastal Areas Facilities Review Act (one hour).

3. Instructors conducting 90 hour general broker prelicensure courses shall provide general information to their students concerning the procedures through which students can arrange to sit for the State license examination and through which licenses are issued by the Commission, and shall give at least two spot quizzes and a comprehensive final exam on the material covered in the course (four hours).

4. In addition to classroom instruction and assigned reading from a general textbook, in the 90 hour broker course students shall also be assigned additional outside reading on various topics which shall include, but not be limited to, informational publications of the New Jersey Department of Environmental Protection on the various environmental topics covered, those sections of the New Jersey Law Against Discrimination

which directly relate to the activities of real estate professionals, and other topics as directed by the New Jersey Real Estate Commission.

5. After having successfully completed the 90 hour broker course, all candidates for licensure as a broker or broker-salesperson must successfully complete a 30 hour prelicensure course on brokers' ethics and agency law and relationships, and a second 30 hour prelicensure course on office management and related topics.

i. All such agency/ethics and office management courses shall be taught by licensed instructors at licensed schools.

ii. All such agency/ethics courses shall be taught utilizing methods which maximize the use of case studies of recent Commission decisions in disciplinary actions, demonstration models and other non-lecture techniques.

iii. A final examination of not less than one hour shall be administered in all such courses on which students must receive a passing grade in order to be deemed to have successfully completed such courses.

iv. No school shall allow students to commence any 30 hour agency/ethics course or office management course at a time other than the starting date of such courses.

6. The 30 hours of instruction in the ethics/agency course shall be devoted to:

i. The fiduciary duties owed by agents to their principals;

ii. Disclosed and undisclosed dual agency;

iii. Conflicts of interest and self-dealing;

iv. The risks and benefits of sub-agency to the principal and the agent;

v. Restrictions on and disclosure requirements regarding acting for more than one party to a transaction, including those pertaining to licensees providing mortgage services;

vi. Disclosure requirements to non-principals;

vii. Issues raised by licensees involved in transactions as non-agents; and

viii. The obligations to properly qualify or pre-qualify prospective purchasers and related issues.

7. The 30 hours of instruction in the office management and related topics course shall be devoted to:

i. Office management requirements imposed upon supervising brokers of main and branch offices;

ii. Recordkeeping requirements, with particular emphasis upon and extensive coverage of escrow account records;

iii. The importance of adequate supervision and training of other licensees to assure their compliance with the license law and the rules of the Commission;

iv. Instruction on proper qualification and pre-qualification techniques, including requiring demonstrations by the students, and with emphasis upon the significance of training and oversight of other licensees;

v. Statutory and rule requirements pertaining to contracts, leases and listing agreements and to broker advertising;

vi. Closings;

vii. Environmental concerns; and

viii. Instruction on licensure requirements and procedures applicable to license applications, transfers, changes of broker address, branch offices, etc., and office closing requirements.

(h) A complete syllabus for the salesperson and broker courses shall be maintained at the offices of the Real Estate Commission and be open to the public for inspection.

(i) All course hours are suggested and may be modified at the discretion of the director of the approved school subject to written notice to and written approval by the Real Estate Commission.

As amended, R.1974 d.307, effective November 13, 1974.
See: 6 N.J.R. 246(c), 6 N.J.R. 478(e).
As amended, R.1978 d.135, effective April 27, 1978.
See: 10 N.J.R. 163(b), 10 N.J.R. 256(d).
As amended, R.1978 d.271, effective August 2, 1978.
See: 10 N.J.R. 256(b), 10 N.J.R. 399(b).
As amended, R.1979 d.52, effective February 8, 1979.
See: 10 N.J.R. 498(c), 11 N.J.R. 142(b).
As amended, R.1983 d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
"Salesman" replaced by "salesperson", subsection (k) deleted.
As amended, R.1984 d.218, effective June 4, 1984.
See: 16 N.J.R. 489(a), 16 N.J.R. 1352(a).
Section substantially amended.
Amended by R.1988 d.411, effective September 6, 1988.
See: 20 N.J.R. 725(b), 20 N.J.R. 2296(a).
Subsections (d) and (e) substantially amended.
Amended by R.1988 d.254, effective June 6, 1988 (operative December 1, 1989).
See: 19 N.J.R. 1051(a), 20 N.J.R. 1205(b).
At (g) old text deleted, new (g) added; brokers pre-licensure syllabus revised.
Notice of Correction, effective May 4, 1992.
See: 24 N.J.R. 1799(a).
Amended by R.1994 d.58, effective February 7, 1994 (operative July 1, 1994).
See: 25 N.J.R. 4852(a), 26 N.J.R. 799(b).
Notice of Correction, effective August 15, 1994.
See: 26 N.J.R. 3442(a).
Amended by R.1997 d.27, effective January 21, 1997.
See: 28 N.J.R. 3065(a), 29 N.J.R. 366(a).
In (f)9, added N.J.S.A. references; in (g)1xv, inserted reference to New Jersey Truth in Renting Law; and inserted N.J.S.A. references.
Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (g), changed the N.J.A.C. references throughout and substituted "Real Estate" for "Land" in 1i; and deleted former (j).
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
Section was "Educational requirements for salespersons and brokers in making application for licensure examination". In the introductory paragraph of (a), inserted ", referral agent's"; in (a)1 and (a)2, inserted "or referral agent's"; in (a)2, the introductory paragraph of (e), (e)1, (e)2, the introductory paragraphs of (e)3 and (e)4 and in (e)5, inserted "or referral agent"; in (b), inserted "examination for licensure as a" and substituted "or referral agent" for "license examination"; in (d), inserted ", referral agent"; in (e)1, substituted a comma for "or" following "broker"; in (e)4i, substituted "proprietary" for "proprietory"; rewrote the introductory paragraph of (f); and in (g)1xvi(5), substituted a comma for "and" following "broker" and inserted "and referral agents".

Case Notes

Real Estate Commission did not deny real estate sales person due process by failing to notify her that her real estate license had expired. *Coyle v. New Jersey Real Estate Com'n*, 280 N.J.Super. 93, 654 A.2d 986 (A.D.1994).

Applicants (real estate salespersons) who were denied relicensure upon their failure to apply for renewal within a two-year period after expiration of their last licenses were not deprived of vested property right in violation of due process by statutory amendment which required school and test for relicensure following a 90-day grace period. *Graham v. N.J. Real Estate Commission*, 217 N.J.Super. 130, 524 A.2d 1321 (App.Div.1987).

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

11:5-2.2 Licensed schools and instructors; requirements

(a) The following regulations are applicable to schools and instructors licensed to conduct prelicensure courses of education in real estate subjects pursuant to N.J.S.A. 45:15-10.4 and 10.5, to applicants for such licenses and, as applicable, to the conducting of continuing education courses by such schools and instructors pursuant to N.J.A.C. 11:5-12.1.

1. The original license term for pre-licensure course instructors and schools shall begin on July 1, 1994 and terminate on February 28, 1997. Thereafter, each two-year license term for school and instructor licenses shall run from March 1 to the last day of February of the second following year.

(b) The Commission shall require any school or instructor in making application for licensure to submit certain documents, statements and forms which shall form the basis for the Commission's judgment whether to grant a license. Where the Commission initially denies an application for a school or instructor license, it shall provide to the applicant notification in writing with reasons for such action. The applicant may appeal such a decision to the full Commission. N.J.A.C. 11:5-11.10 shall be applicable to all such appeals.

(c) Public adult education programs conducted under the auspices of a board of education in this State and any college or university accredited as such by the State Department of Higher Education shall be presumed to be qualified providers of real estate courses, so long as their real estate prelicensure education program is under the direction of a licensed instructor or other qualified individual who has affirmatively demonstrated to the Commission his or her good moral character and has met the other requirements of N.J.S.A. 45:15-10.9.

(d) Except as provided in (c) above, all other applicants for a license to operate a real estate prelicensure school, and in the case of a corporation, or limited or general partnership, the members, officers, directors and owners of a controlling interest thereof, shall demonstrate their good moral character, including the absence of any conviction for the crimes or other offenses specified under the provisions of N.J.S.A. 45:15-12.1. The Commission may make such further investigation and require such proof as it deems proper as to the honesty, trustworthiness, character and integrity of an applicant.

(e) When a school is to be conducted in the name of a corporation, a certified copy of its certificate of incorporation shall accompany the application for licensure. When a school is to be conducted under a trade name, whether a sole proprietorship, firm, general partnership, or limited partnership, a true copy of the certificate of trade name or articles of the general or limited partnership as filed in the office of the county clerk shall accompany the application. A school shall not use the designation of "College" or "University," as part of its name or in any other manner, unless it, in fact, meets the standards and qualifications of the State agency having jurisdiction and has been approved by that agency.

(f) Every school licensed by the Commission shall maintain a bona fide office open to the public during normal business hours for the purpose of assisting former and current students. Schools shall provide adequate space, seating, equipment and instructional materials for their students. The premises, equipment and facilities of the school shall comply with all local, city, county and State regulations, such as fire codes, building and sanitation codes. A certificate from a proper authority evidencing compliance with these requirements shall accompany an application for school licensure. The Commission may require proof of ownership or a copy of the lease if the facility is rented. Public adult education programs conducted under the auspices of a board of education in this State and any college or university accredited as such by the New Jersey Commission on Higher Education, the facilities of which have been approved by a State agency, shall be presumed to have met the requirements of this paragraph, so long as the real estate courses offered are held at the approved facility.

1. Any additional teaching locations must be licensed by the Commission and must comply with all the requirements appli-

cable to licensed schools, their directors and instructors as set forth in the Act and this rule. School directors shall have oversight responsibility for these locations. All prelicensure courses conducted at such locations must be taught by licensed instructors or guest lecturers, pursuant to N.J.S.A. 45:15-10.5 and this rule. All continuing education courses conducted at such locations shall be taught by licensed instructors or by individuals approved as continuing education instructors pursuant to N.J.A.C. 11:5-12.10.

(g) All schools shall furnish to the Commission at the time of application for initial licensure the school policy and regulations pertaining to standards for satisfactory completion of the courses offered at the school and the issuance of a Certificate, conditions for dismissal of a student and conditions for reinstatement.

1. Any changes in school policy and regulations, as set forth in (g) above, from the information submitted with the original application for school licensure or as otherwise previously supplied, shall be disclosed to the Commission within 10 business days in writing, or on a form which the Commission prescribes.

(h) When a school fulfills all of the requirements for licensure, then a license shall be executed by the President of the Commission as attested by the Executive Director. School licensure shall be limited to the specific ownership and school locations identified on the license document(s).

(i) An individual seeking approval as a director of a licensed real estate school administered by a public adult education program or an accredited college or university who is not licensed as a real estate instructor may nevertheless qualify as the director of such a school, so long as he or she is at least 18 years of age; has a background of good moral character, including the absence of any conviction for the crimes or other offenses specified under the provisions of N.J.S.A. 45:15-12.1; and has fulfilled all of the education requirements imposed upon candidates for licensure as real estate instructors within two years of applying to the Commission for approval to be the director of such a school.

(j) In order to enable the Commission to confirm that courses offered by real estate schools include the required number of hours of instruction as prescribed in N.J.S.A. 45:15-10.1(a) and (b) and N.J.A.C. 11:5-2.1, every six months, each school director shall submit data on courses to be offered by their school in the forthcoming six month period, the starting and ending dates of the courses, the days and hours of class sessions and teaching locations. Such course information shall be provided on forms prescribed by the Commission and shall be retained as permanent records for not less than three years after submission.

(k) No person, other than a guest lecturer, shall teach real estate education courses, the attendance and successful completion of which shall constitute the fulfillment of the educational prerequisites for licensure established under N.J.S.A. 45:15-10.1, unless that person is licensed as an instructor pursuant to N.J.S.A. 45:15-10.5 and this section.

1. Each applicant for licensure as a real estate instructor shall be 18 years of age or older and shall have a background of good moral character, including the absence of any conviction for those certain crimes or other like offenses referred to in N.J.S.A. 45:15-12.1, subject to the applicant's ability to affirmatively demonstrate his or her rehabilitation from such conviction. In order to confirm the absence of any such conviction, the Commission shall require all non-attorney applicants to submit with their application for instructor licensure a New Jersey State Police Request for Criminal History Record Information Form and a certified check or money order in the amount established by the New Jersey State Police as the processing fee for such forms.

2. Each applicant for licensure must hold a bachelor's degree from an accredited college or university, except for the following applicants:

i. New Jersey licensed brokers who have been continuously licensed as such for the two years immediately preceding their application; and

ii. Licensed brokers from other states who have been continuously licensed as such for the three years immediately preceding their application.

3. Except as provided in (*l*)3i and ii below, all instructor license applicants must successfully complete all of the education requirements for licensure as a New Jersey broker established at N.J.A.C. 11:5-2.1, totaling 150 hours, not more than one year prior to passing the instructor license examination and applying for an instructor license.

i. New Jersey broker licensees who have been licensed as such for at least the two years immediately preceding the application and who have completed the full 150 hours of broker prelicensure courses established at N.J.A.C. 11:5-2.1 shall be deemed to have fulfilled the education requirements for licensure as an instructor.

ii. The following individuals will not be required to take the 90-hour general broker course but must successfully complete the two 30-hour broker prelicensure courses referred to in N.J.A.C. 11:5-2.1 in order to fulfill the instructor prelicensure education requirements:

(1) New Jersey broker licensees who have been licensed as such for the two years preceding their application for an instructor license but who have not previously completed those two courses; and

(2) Licensed brokers from other states who have been licensed as such for the three years immediately preceding application.

4. All instructor license applicants shall successfully complete an instructor license examination as established by the Commission. The examination shall extensively test the applicant's general real estate knowledge and shall include questions on teaching methods. Applicants are advised to engage in independent study and/or to take courses offered by independent providers on teaching methods.

5. Subsequent to passing the instructor license examination, as a prerequisite to being issued an instructor license, all applicants must attend a seminar conducted by or under the direction of the Commission staff covering Commission and licensing procedures. Such seminars shall not exceed one day in length.

(*l*) Regulations applicable to the renewal of school and instruction licenses are as follows:

1. Pursuant to N.J.S.A. 45:15-10.7, the fee for the renewal of a real estate instructor license for an additional two-year license term shall be $ 100.00. The fee for the renewal of a real estate school license shall be $ 400.00 for the first teaching location licensed and $ 200.00 for each additional licensed location to be renewed.

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. Such seminars shall be offered on a minimum of two dates, each in a different location throughout the state, during the second year of each two-year license term. Persons initially licensed as instructors in the last six months of the two-year license term are exempt from this seminar attendance requirement for the first renewal of their instructor license.

3. In the event that any person to whom an instructor's license has been or shall have been issued shall fail to renew such license or obtain a new license for a period of two consecutive years or more after the expiration of the last license held, the Commission shall require such person to again fulfill all the qualifications for initial licensure as an instructor prior to issuance of a further instructor's license. This requirement shall not apply to a person reapplying for an instructor's license who was a licensed instructor and who allowed their license to expire due to subsequent employment in a public agency in this State with responsibility for dealing with matters relating to real estate if the person reapplying does so within one year of termination of that employment.

(m) For real estate prelicensure courses, the maximum teaching load per instructor or guest lecturer shall not exceed the ratio of one instructor or guest lecturer to 60 students per class. Each prelicensure course offered by a licensed school shall be under the supervision of an instructor licensed pursuant to N.J.S.A. 45:15-10.5 and N.J.A.C. 11:5-2.2(k). At least one licensed instructor shall be present in the classroom at all sessions. However, additional instructors or guest lecturers may be utilized for instruction so long as not more than 25 percent of the required instruction is done by guest lecturers. Broker prelicensure courses may be taught by up to three instructors, provided that one licensed instructor is designated as having the responsibility for the quality of instruction in that course. School directors shall maintain as a business record the names of any persons teaching as guest lecturers or as a group of instructors, with an indication of the designated supervising instructor.

(n) All tuition charged by a school shall be specified separately. If additional fees are to be charged for supplies, materials or books needed in course of work, they shall be itemized by the school prior to the payment of any fees and such items shall become the property of the student upon payment.

(o) The tuition and fees shall be specifically set forth in a student contract. The contract shall expressly state the school's policy regarding the return of unearned tuition when a student is dismissed or withdraws voluntarily or because of hardship.

(p) Any person who has a permanent disability or physical handicap which precludes that person from attending regular scheduled classes at a licensed school may request Commission approval to receive special instruction through a licensed school provided this request is supported by sworn statements of doctors or other persons having knowledge of the facts and provided a licensed school is willing to undertake such an agreement.

(q) No school shall, without the approval of the Commission, accept for enrollment as a transfer student any person concurrently enrolled with any other licensed school, unless upon the showing of good cause by said student to the Commission in writing.

(r) Any school that offers real estate continuing education courses shall maintain records of licensees' attendance at such courses as prescribed by N.J.A.C. 11:5-12.8. Every school shall permanently establish and maintain for each student enrolled in a prelicensure education course, complete, accurate and detailed records for a period of not less than three years after student matriculation. Such records shall be available for inspection during regular school hours by the Commission and shall contain the following information:

1. The total number of hours of instruction undertaken by the student;

2. Completed areas of study in real estate subjects prescribed by the Act and these regulations;

3. The student's attendance record; and

4. The names of all supervising instructors and guest lecturers.

(s) To satisfactorily complete any prelicensure course, a student must receive a passing grade and attend at least 80 percent of the class session hours required for the course by N.J.A.C. 11:5-2.1.

(t) Upon a student's satisfactory completion of a prelicensure course in real estate, the school shall issue to the student a Course Completion Certificate.

(u) The director of a real estate school shall be responsible for properly closing the school in compliance with this subsection.

1. No later than 10 days after the date on which the school ceases operations, the director shall return the school license, stamp, and all education certificates to the Commission and shall advise the Commission in writing of the date on which the school closed.

2. Within 30 days of the date on which the school ceases operations, the director shall submit an affidavit to the Commission certifying the following:

i. The location where student records are to be kept in compliance with (r) above and the name of the person who is to act as custodian of the records. The Commission shall be notified immediately of any change in such information. Records shall be kept for a period of not less than three years;

ii. The name of the owner or authorized representative of the school and the address where he or she may be contacted by the Commission;

iii. That the school license and school stamp have been returned to the Commission;

iv. That all students have been timely notified of the school closing, and any tuition received by the school for future courses or courses which were not completed has been returned to the students;

v. That all signs have been removed, and all advertisements and trade materials which refer to the school have been recalled;

vi. That the appropriate telephone services have been advised that the school is closed and that future telephone directories should not contain the name of the school; and

vii. That there are no outstanding fees, fines or penalties due and owing the Commission.

(v) No school shall use any name other than the name in which it is licensed for advertising or publicity purposes; nor shall any school advertise or imply that it is "recommended," "endorsed," "accredited," or "approved" by the Commission, but a licensed school may indicate that it has been "licensed" to conduct courses of education in real estate subjects to qualify applicants for licensure examination. No school shall make any warranties or guarantees that a student will pass the State license examination as a result of taking its course.

(w) (Reserved)

(x) The purpose of this subsection is to assure that there is a total separation between instructional activity conducted by licensed schools and any solicitation of students, which, as defined in (x)2ii below, means any recruiting efforts or brokerage activity directed at students. These provisions will be construed in a manner consistent with that regulatory objective. A violation of any of these provisions will be considered by the Commission as conduct demonstrating unworthiness for licensure, thereby subjecting the offending licensee to sanctions pursuant to N.J.S.A. 45:15-17(e) and (t). The Commission may also impose sanctions for a violation of these provisions pursuant to N.J.S.A. 45:15-10.11 and N.J.A.C. 11:5-12.15. Requirements regulating the involvement of licensed schools in soliciting students to become salespersons or referral agents for particular real estate brokers are as follows:

1. At the beginning of the first class session of all salesperson or referral agent prelicensure courses, all licensed schools shall distribute to all students in writing the following:

NOTICE

TO: ALL SALESPERSON/REFERRAL AGENT COURSE STUDENTS

FROM: NEW JERSEY REAL ESTATE COMMISSION

RE: SOLICITATION OF SALESPERSON OR REFERRAL AGENT LICENSE CANDIDATES AT PRELICENSURE SCHOOLS

It is the policy of the New Jersey Real Estate Commission that there be a complete and total separation between the instruction you receive in your prelicensure education course and any efforts by brokers to recruit you to join their firm and/or to secure listings or offers on listed properties from you. This policy is reflected in Commission rule N.J.A.C. 11:5-2.2(x), which is reproduced in its entirety below.

If you are subjected to any recruitment efforts or are solicited for listings or offers during class time you should immediately

notify your instructor, the Director of your school, and the New Jersey Real Estate Commission by writing to:

New Jersey Real Estate Commission
20 West State Street
PO Box 328
Trenton, New Jersey 08625-0328
Attn: Director, Real Estate Education

You are free to negotiate the terms of your employment with any broker. It is in your own best interest to talk to several prospective employing brokers before deciding which offers the best compensation plan, including post-termination payment provisions, and support package for you. You should also consider a prospective employer's professionalism and reputation for honesty and integrity when deciding which broker to work for.

In the event an enrolled student does not attend the first session of a salespersons/referral agents course, a copy of the foregoing notice shall be delivered to that student at the commencement of the first class session which that student does attend.

2. For the purposes of this subsection, the following definitions shall apply:

i. The phrase "brokerage activity" means any activity which, pursuant to N.J.S.A. 45:15-1 and 45:15-3 would require the person engaging in such activity to hold a license as a real estate broker, real estate salesperson or referral agent;

ii. The term "solicit" means to recruit, invite or urge a student to seek employment with a particular broker, or to list, purchase or lease through, or to make referrals of listing, purchaser or lessee prospects to a particular broker; and

iii. The phrase "successful completion" means the receipt by the student of a Real Estate Commission school certificate form, duly signed by the instructor and the school director and stamped by the licensed school, certifying to the student's having completed and passed a prelicensure course conducted by that school.

3. With the exception of posting, distributing or displaying written materials as provided in (x)5 below, no school director, instructor, guest lecturer or staff member shall, prior to, nor within seven days following, a student's successful completion of a course, solicit a student to become a salesperson or referral agent for any particular real estate broker, nor shall any such person at any time accept any fee or other compensation for soliciting or recruiting students attending their school to apply for employment with a particular real estate broker.

4. No in-person or electronic solicitation of students to apply for employment as salespersons or referral agents with a particular real estate broker shall be permitted at a licensed school location during the prescribed class hours, nor in the breaks between such class hours. Such soliciting may be scheduled and held at licensed schools before, after or separate from the prescribed class hours, for example as a "career night" for students, provided that students are notified in writing in advance that their attendance at such recruitment functions is completely voluntary. However, no school director, instructor, guest lecturer or staff member shall engage in such activity at any time prior to, nor within seven days following, a student's successful completion of a course. Licensed instructors who are also licensed brokers, salespersons or referral agents may conduct prelicensure courses, and licensees who are not licensed instructors may appear as guest lecturers in such courses, so long as their presentations do not include the solicitation of students.

5. Any licensed school which posts, distributes or displays written material which solicits students to inquire about employment as a salesperson or referral agent with a particular broker must similarly post, distribute or display comparable written material from any real estate broker who requests the school to do so. However, no written material soliciting students to apply for employment with a particular real estate broker or any referral program shall be distributed during the prescribed class hours.

6. No licensed school may offer a reduced tuition rate to students where eligibility for the lower tuition is contingent upon a student making a commitment to becoming licensed through a particular broker subsequent to their qualifying for licensure and no licensed school may otherwise make or imply any promise or guarantee of employment to any student.

7. No oral statements or written text referring to a licensed school may be included or contained in any advertisement by a real estate licensee, and no advertisement of a licensed school may refer to the brokerage operation or include the telephone number of any licensee except that a school which is owned by a real estate licensee or franchisor may use that name in its school name.

i. Any advertisement by a school whose name includes the name of an affiliated licensed real estate broker or franchisor shall include the following disclosure legend:

Attending this school will not obligate you to become employed with our affiliated real estate broker(s), nor guarantee you an interview or a job with our affiliated real estate broker(s).

ii. No advertisement referring to a licensed school may be placed in the Help Wanted classified section of any newspaper or periodical.

8. No licensed school shall conduct prelicensure course sessions in any area which is part of a location which is licensed as a main or branch office of a real estate broker. For the purposes of this paragraph, an area will be considered as part of a licensed office location if any brokerage activity is conducted in that area at any time.

i. Where space on two or more floors in a multi-story building is licensed as a main or branch office location, it is permissible for prelicensure courses to be conducted in such a building, provided that the primary means of access to and egress from the floor where the courses are conducted does not require the students to walk through any area of the licensed office location wherein brokerage activity occurs.

ii. Where only one floor in a building is licensed as a main or branch office, it is permissible for prelicensure courses to be conducted in another area on that floor, provided that there is a separate entrance to that area either from the exterior of the building or from a common foyer or lobby and provided that the primary means of access to and egress from the area wherein the courses will be conducted does not require students to walk through a portion of the licensed premises wherein brokerage activity takes place.

iii. In all situations where prelicensure courses are conducted in the same building in which brokerage activity occurs under the authority of a broker in any way affiliated with the licensed school conducting such courses, the broker shall post signs either on the exterior of the building or in any common foyer or lobby, directing students either to the separate exterior entrance to the school location or to the primary route of access to the school location from such foyer or lobby.

9. No licensed school shall allow any person to solicit students enrolled in, or considering enrolling in, a prelicensure or continuing education course to list, purchase or lease any property; or for referrals of prospective sellers, purchasers or lessees at any time while such students are on school premises.

(y) Licensed schools providing continuing education courses shall comply with all requirements imposed upon the providers of such courses as set forth in N.J.A.C. 11:5-12.

R.1972 d.127, effective June 28, 1972.
See: 4 N.J.R. 71(a).
Amended by R.1972 d.150, effective July 27, 1972.
See: 4 N.J.R. 160(d), 4 N.J.R. 190(a).
Amended by R.1980 d.441, effective October 10, 1980.
See: 12 N.J.R. 341(a), 12 N.J.R. 665(c).
(e) and (f): New text.
Amended by R.1983, d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
Language simplified.
Amended by R.1984, d.218, effective June 4, 1984.
See: 16 N.J.R. 489(a), 16 N.J.R. 1352(a).
Section substantially amended.
Amended by R.1986 d.63, effective March 17, 1986.
See: 17 N.J.R. 376(a), 18 N.J.R. 566(b).
(o)-(p) deleted; old (q) recodified to (p) with text added "instructor(s) name and . . . after student matriculation."; (r)-(w) recodified to (q)-(v).
Amended by R.1988 d.409, effective September 6, 1988.
See: 20 N.J.R. 1161(a), 20 N.J.R. 2298(a).
Substantially amended (j) and (k); added new (*l*) and recodified (*l*)-(v) as (m)-(w).
Amended by R.1990 d.378, effective August 6, 1990.
See: 22 N.J.R. 777(a), 22 N.J.R. 2323(a).
Added new x.
Amended by R.1993 d.11, effective January 4, 1993.
See: 24 N.J.R. 3488(a), 25 N.J.R. 180(a).
Subsection (e) deleted and reserved.
Amended by R.1994 d.59, effective February 7, 1994 (operative July 1, 1994).
See: 25 N.J.R. 4855(a), 26 N.J.R. 801(a).
Amended by R.1994 d.267, effective June 20, 1994 (operative July 1, 1994).
See: 26 N.J.R. 730(a), 26 N.J.R. 1194(b), 26 N.J.R. 1222(a), 26 N.J.R. 2581(c).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
Changed N.J.A.C. references throughout.
Amended by R.2004 d.130, effective April 5, 2004.
See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).
In (g)1, deleted "paragraph" following "set forth in", deleted "promptly" preceding "disclosed to" and inserted "within 10 business days" following "the Commission"; in (n), inserted "prior to the payment of any fees" following "itemized by the school".
Administrative correction.
See: 36 N.J.R. 5365(a).
Amended by R.2011 d.184, effective July 18, 2011.
See: 43 N.J.R. 369(a), 43 N.J.R. 1592(a).
In the introductory paragraph of (a), inserted "prelicensure" and "and, as applicable, to the conducting of continuing education courses by such schools and instructors pursuant to N.J.A.C. 11:5-12.1", and substituted a comma for "and" following "10.5"; in the introductory paragraph of (f), inserted "a" preceding "proper", and substituted "evidencing compliance with" for "covering" and "New Jersey Commission on" for "State Department of", in (f)1, inserted "prelicensure" and the last sentence; in (m), substituted "For real estate prelicensure courses, the" for "The"; rewrote the introductory paragraph of (r); in (t), inserted "prelicensure" and "Course Completion", in the introductory paragraph of (x), inserted "and N.J.A.C. 11:5-12.15" and "or referral agents"; in (x)9, deleted a comma following "person to", and inserted "or continuing education", and added (y).
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In (x)1, (x)2i, (x)3 and (x)5, inserted "or referral agent"; in the "TO" line of the NOTICE in (x)1, inserted "/REFERRAL AGENT"; in the "RE" line of the NOTICE in (x)1, inserted "OR REFERRAL AGENTS", in the introductory paragraph of the NOTICE in (x)1, substituted "their" for the fifth occurrence of "the", in the last paragraph of the NOTICE in (x)1, inserted "/referral agents"; in (x)2i, substituted a comma for "or" following "broker" and inserted "45." preceding "15-3"; in (x)3, inserted "or displaying"; and in (x)4, deleted "or any referral program" following "broker" and substituted a comma for "or" following "brokers".

11:5-2.3 Applications processed by the Education Bureau of the Real Estate Commission

(a) Applications for the following licenses and approvals are processed by the Education Bureau of the Real Estate Commission:

1. Real Estate Instructor license;

2. Real Estate School license;

3. License for additional teaching location of a licensed real estate school;

4. Approval of Real Estate School Director;

5. Approval of experience report for broker license applicant;

6. Approval of real estate continuing education provider;

7. Approval of real estate continuing education instructor; and

8. Approval of real estate continuing education course.

(b) Applications for the following waivers are processed by the Education Bureau of the Real Estate Commission:

1. Waiver of salesperson or referral agent prelicensure education requirement;

2. Partial waiver of broker prelicensure education requirement and/or complete waiver of broker experience requirement;

3. Waiver of broker experience and certain prelicensure education requirements based upon status of applicant as a qualifying disabled veteran pursuant to N.J.S.A. 45:15-11; and

4. Waiver of continuing education requirement pursuant to N.J.A.C. 11:5-12.5.

New Rule, R.2003 d.440, effective November 3, 2003.
See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).
Amended by R.2011 d.184, effective July 18, 2011.
See: 43 N.J.R. 369(a), 43 N.J.R. 1592(a).
In (a)4, deleted "and" from the end, in (a)5, substituted a semicolon for a period at the end; added (a)6 through (a)8, in (b)2, deleted "and" from the end; in (b)3, substituted "; and" for a period at the end; and added (b)4.
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In (b)1, inserted "or referral agent".

11:5-2.4 Examination eligibility certificates

(a) The Education Bureau issues Certificates of Examination Eligibility to:

1. Broker license candidates who have fulfilled or, to the extent permitted by N.J.A.C. 11:5-3.8 and 2.1(e), had waived the broker license experience and/or education requirements;

2. Instructor license candidates who have fulfilled or, to the extent permitted by N.J.A.C. 11:5-2.2(k), had waived the instructor license education requirement; and

3. Salesperson or referral agent license candidates who, as provided in N.J.A.C. 11:5-2.1(e), have had the salesperson's or referral agent's license education requirement waived.

New Rule, R.2003 d.440, effective November 3, 2003.
See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In (a)3, inserted "or referral agent" and "or referral agent's".

11:5-2.5 Education Bureau forms and processing times

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

1. Application for real estate school license for non-public school;

2. Application for licensure of additional teaching location for a non-public real estate school;

3. Application for real estate school license for public college, university or adult education program;

4. Application for real estate instructor license;

5. Application for change in address of administrative office or primary teaching location of non-public real estate prelicensure school;

6. Application for relicensure of public college, university or adult education program with new director;

7. Application for relicensure of non-public school with new director or with new partner(s) (partnership) or new owner(s) of a controlling interest (corporation) or school name change;

8. Application for waiver of salesperson or referral agent prelicensure education requirement;

9. Application for partial waiver of broker prelicensure education requirement and/or complete waiver of experience requirements;

10. Experience report for Broker License Applicant;

11. New Jersey State Police, State Bureau of Identification Request for Criminal History Record Information Form;

12. Application for approval of real estate continuing education provider;

13. Application for approval of real estate continuing education instructor; and

14. Application for approval of real estate continuing education course.

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

1. Applications for real estate instructor licenses, school licenses, and additional teaching location licenses—three weeks;

2. Applications for a change of address of a licensed school—three weeks;

3. Applications for relicensure of schools with new directors or new owners of a controlling interest—three weeks;

4. Applications for renewal of instructor licenses, school licenses, and additional teaching location licenses—four weeks;

5. Applications for waivers of the prelicensure education requirements and/or the broker experience requirement which do not require the review of additional information—four weeks;

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

7. Applications for approval of real estate continuing education provider—three weeks after recommendation by the Voluntary Advisory Committee is considered by the Real Estate Commission;

8. Applications for approval of real estate continuing education instructor—three weeks after recommendation by the Voluntary Advisory Committee is considered by the Real Estate Commission;

9. Applications for approval of real estate continuing education course—three weeks after recommendation by the Voluntary Advisory Committee is considered by the Real Estate Commission; and

10. Applications for the issuance of a waiver of the continuing education requirement—three weeks after receipt of a complete waiver application.

New Rule, R.2003 d.440, effective November 3, 2003.
See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).
Amended by R.2011 d.184, effective July 18, 2011.
See: 43 N.J.R. 369(a), 43 N.J.R. 1592(a).
In (a)10, deleted "and" from the end; in (a)11, substituted a semicolon for a period at the end; added (a)12 through (a)14; in (b)5, deleted "and" from the end; in (b)6, substituted a semicolon for a period at the end; and added (b)7 through (b)10.
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In (a)8, inserted "or referral agent".

11:5-2.6 Education Bureau transaction fees

The fees applicable to transactions processed by the Education Bureau of the Real Estate Commission that are unrelated to real estate continuing education are listed in the table below. Fees applicable to applications for approval of real estate continuing education providers, instructors and courses are listed in N.J.A.C. 11:5-12.17.

EDUCATION BUREAU TRANSACTION FEES	
Description	Amount
Criminal history check and electronic fingerprint scan	State-contracted vendor fee (paid directly to vendor)
Application fee, school license	$ 100.00
Application fee, instructor license	$ 50.00
Application fee, waiver of salesperson or referral agent education	$ 25.00
Initial license fee, non-public school	$ 400.00 for licenses issued in the first year of a two-year license term;
	$ 200.00 for licenses issued in the second year of a two-year term.
Renewal fee, non-public school	$ 400.00 plus $ 200.00 for each additional licensed location
License fee, additional teaching location	$ 200.00 for licenses issued in the first year of a two-year license term;
	$ 100.00 for licenses issued in the second year of a two-year term.
Change of address (school)	$ 50.00
License fee, instructor	$ 200.00 for licenses issued in the first year of a two-year license term;
	$ 100.00 for licenses issued in the second year of a two-year term.
Renewal fee, instructor	$ 100.00
Change of name (school)	$ 100.00
Change of name for individual	$ 50.00
Change of school director	$ 50.00
Application fee, waiver of salesperson education	$ 25.00
Application fee, waiver of broker education or experience	$ 25.00
Application fee, approval of experience report for broker license applicant	$ 25.00

New Rule, R.2003 d.440, effective November 3, 2003.
See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).
Administrative correction.
See: 36 N.J.R. 656(b).
Amended by R.2009 d.287, effective September 21, 2009.
See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).
In the Education Bureau Transaction Fees table, substituted the entry "Criminal history check and electronic fingerprint scan" for the entry "Criminal history check" and updated the Amount.
Amended by R.2011 d.184, effective July 18, 2011.
See: 43 N.J.R. 369(a), 43 N.J.R. 1592(a).
In the introductory paragraph, inserted "that are unrelated to real estate continuing education" and the last sentence.
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In the Education Bureau Transaction Fees table, inserted "or referral agent".

SUBCHAPTER 3. LICENSING

11:5-3.1 Terms of real estate licenses

Commencing July 1, 1997, broker, broker-salesperson, salesperson, referral agent and branch office licenses shall be issued on the basis of two year license terms. All licenses issued during each biennial term shall run from the date of issuance to the end of the biennial term. All licenses shall expire on June 30 of the second year following the year in which the license term commenced.

New Rule, R.1997 d.159, effective April 7, 1997.
See: 29 N.J.R. 299(a), 29 N.J.R. 1324(b).
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
Inserted ", referral agent".

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

With the exception of fees paid to the State-contracted fingerprint scanning vendor, fees paid to the license examination administration vendor and fees paid to accomplish an online transfer or termination as set forth in N.J.A.C. 11:5-3.11, any and all fees prescribed by the Real Estate License Act shall be paid by broker's business account check, certified or bank check or money order payable to the State Treasurer of New Jersey. No cash or currency shall be accepted.

Amended by R.1986 d.92, effective April 7, 1986.
See: 17 N.J.R. 2353(a), 18 N.J.R. 702(a).
Added text, "brokers business account check, certified or bank".
Amended by R.2009 d.287, effective September 21, 2009.
See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).
Rewrote the section.

11:5-3.3 Criminal history record check

(a) The Commission shall require an individual licensee or any officer, director, partner or owner of a controlling interest of a licensed corporation or partnership to complete an electronic fingerprint scan through the State-contracted vendor, pay the fees required for its processing and submit proof of completion of the fingerprint process with their licensing application.

(b) Evidence of completion of the fingerprint scanning process shall include the applicant's copy of the completed fingerprint scanning vendor's form and a copy of the payment receipt issued by the fingerprint scanning vendor at the time of the completion of the fingerprint scanning process.

(c) The applicant, if a natural person, shall submit with his or her license application the evidence of completion of the fingerprint scanning process set forth in (b) above.

(d) The applicant, if a corporation or partnership, shall submit with its application for license evidence of completion of the fingerprint scanning process as set forth in (b) above for each officer, director, partner, or owner of a controlling interest.

R.1971 d.83, effective May 27, 1971.
See: 2 N.J.R. 42(c), 3 N.J.R. 110(d).
Amended by R.1976 d.19, effective January 13, 1976.
See: 7 N.J.R. 567(e), 8 N.J.R. 70(e).
Amended by R.1983 d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
Subsections (c) and (e) deleted, recodification.
New Rule, R.1985 d.601, effective November 18, 1985.
See: 17 N.J.R. 2230(a), 17 N.J.R. 2779(a).
Repealed this section dealing with "Fingerprinting" and adopted New Rule.
Amended by R.1995 d.23, effective January 17, 1995.
See: 26 N.J.R. 3111(a), 27 N.J.R. 370(a).
Repeal and New Rule, R.2009 d.287, effective September 21, 2009.
See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).
Section was "Criminal history record check".
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In (c), substituted "license application" for "application for a salesperson's, broker-salesperson's or broker's license".

11:5-3.4 Examination rules

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

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

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

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

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

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

As amended, R.1972 d.168, effective August 26, 1972.
See: 4 N.J.R. 160(d), 4 N.J.R. 190(a).

As amended, R.1973 d.43, effective February 5, 1973.
See: 5 N.J.R. 13(b), 5 N.J.R. 86(b).
As amended, R.1973 d.306, effective October 25, 1973.
See: 5 N.J.R. 350(a), 5 N.J.R. 338(a).
As amended, R.1983 d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
"Salesman" replaced by "salesperson".
Amended by R.1995 d.23, effective January 17, 1995.
See: 26 N.J.R. 3111(a), 27 N.J.R. 370(a).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
Rewrote (b).
Amended by R.2009 d.287, effective September 21, 2009.
See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).
In (a)4, inserted "and for fingerprinting scanning" and "and fingerprint scanning vendor".
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In the introductory paragraph of (a) and in (a)4, inserted "or referral agent"; in the introductory paragraph of (a), substituted a comma for "or" following "broker-salesperson", in (a)4, substituted a comma for "and" following the first occurrence of "license" and a comma for "or" following the second occurrence of "broker-salesperson", and inserted "and referral agent".

11:5-3.5 Requests for disclosure of social security numbers and electronic mailing addresses

(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.

(b) Business entity and sole proprietor broker licensees ("brokers") shall establish an official e-mail address. Brokers shall provide to the Commission their current official e-mail address at the time of applying for license renewal through the on-line renewal system. Upon the establishment by the Commission of an Internet-based system for updating brokers' official e-mail addresses, brokers shall, within 30 days of being advised of the availability of that system, enter their current official e-mail address on that system. Subsequent to the implementation of the Internet-based system for updating the official e-mail addresses of brokers, the Commission shall, at its discretion, transmit all general orders, bulletins and public notices to brokers either through e-mail or regular mail.

(c) Upon making any subsequent change to their official e-mail address, the broker shall update the information on the on-line broker e-mail address notification system within 10 days of making such a change.

New Rule, R.1994 d.268, effective June 20, 1994 (operative July 1, 1994).
See: 26 N.J.R. 735(a), 26 N.J.R. 1222(a), 26 N.J.R. 2585(a).
Repeal and New Rule, R.1997 d.160, effective April 7, 1997.
See: 29 N.J.R. 302(a), 29 N.J.R. 1324(c).
Section was "Collection of Social Security numbers of licenses".
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
Section was "Requests for disclosure of social security numbers". Added (b) and (c).

11:5-3.6 Salesperson's and referral agent's licenses; age requirement

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

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

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

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

As amended, R.1973 d.214, effective August 2, 1973.
See: 5 N.J.R. 228(f), 5 N.J.R. 316(a).
As amended, R.1974 d.307, effective November 13, 1974.
See: 6 N.J.R. 246(c), 6 N.J.R. 478(c).
As amended, R.1981 d.261, effective July 9, 1981.
See: 13 N.J.R. 306(a), 13 N.J.R. 440(c).
(b) "On or after September 1, 1967" deleted; "for licensure as a salesman" added.
(d) added.
As amended, R.1983 d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
"Salesman" changed to "salesperson".
As amended, R.1984 d.218, effective June 4, 1984.
See: 16 N.J.R. 489(a), 16 N.J.R. 1352(a).
New subsections (d) through (f) added.
Amended by R.1995 d.23, effective January 17, 1995.
See: 26 N.J.R. 3111(a), 27 N.J.R. 370(a).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (b) and (c), changed N.J.S.A. and N.J.A.C. references, rewrote (d), and deleted former (e) through (f).
Amended by R.2004 d.130, effective April 5, 2004.
See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).

In (c), inserted "pass the State salesperson examination and" following "An applicant must" in the first sentence.
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
Section was "Salesperson's licenses; age requirement". In (a) and (c), inserted "or referral agent's" throughout; in (b), (c) and (d), inserted "or referral agent"; and in (b), substituted "his or her" for "his/her".

11:5-3.7 Employment of salesperson or referral agent sponsored by broker

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

(b) An application for licensure or renewal of licensure as a referral agent shall include a certification signed by the licensed real estate broker by whom the applicant is or will be employed confirming:

1. The broker and the applicant have reviewed the restrictions imposed by law upon the activities of a referral agent; and

2. The applicant or referral agent has acknowledged that he or she is aware that the activities of a referral agent are limited to referring prospective consumers of real estate brokerage services only as set forth in N.J.A.C. 11:5-6.10(a)2.

(c) Applications for licensure as a referral agent other than renewal applications shall also contain a certification signed by the applicant confirming the statements in (b)1 and 2 above.

As amended, R.1983 d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
"Salesman" replaced by "salesperson".
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
Rewrote (a); and deleted former (b).
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
Section was "Employment of salesperson sponsored by broker". Inserted designation (a); in (a), inserted "referral agent"; and added (b) and (c).

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

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

1. A person who is presently licensed as a broker in another state and who has been actively licensed and engaged in the real estate brokerage business on a full time basis as a broker, broker-salesperson or salesperson for at least three years immediately preceding the date of application shall qualify for a waiver of the experience requirement for licensure as a New Jersey real estate broker.

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

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

ii. Such work in (a)2i above was performed during any five days in each week of the three-year period; and

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

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

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

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

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

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

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

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

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

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

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

As amended, R.1972 d.150, effective July 27, 1972.
See: 4 N.J.R. 160(d), 4 N.J.R. 190(a).
As amended, R.1974 d.307, effective November 13, 1974.
See: 6 N.J.R. 246(c), 6 N.J.R. 478(e).
As amended, R.1981 d.261, effective July 9, 1981.
See: 13 N.J.R. 306(a), 13 N.J.R. 440(c).
Substantially amended.
As amended, R.1983 d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
Former subsections (a) and (f) deleted, recodified, "salesman" changed to "salesperson".
Amended by R.1987 d.68, effective January 20, 1987.
See: 18 N.J.R. 1782(a), 19 N.J.R. 232(a).
Deleted text in (a) "full-time during his apprenticeship as a salesperson" and added text "on a full ... per calendar week."
Amended by R.1994 d.56, effective February 7, 1994 (operative July 1, 1994).
See: 25 N.J.R. 4849(b), 26 N.J.R. 798(a).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (a)2ii and (d), changed N.J.A.C. references.
Amended by R.2009 d.287, effective September 21, 2009.
See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).
Added a new (a)1, recodified former (a)1 and (a)2 as (a)2 and (a)3, and in (a)2ii, substituted "(a)2i" for "(a)1i" and inserted a hyphen following "three".

Case Notes

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

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

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

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

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

(a) Each broker who ceases to be active shall within five business days of the cessation of business return to the Commission his license, and the licenses of all salespersons, broker-salespersons and referral agents for cancellation.

(b) Each employee's license must be accompanied by a letter terminating employment in compliance with N.J.S.A. 45:15-14.

(c) No broker engaging in the real estate brokerage business as a sole proprietor, as a broker of record of a partnership or as a broker of record of a corporation shall be relicensed by the Commission unless within 30 days of the date of which the broker ceases engaging in the real estate brokerage business he or she shall complete and submit an affidavit to the Commission certifying that:

1. The broker's license, the corporate or partnership license, and the licenses of all referral agents, salespersons and broker-salespersons have been returned to the Commission for cancellation;

2. The broker's trust account has been closed and that all funds held in trust for others have been disbursed to proper parties;

3. All commissions and other compensation owed to salespersons, referral agents and broker-salespersons have been paid, or, if not yet received by the broker, will be paid upon receipt;

4. No further commissions are due the broker except that any commissions for services previously rendered and payable in the future upon the occurrence of specified events are described on a list attached to the affidavit. The list shall describe the nature and amounts of such outstanding commissions with sufficient information to identify each transaction;

5. The broker has notified all principals in ongoing transactions, in writing, that the broker has ceased engaging in the real

estate brokerage business or that the broker will hereinafter engage in the real estate brokerage business in another capacity. The notice shall describe the disposition of pending transactions and the name of custodian and place of deposit of any funds received from principals;

6. The broker has removed from the licensed premises all signs indicating that the premises contains the office of a licensed real estate broker;

7. The broker has recalled all signs and other advertisements or trade materials indicating that the broker is engaged in the real estate brokerage business;

8. The broker has advised the appropriate telephone services that the firm is no longer engaged in the real estate brokerage business, and that further telephone directories should not contain the name of the individual or firm as licensed brokers;

9. There are no outstanding fines or penalties due and owing the Real Estate Commission;

10. The broker acknowledges his or her responsibility to maintain records as required in N.J.A.C. 11:5-5.4. The broker must provide the address of the place of depository of such records and acknowledge responsibility to advise the Commission of any change in the name of the custodian or place of depository for a period of six years.

(d) When a new broker of record of a corporation or partnership is being substituted for the existing broker of record, the existing broker of record satisfies the certification requirements of (c) above when in compliance with the substitution procedures of (e) below.

(e) No new broker of record of a corporation or partnership shall be substituted unless the new broker of record and the former broker of record prepare and submit a joint affidavit to the Commission certifying that:

1. Custody of all funds held in trust for principals has been assumed by the new broker of record;

2. The new broker of record has reviewed all pending transactions and is satisfied that all funds held in trust have been accounted for;

3. All salespersons', broker-salespersons' and referral agents' commissions and other compensation are paid to date;

4. The new broker acknowledges responsibility to pay salespersons', broker-salespersons' and referral agents' commissions in accordance with the policy for payment existing on the date of substitution;

5. No fines are presently owed to the Real Estate Commission, and if any fines are assessed after the date of substitution for actions occurring prior to substitution, both the former broker and new broker are jointly and severally responsible for payment;

6. All signs and advertisements have been changed to reflect the broker now authorized to transact business in the name of the firm;

7. All records required to be maintained pursuant to N.J.A.C. 11:5-5.4 have been turned over to the new broker, and the new broker acknowledges responsibility to maintain such records for a period of six years;

8. The new broker acknowledges that he or she will be responsible to transact business in the name and on behalf of the firm.

As amended, R.1983 d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
"Salesman" changed to "salesperson", language simplified.
Amended by R.1985 d.186, effective April 15, 1985.
See: 16 N.J.R. 2228(b), 17 N.J.R. 970(b).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (c), changed N.J.A.C. reference and deleted "permanent type" following "maintain" in 10; and in (e), changed N.J.A.C. reference in 7.
Amended by R.2004 d.130, effective April 5, 2004.
See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).
In (a), substituted "within five business days of the cessation of business" for "immediately".
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In (a), substituted a comma for "and" following the first occurrence of "salespersons" and inserted "and referral agents"; in the introductory paragraph of (c), substituted "by the Commission" for "as broker or salesperson"; in (c)1, inserted "referral agents,"; in (c)3 and (e)3, inserted "and other compensation"; in (c)3, inserted ", referral agents", and in (e)3 and (e)4, inserted ", broker-salespersons' and referral agents' ".

11:5-3.10 Sponsoring of license applications or transfers of license

(a) The New Jersey Real Estate Commission, Department of Banking and Insurance, hereby grants to brokers of record or employing brokers the right to have initial applications for licenses of referral agents, salespersons or broker-salespersons who will be in their employ authorized by one other person, other than the broker of record or employing broker. This other person must be the holder of a broker's license and an officer of the broker of record's corporation or a member of his or her partnership, as the case may be. In the event the employing broker is a sole proprietor, such a designee shall be licensed as a broker-salesperson in the employ of the employing broker. The broker of record or employing broker, as applicable, shall file with the New Jersey Real Estate Commission a power of attorney granting this authority to the designated person at least 10 days prior to delegating performance of the function of that person.

(b) Any employing broker or broker of record may authorize one individual in their employ to sign and surrender to the Real Estate Commission, in accordance with the requirements of N.J.S.A. 45:15-14, the real estate referral agent, salesperson or broker-salesperson license of any licensee whose employment relationship with that employing broker or broker of record is terminated. The employing broker or broker of record shall, on a form to be provided by the Commission, notify the Commission in writing of the designation of the employee so authorized, which person need not be the holder of a real estate license. The form designating the authorized person shall be filed with the Real Estate Commission at least 10 days prior to delegating performance of the function of that person. The employing broker or broker of record shall immediately notify the Real Estate Commission in writing in the event that, for any reason, the authority of the person so designated to perform that function is revoked, and shall indicate whether a new designee is to be named. Only the employing broker or broker of record and one other person duly designated and identified to the Real Estate Commission as provided in this section may perform the said license transfer functions at any one time.

R.1972 d.127, effective June 28, 1972.
See: 4 N.J.R. 71(a).
Amended by R.1983 d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
"Salesman" replaced by "salesperson".
Amended by R.1987 d.119, effective March 2, 1987.
See: 18 N.J.R. 2418(a), 19 N.J.R. 409(b).
Substantially amended.
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In (a), inserted "Banking and" and "referral agents," and substituted "authorized" for "sponsored" following the first occurrence of "employ", and deleted "authorized" preceding the second occurrence of "broker"; and in (b), inserted "referral agent,".

11:5-3.11 License transfer and termination procedures

(a) For the purpose of expediting the right of licensees to engage in real estate activities, where license certificates cannot be issued without delay after all conditions have been fulfilled, the Commission directs that a certificate of authority in the form of a letter to the licensee be sent to serve as a temporary license for a limited period of time.

(b) In cases where a licensee who is transferring from one broker to another requests that their current broker deliver their license to them, rather than return it to the Commission, so as to personally facilitate the transfer process, the license shall be so delivered, provided that:

1. The rear of the license certificate is signed and dated by the terminating broker in the appropriate location prior to the delivery of the license to the departing licensee;

2. At the time of the delivery of the license to the departing licensee, the termination confirmation section of the license, reflecting the effective date of the licensee's separation from that broker, has been completed, signed and retained by the terminating broker; and

3. Within five business days of the delivery of the license to the departing licensee, the terminating broker shall either:

i. Mail to the Commission the completed and signed termination confirmation section of the license and send a copy of it to the departing licensee at their last known residence address; or

ii. Process the termination online at http://www.state.nj.us/dobi and send a copy of the completed and signed termination confirmation section of the license to the departing licensee at their last known residence address.

(c) A transferring licensee who receives their license from the terminating broker after that broker has signed the license and entered the date of termination on it may then take that license to their new employing broker. Prior to the transferring person commencing work as a licensee for the new employing broker, that broker shall:

1. Enter on the license in the appropriate location the effective date of the individual's employment with that broker and sign the license as the new employing broker;

2. Detach the temporary license stub portion from the main license document and place it with the licenses of the other persons licensed with that broker; and

3. Either mail to the Commission the dated and signed license of the transferring individual with the required transfer fee (see N.J.S.A. 45:15-14) in the form of a certified or cashier's check or money order or broker's business account check (See N.J.A.C. 11:5-3.2) or process the transfer online at http://www.state.nj.us/dobi and pay the required transfer fee in the form of an electronic check or credit card and retain the paper license signed by the broker, with the effective date of the transferring individual's employment with their firm entered thereon, as a business record as set forth in (f) below.

(d) In cases where a broker terminates the employment of a broker-salesperson, salesperson or referral agent with his or her firm or where a broker-salesperson, salesperson or referral agent resigns such employment, written notice specifying the effective date of the termination or resignation shall be provided by the terminating broker or by the resigning licensee, as applicable. Within five business days of the broker's issuance of a notice of termination or receipt of a resignation, if the licensee has not requested the delivery of the license to them so as to personally

facilitate a transfer of their license to another broker, the broker shall either:

1. Deliver or mail to the Commission the licensee's license; or

2. Process the termination online at http://www.state.nj.us/dobi; and

3. Regardless of whether the procedure in (d)1 or 2 above is utilized, contemporaneously send to the licensee at their last known residence address written notice of the license having been returned to the Commission or of the termination of the licensee's employment with the broker having been processed online.

(e) The following regulations pertain to online transfers and terminations:

1. Only referral agent, salesperson or broker-salesperson licenses can be transferred or terminated online;

2. All terminations and transfers shall be completed by an active broker of record or an active employing broker;

3. A broker of record or employing broker shall not process an online termination or transfer on their own license; and

4. Online transfers are not allowed unless the license of a referral agent, salesperson or broker-salesperson has been terminated by the broker of record or employing broker under whose supervision the transferring individual was licensed to engage in brokerage activity prior to the termination.

(f) Brokers who terminate licensees or accomplish the transfer of licensees to their firms as set forth in this section shall maintain records of such terminations and transfers for six years.

R.1972 d.127, effective June 28, 1972.
See: 4 N.J.R. 17(a).
Amended by R.1983 d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
Reference to a letter and its contents was deleted.
Amended by R.1994 d.60, effective February 7, 1994 (operative July 1, 1994).
See: 25 N.J.R. 4858(a), 26 N.J.R. 803(a).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (c), changed N.J.A.C. reference in 3.
Amended by R.2009 d.287, effective September 21, 2009.
See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).
Section was "Expediting of license issuance and transfer procedures". In the introductory paragraph of (b), substituted "personally facilitate" for "expedite", rewrote (b)3 and (c)3; and added (d), (e) and (f).
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In (d), substituted a comma for "or" following "broker-salesperson" twice and inserted "or referral agent" twice; and in (e)1 and (e)4, inserted "referral agent,".

11:5-3.12 License applications processed by the Real Estate Section of the Department of Banking and Insurance Licensing Services Bureau

(a) Applications for the following license types are processed by the Department of Banking and Insurance Licensing Services Bureau, Real Estate Section:

1. Real Estate Salesperson;

2. Real Estate Referral Agent;

3. Real Estate Broker—Salesperson;

4. Real Estate Broker—Sole Proprietor;

5. Real Estate Broker—Business entity;

6. Real Estate Broker—Broker of Record of a licensed business entity; and

7. Branch office.

New Rule, R.2003 d.440, effective November 3, 2003.
See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).
Amended by R.2009 d.287, effective September 21, 2009.
See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).
Section was "License applications processed by the Licensing Section of the Real Estate Commission". In the introductory paragraph of (a), substituted "Department of Banking and Insurance Licensing Services Bureau, Real Estate Section" for "Licensing Section of the Real Estate Commission".
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
Inserted new (a)2; and recodified former (a)2 through (a)6 as (a)3 through (a)7.

11:5-3.13 Licensing Services Bureau, Real Estate Section forms, instructions, processing times, deadlines

(a) The following forms are utilized by the Real Estate Section of the Department of Banking and Insurance Licensing Services Bureau:

1. Original salesperson or referral agent license application;

2. Original broker/broker-salesperson application;

3. Name change (by license or application);

4. Broker status change;

5. Referral agent, salesperson or broker-salesperson transfer of license (on rear of license document);

6. Broker's Authorized Designee or Power of Attorney;

7. Change of business address;

8. Application for broker license for business entity (includes application for broker of record license);

9. Application for sole proprietor broker license;

10. Application for reactivation within current license term or for reinstatement of referral agent or salesperson license;

11. Application for reactivation within current license term or for reinstatement of broker-salesperson license;

12. Office Closing affidavit;

13. Application for branch office license;

14. Change of branch office supervisor;

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

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

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

18. Change of corporate representative and multiple license;

19. Change of broker of record;

20. Change of corporate title;

21. Corporate license and multiple broker license;

22. Reinstatement of business entity broker license;

23. Reinstatement of sole proprietor broker license;

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

25. Change of tradename or new tradename;

26. Multiple broker of record license;

27. Temporary broker's license;

28. Change of Broker of Record Affidavit;

29. Individual irrevocable consent to service of process;

30. Corporate irrevocable consent to service of process;

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

32. The form to request fingerprint scan processing utilized by the State-contracted fingerprint scanning vendor; and

33. Change of license type.

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

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

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

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

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

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

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

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

6. License renewals:

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

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

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

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

New Rule, R.2003 d.440, effective November 3, 2003.
See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).
Amended by R.2009 d.287, effective September 21, 2009.
See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).
Section was "Licensing Section forms, instructions, processing times, deadlines". In the introductory paragraph of (a), substituted "Real Estate Section of the Department of Banking and Insurance Licensing Services Bureau" for "Licensing Section of the Real Estate Commission"; rewrote (a)32; and in (b), inserted "Services Bureau, Real Estate".
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In (a)1, inserted "or referral agent"; in (a)5, substituted "Referral agent, salesperson" for "Salesperson", in (a)10, inserted "referral agent or"; in (a)31, deleted "and" from the end; in (a)32, substituted "; and" for a period at the end; added (a)33; in (d)1 and (d)2, inserted "referral agent,"; and in (d)1, inserted "and referral agents".

11:5-3.14 Licensing fees

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

LICENSE FEES

Initial License Fees (amounts include $ 50.00 application fee and, where applicable, Real Estate Guaranty Fund fees of $ 10.00 for salespersons and referral agents and $ 20.00 for brokers and broker-salespersons. See N.J.S.A. 45:15-35. Amounts do not include the processing fee for fingerprint scanning payable directly to the State-contracted vendor):

License	Fee
Corporations, partnerships and other business entities	$ 270.00
Broker of record	$ 270.00
Sole proprietor broker	$ 270.00
Broker-salesperson	$ 270.00
Salesperson	$ 160.00
Referral agents	$ 160.00
Branch office	$ 150.00
Temporary broker license	$ 300.00

Renewal Fees:

License	Fee
Corporations, partnerships and other business entities	$ 200.00
Broker of record	$ 200.00
Sole proprietor broker	$ 200.00
Broker-salesperson	$ 200.00
Salesperson	$ 100.00
Referral agents	$ 100.00
Branch office	$ 100.00

Late Renewal Fees:

License	Fee
Corporations, partnerships and other business entities	$ 40.00
Broker	$ 40.00
Broker-salesperson	$ 20.00
Salesperson	$ 20.00
Referral agents	$ 20.00

Transfers:

License	Fee
Broker-salesperson	$ 25.00
Salesperson	$ 25.00
Referral agents	$ 25.00

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

License	Fee
Corporations, partnerships and other business entities	$ 250.00
Broker of record	$ 250.00
Sole proprietor broker	$ 250.00
Broker-salesperson	$ 250.00
Salesperson	$ 150.00
Referral agent	$ 150.00
Branch office	$ 150.00

Changes:

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

New Rule, R.2003 d.440, effective November 3, 2003.
See. 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).
Administrative correction.
See: 36 N.J.R. 656(b).
Amended by R.2009 d.287, effective September 21, 2009.
See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).
In the introductory paragraph, substituted "Department of Banking and Insurance Licensing Services Bureau, Real Estate Section" for "Licensing Section of the Real Estate Commission"; in the paragraph below "LICENSE FEES", deleted ", $ 18.00 criminal history record check fee for each individual required by N.J.A.C. 11:5-3.3 to undergo such a check" following "application fee", and inserted "Amounts do not include the processing fee for fingerprint scanning payable directly to the State-contracted vendor"; and in the "Initial License Fees" portion of the table, updated the Fee amounts for entries "Broker of record", "Sole proprietor broker", "Broker-salesperson", "Salesperson", "Branch office" and "Temporary broker license" and deleted

the entry for "Multiple broker license"; and in the "Late Renewal Fees" portion of the table, deleted the entry for "Branch office".
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In the paragraph following "LICENSE FEES", inserted "and referral agents"; in the table, inserted entries for "Referral agent" throughout, and in the next to last table entry, substituted a comma for "or" following "record" and inserted ", salesperson or referral agent".

11:5-3.15 Change of status from referral agent to salesperson or broker-salesperson

(a) A licensed referral agent who was not previously licensed as a broker, broker-salesperson or salesperson and who has been licensed as a referral agent for less than one year shall be eligible for licensure as a salesperson without being required to complete any continuing education.

(b) A licensed referral agent who was not previously licensed as a broker, broker-salesperson or salesperson and who has been licensed as a referral agent for between one and six years immediately preceding making application for a change of status to that of a licensed salesperson shall, in order to qualify for licensure as a salesperson, complete 24 hours of continuing education, all of which shall be in core topics as set forth in N.J.A.C. 11:5-12.4. The 24 hours of continuing education shall be completed within the two years immediately preceding application for licensure as a salesperson.

(c) A licensed referral agent who was not previously licensed as a broker, broker-salesperson of salesperson and who has been licensed as a referral agent for more than the six immediately preceding years shall, in order to qualify for licensure as a salesperson, be required to complete the prelicensure education requirement applicable to salespersons and to pass the State license examination for salespersons.

(d) A licensed referral agent who was previously licensed as a broker, broker-salesperson or salesperson who has been licensed as a referral agent for the six immediately preceding years or any lesser period shall, in order to qualify for reissuance of a broker, broker-salesperson or salesperson license, complete the hours of continuing education as set forth below:

1. To qualify for relicensure as a salesperson, a person who has been licensed as a referral agent for less than three years shall complete 12 hours of continuing education, all of which shall be in core topics as set forth in N.J.A.C. 11:5-12.4 within the two years immediately preceding application.

2. To qualify for relicensure as a salesperson, a person who has been licensed as a referral agent three years or more, but less than six years, shall complete 18 hours of continuing education, all of which shall be in core topics as set forth in N.J.A.C. 11:5-12.4 within the two years immediately preceding application.

3. To qualify for relicensure as a broker or broker-salesperson, a person who has been licensed as a referral agent for less than three years shall complete 18 hours of continuing education within two years immediately preceding application, all of which shall be in core topics as set forth in N.J.A.C. 11:5-12.4.

4. To qualify for relicensure as a broker or broker-salesperson, a person who has been licensed as a referral agent for three years or more, but less than six years, shall complete 24 hours of continuing education within the two years immediately preceding application, all of which shall be in core topics as set forth in N.J.A.C. 11:5-12.4.

(e) A licensed referral agent who was previously licensed as a broker, broker-salesperson or salesperson who has been licensed as a referral agent for more than the six immediately preceding years shall, in order to qualify for re-licensure as a broker, broker-salesperson or salesperson, complete 30 hours of continuing education, 24 hours of which shall be in core topics as set forth in N.J.A.C. 11:5-12.4, and shall pass the broker's license examination or the salesperson's license examination, as applicable.

New Rule, R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).

SUBCHAPTER 4. EMPLOYMENT PRACTICES/OFFICE AND LICENSEE SUPERVISION

11:5-4.1 Licensee business relationship agreements; commissions; accounting to salespersons and referral agents; actions for collection of compensation

(a) Prior to a salesperson or referral agent engaging in any real estate brokerage activity, a broker and the salesperson or referral agent must enter into and sign a written agreement that contains the terms of their business relationship. Such agreement shall contain terms including, but not limited to, the following:

1. The rate of compensation to be paid to the salesperson or referral agent during his or her affiliation with the broker;

2. A promise by the broker to pay to the salesperson or referral agent his or her portion of commissions earned within 10 business days of their receipt by the broker or as soon thereafter as such funds have cleared the broker's bank, or in accordance with another payment schedule explicitly set forth in the written agreement;

3. The rate of compensation payable to the salesperson or referral agent on transactions which close and, if applicable, on renewals which occur subsequent to the termination of the salesperson's or referral agent's affiliation with the broker; and

4. A provision that any future changes to the agreement will not be binding unless the changes are contained in a writing signed by both parties.

(b) A copy of the fully executed agreement shall be provided to the salesperson or referral agent upon the commencement of his or her affiliation with the broker, and the original thereof shall be maintained by the broker as a business record in accordance with N.J.A.C. 11:5-5.5.

(c) All compensation paid to brokers shall, unless debited from funds held in escrow in accordance with N.J.A.C. 11:5-5.1(d), be deposited into the general business account of the broker within five business days of their receipt by the broker.

(d) If any monies due a salesperson or referral agent under the terms of the written agreement with their broker are not paid within 10 business days of the broker's receipt of such funds or promptly thereafter upon their having cleared the broker's account, the broker shall provide to the salesperson or referral agent a complete written explanation of the failure to pay such monies.

(e) Within 30 days of the termination of the affiliation of a salesperson or referral agent with a broker, the broker shall provide a complete written accounting of all monies due the salesperson or referral agent as of the date of termination and/or which may become due in the future. If any sums so accounted for are not in accord with the terms of the post-termination compensation clause in the written agreement between the broker and the salesperson or referral agent, the broker shall give a complete written explanation of any difference to the salesperson or referral agent with the accounting.

(f) A broker must maintain copies of the following documents and proof of delivery of the document to the salesperson or referral agent for six years: agreements as described in (a) above, explanations of the failure to pay compensation due a salesperson or referral agent on a timely basis as described in (d) above; and accountings and explanations regarding compensation due a salesperson or referral agent subsequent to the termination of their affiliation with a broker as described in (e) above.

(g) If the Commission confirms that a broker has complied with the requirements imposed by this section, the Commission will not further investigate a complaint alleging the non-payment of a commission by a broker to a salesperson or referral agent unless such complaint is accompanied by a copy of an arbitration decision or the equivalent, or a copy of a judgment of a court of competent jurisdiction secured by the salesperson or referral agent against the broker. Unless appealed, the failure by a broker to pay monies awarded to a salesperson or referral agent under the terms of any such decision or judgment within 30 days of its effective date shall subject the broker to sanctions pursuant to N.J.S.A. 45:15-17.

(h) Broker, salesperson and referral agent licensees may only bring or maintain actions in the courts of New Jersey for the payment of compensation due them for brokerage services performed as provided in N.J.S.A. 45:15-3.

1. The Commission interprets the language "at the time the alleged cause of action arose" as used in N.J.S.A. 45:15-3 to mean at the time that the brokerage services which form the basis for the alleged claim to compensation were rendered. For example, at the time when a property was listed for sale or rental by a licensee.

2. The Commission does not interpret the language "at the time the alleged cause or action arose" as requiring that the licensee must have been actively licensed at the time that the compensation allegedly due was to have been paid. For example, the Commission does not construe this language as requiring licensure at the time of the renewal of a lease to enable a claimant to sue for compensation based upon a promise, made or in effect when the lease was originally executed, to pay additional consideration to the claimant in the event that the lease was renewed.

(i) All references to "salesperson" in this section include individuals licensed as broker-salespersons. All references to "non-payment of a commission" in this section shall be construed to include the non-payment of other forms of compensation.

(j) The Commission interprets "employment agreement," "employ," and "employing broker" in N.J.S.A. 45:15-1 et seq., and this section to permit an employment relationship or an independent contractor relationship between a broker and a broker-salesperson, salesperson, or referral agent.

As amended, R.1976 d.254, eff. August 16, 1976.
See: 8 N.J.R. 336(b), 8 N.J.R. 422(a).
As amended, R.1983 d.471, eff. November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
"Salesman" replaced by "salesperson".
Amended by R.1989 d.424, effective August 21, 1989 (operative November 19, 1989).
See: 21 N.J.R. 1308(b), 21 N.J.R. 2519(a).
Language entirely deleted and replaced with more detailed requirements including essential provisions which must be included in all contracts between brokers and salespersons.
Amended by R.1994 d.57, effective February 7, 1994.
See: 25 N.J.R. 4851(a), 26 N.J.R. 799(a).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (a), rewrote 2; deleted former (c); recodified former (d) through (j) as (c) through (i); and changed N.J.A.C. references throughout.
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
Section was "Employment agreements; commissions, accounting to salespersons, actions for collection of compensation". Inserted "or referral agent" throughout; in (a)3, inserted "or referral agent's"; and in the introductory paragraph of (h), substituted a comma for "and" following "Broker".

Amended by R.2017 d.130, effective July 3, 2017.
See: 48 N.J.R. 1900(a), 49 N.J.R. 1910(a).
Section was "Employment agreements; commissions; accounting to salespersons and referral agents; actions for collection of compensation". Rewrote the introductory paragraph of (a), and (e) and (f); in (a)2, substituted "written" for "employment"; in (d), substituted "If" for "In the event that", and deleted "and comprehensive" following "complete"; in (g), substituted "If" for "In situations where", and deleted "all of" following "with"; in (i), deleted "shall be construed to also" following the first occurrence of "section"; and added (j).

Case Notes

Real Estate Commission regulation is reasonable interpretation of statute governing actions for recovery of real estate commissions, which requires that claimant be duly authorized real estate broker at time commission was earned. *Prestia Realty Inc. V. Hartz Mountain Industries, Inc.*, 303 N.J.Super. 140, 696 A.2d 95 (N.J.Super.A.D. 1997).

Regulation stating that real estate broker suing for commissions must have been duly licensed when broker performed all necessary brokerage services does not require broker to be licensed at time of closing. *Atlantic Commercial Group, Inc. v. Dunham*, 303 N.J.Super. 122, 696 A.2d 85 (N.J.Super.A.D. 1997).

Issues of fact precluded summary judgment on issue whether claimed agent was an employee of real estate agency for purposes of wrongful discharge claim. *MacDougall v. Weichert*, 144 N.J. 380, 677 A.2d 162 (1996).

Commingling of funds, accounting failures, as well as other violations, warranted permanent revocation of broker/salesperson license and imposition of fine. *New Jersey Real Estate Commission v. Duffy*, 93 N.J.A.R.2d (REC) 13.

Commingling trust monies and failing to maintain separate account for escrow funds, as well as other violations, warranted revocation of broker's license, suspension of salesperson's license, and assessment of fine. *New Jersey Real Estate Commission v. Woods*, 92 N.J.A.R.2d (REC) 25.

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

11:5-4.2 Broker supervision and oversight of individual licensees, office operations and escrowed monies

(a) The following apply to individual broker licensees operating as sole proprietors (employing brokers) or as the authorized broker (broker of record) of a corporation or other entity licensed as a New Jersey real estate broker. As used in this section, the term "individual broker" shall refer to employing brokers and brokers of record and the term "broker licensee" shall refer to sole proprietors and corporations or other entities licensed as brokers.

1. The Commission will hold responsible individual brokers for any actions of the broker licensee or any person employed by or licensed through the broker licensee taken in the pursuit of its real estate brokerage business which violate any of the provisions of the real estate license law, N.J.S.A. 45:15-1 et seq., or the regulations promulgated thereunder.

i. This responsibility shall apply regardless of where the persons licensed through the broker licensee engage in actions in pursuit of the broker licensee's real estate brokerage business.

2. Every real estate transaction in which a broker licensee participates as a broker shall be under the ultimate supervision of the individual broker.

3. The individual broker shall, in addition to ascertaining that a separate account is maintained for the funds of others coming into the possession of the broker licensee, make certain that no such funds of others are disbursed or utilized without his or her express authorization and knowledge.

4. The provisions of this subsection do not apply to brokers licensed as broker-salespersons.

As amended, R.1983 d.471, effective November 7, 1983.
See: 15 New Jersey Register 1343(a), 15 New Jersey Register 1865(c).
Subsections (a) and (c) deleted; subsection (b) recodified as (a).
Amended by R.1995 d.23, effective January 17, 1995.
See: 26 New Jersey Register 3111(a), 27 New Jersey Register 370(a).
Amended by R.1998 d.246, effective May 18, 1998.
See: 30 New Jersey Register 278(a), 30 New Jersey Register 1827(a).
Rewrote (a).

11:5-4.3 Use of license for the benefit of others

(a) No arrangement, direct or indirect, shall be entered into by any licensee whereby an individual licensee lends his name or license for the benefit of another person, firm or corporation, or whereby the provisions of the real estate statute and rules relating to licensing are circumvented.

(b) Lending a broker's license for the benefit of another person, firm or corporation shall be construed as including any arrangement whereby a broker fails to personally oversee and direct the operations of the business of which he or she is licensed as broker of record or employing broker. For the purposes of this section, personal oversight and direction of the business shall be construed as requiring the broker to be physically present in the main office or branch office locations of the business at least one day each week (excluding vacations and emergencies). Communication via telephone and/or mail alone for an extended period of time may be considered by the Commission as evidence of prohibited license lending.

(c) Nothing in this section shall be construed to limit a broker's responsibility to insure the adequate supervision of all offices in accordance with the requirements of N.J.A.C. 11:5-4.4 and 4.5.

As amended, R.1982 d.101, effective April 5, 1982.
See: 13 New Jersey Register 302(b), 14 New Jersey Register 345(b).
Deleted existing text of (b) and added new (b) through (b)2.
As amended, R.1983 d.471, effective November 7, 1983.
See: 15 New Jersey Register 1343(a), 15 New Jersey Register 1865(c).
Amended by R.1989 d.426, effective August 21, 1989 (operative November 19, 1989).
See: 20 New Jersey Register 2184(a), 20 New Jersey Register 3019(a), 21 New Jersey Register 1311(a), 21 New Jersey Register 2522(a).
Established the minimum amount of personal contact which brokers must maintain with their offices and salespeople, deleted (b) and added new (b) and (c).

Amended by R.1998 d.497, effective October 5, 1998.
See: 30 New Jersey Register 2333(a), 30 New Jersey Register 3646(a).
In (c), changed N.J.A.C. references.

11:5-4.4 Maintained offices

(a) Every resident real estate broker not licensed as a broker-salesperson shall maintain a main office for the transaction of business in the State of New Jersey, which shall be open to the public during usual business hours. This main office and the activities of the licensees working from it shall be under the direct supervision of either the broker himself or herself, or of a person licensed as a broker-salesperson. Such supervision shall be maintained on a full time basis. Maintaining full-time supervision shall not be construed as requiring the person performing the supervisory functions to be present at the office location continuously during usual business hours. However, the person performing the supervisory functions shall provide sufficient information so as to allow the personnel at the main office to make communication with that person at all times. Further, the licensee supervising the main office shall be so employed on a full-time basis and, when not required to be away from the office for reasons related to the business of the office, shall be physically present at that office during usual business hours at least five days per calendar week (excluding vacations and emergencies) and shall not be otherwise employed during such time.

1. In the event the main office of a broker is under the direct supervision of a broker-salesperson, the broker who maintains such a main office shall be ultimately responsible for all activities conducted by licensees and employees. Such a broker shall also provide sufficient information to the personnel at such offices so as to allow them to make communication with such broker at all times. Nothing in this section shall be construed to limit a broker's responsibility to comply with the requirements of N.J.A.C. 11:5-4.3.

(b) If such office is located in a residence, it shall be independent of living quarters and shall have a separate exterior entrance plainly visible from the street upon which the licensed premises shall have frontage. This subsection shall not apply to offices in existence prior to December 1, 1963.

(c) No broker's maintained place or places of business shall be in the dwelling premises of any salesperson or referral agent in that broker's employ.

(d) Sole proprietor employing brokers and persons licensed as a broker of record for a licensed entity are responsible to supervise, track and oversee the brokerage activity of persons licensed under their authority regardless of where such activity takes place.

As amended, R.1983 d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
"Salesman" replaced by "salesperson".
Amended by R.1989 d.427, effective August 21, 1989 (operative November 19, 1989).
See: 20 N.J.R. 1160(a), 21 N.J.R. 1312(b), 21 N.J.R. 2523(a).
Clarification obligation of brokers of record to supervise their main office on a full time basis and unusual business hours, added to (a) and new (a)1.
Amended by R.1998 d.246, effective May 18, 1998.
See: 30 N.J.R. 278(a), 30 N.J.R. 1827(a).
Inserted a new (d).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (a)1, changed N.J.A.C. reference.
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In (c), inserted "or referral agent".

Case Notes

Regulation of the New Jersey real estate commission which states holders of reciprocal licenses for non-resident brokers are not permitted to maintain offices in New Jersey is invalid as there is no statutory prohibition on the maintenance of a branch office by a reciprocally licensed non-resident broker in New Jersey which is under the direct, full-time supervision of a competent New Jersey licensee. Atty.Gen.F.O.1977, No. 14.

11:5-4.5 Branch office compliance with N.J.A.C. 11:5-4.4 (Maintained offices)

(a) In the event a real estate broker maintains a branch office or offices, every such place of business shall comply with the provisions of N.J.A.C. 11:5-4.4 (Maintained offices).

(b) No license shall be issued for a branch office situated in the dwelling premises of a referral agent, a salesperson or a broker-salesperson.

(c) Any branch office shall be under the direct supervision of a licensed broker employed as a broker salesperson by the broker maintaining the branch office.

(d) Such individual shall devote his or her full time to management of said office during the usual business hours.

(e) The name of the individual responsible for the supervision of the branch office shall be recorded at all times with the Commission.

(f) When a branch office license is issued to a broker it shall specifically set forth the name of the broker and the address of the branch office, and shall be conspicuously displayed at all times in the branch office. The branch office shall also prominently display the name of the broker-salesperson licensee in charge as "office supervisor" and the names of all other licensees doing business at that branch office.

(g) The said branch office license shall be returned for cancellation or correction upon the change of an "office supervisor".

As amended, R.1983 d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
Correct N.J.A.C. citations added.
Amended by R.1985 d.187, effective April 15, 1985.

See: 16 N.J.R. 2228(a), 17 N.J.R. 970(a).
(f): Substantially amended.
Amended by R.1989 d.428, effective August 21, 1989 (operative February 21, 1990).
See: 21 N.J.R. 1313(a), 21 N.J.R. 2523(a).
Required that branch offices be supervised by broker-salespersons.
Amended by R.1995 d.23, effective January 17, 1995.
See: 26 N.J.R. 3111(a), 27 N.J.R. 370(a).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (a), changed the N.J.A.C. reference and deleted "of this subchapter" from the end.
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In (b), inserted "referral agent, a" and inserted "a" preceding "broker-salesperson"; and in (f), substituted "licensees" for "broker-salespersons and the salespersons".

Case Notes

Regulation of the New Jersey real estate commission which states holders of reciprocal licenses for non-resident brokers are not permitted to maintain offices in New Jersey is invalid as there is no statutory prohibition on the maintenance of a branch office by a reciprocally licensed non-resident broker in New Jersey which is under the direct, full-time supervision of a competent New Jersey licensee. Atty.Gen.F.O.1977, No. 14.

SUBCHAPTER 5. TRUST ACCOUNTS/RECORDS OF BROKERAGE ACTIVITY

11:5-5.1 Special accounts for funds of others; commingling

(a) Every resident real estate broker shall establish and maintain, in an authorized financial institution in New Jersey, and every reciprocally licensed Real Estate broker shall establish and maintain in an authorized financial institution in New Jersey or the State wherein he has a resident real estate broker's license, a special account or special accounts, separate and apart from other business or personal accounts, for the deposit of all moneys or others received by the broker acting in said capacity, or as escrow agent, or as temporary custodian, in a real estate transaction.

(b) Every real estate broker shall file with the broker's application for licensure or license renewal an affidavit or certificate setting forth the name or names of the financial institution or institutions where said special account or accounts have been established and shall identify any and all account numbers. Any change in an existing account or the establishment of any new account shall be immediately reported to the Real Estate Commission in the form of an affidavit or certification.

(c) In construing N.J.S.A. 45:15-17(o), the following shall be considered to constitute commingling by a licensee:

1. Mingling the money of his principals with his own;

2. Failure to maintain and deposit promptly in a special account in an authorized financial institution, separate and apart from personal or other business accounts, all moneys received by a real estate broker acting in said capacity, or as escrow agent, or as the temporary custodian of the funds of others in a real estate transaction; or

3. Failure to promptly segregate any moneys received which are to be held for the benefit of others.

(d) Where the nature of a given real estate transaction is such that the commissions earned by a broker in connection with services rendered in said transaction are included among the funds deposited to the broker's trust account, the portion of such funds deposited to the broker's trust account which constitute the broker's commission shall be promptly paid from the trust account, with appropriate annotations to the broker's business records to indicate the amount and source of such commissions; provided, however, that such broker shall have been previously authorized to make such disbursement.

(e) Within the meaning of this section, the word "promptly" means not more than five business days next following the receipt of the money or property of another. However, where monies are received by a licensee as provided in (c)2 above as a good faith or earnest money deposit accompanying an offer to buy or lease property, if during the five business day period next following the date of the licensee's receipt of those funds the offer is withdrawn prior to acceptance by the offeree or is rejected with no counteroffer made by the offeree, the licensee need not deposit those funds into an escrow or trust account but may, upon the request of the offerer, return them in the same form in which they were received to the offerer. In all other cases, the licensee must deposit such monies within five business days of receipt. Examples of such cases include transactions where negotiations are ongoing, or if a contract or lease is being reviewed by an attorney, or if subsequently to the rejection of an offer the offerer has requested the licensee to retain the monies in the event that the offerer determines to submit another offer on the same or a different property.

(f) The maintenance of clearly nominal amounts of the licensee's funds in trust accounts solely to provide continuity in such account or to meet bank service charges shall not be construed to be commingling.

(g) Where any law or governmental regulation compels maintenance of a fixed amount of the funds of a licensee is a trust account for the purpose of providing a safety factor, the maintenance of such fixed amount shall not be construed to be commingling.

(h) Every person licensed as a broker of record or as a sole proprietor broker shall be a signatory on the escrow or trust account(s) of their brokerage firm. Only individuals who are actively licensed by the Commission as a real estate broker-sales-

person or salesperson may be additional signatories on escrow or trust accounts.

(i) Brokers may accept payments to be held in trust or in escrow, or as the temporary custodian of the funds of others in any real estate transaction, in the following forms: cash; a negotiable instrument payable to the broker's firm; a charge against a check debit card resulting in a credit to the broker's trust or escrow account; or a wire transfer of funds directly from an account of the payor to the trust or escrow account of the broker. As provided in this subsection, brokers may also accept deposit and rent payments to be held by them in trust or in escrow or as a temporary custodian in the form of charges made upon the credit cards of tenants in short term rental transactions.

1. All payments to be held by a broker in trust or in escrow, or as the temporary custodian of monies in a real estate transaction, made in the form of cash, negotiable instruments, wire transfers or by charges made upon credit cards or check debit cards shall be recorded in the broker's trust or escrow account ledger and as otherwise required by N.J.A.C. 11:5-5.4.

2. Brokers shall not accept payments made through credit card charges in any real estate transaction other than a short term rental. For the purposes of this subsection, a "short term rental" is a rental of a residential property for not more than 125 consecutive days with a specific termination date.

3. Brokers who accept payments in the form of credit card charges in short term rentals shall cause those payments to be credited to a special trust or escrow account, distinct from the escrow or trust account(s) maintained by the broker for other purposes. Brokers who accept such payments shall also maintain a business account, separate and apart from all trust or escrow accounts including the account to which the credit card charges shall be credited. The said business account may be the same business account maintained by the broker for general purposes.

4. Before accepting any payment in the form of a credit card charge on a short term rental, a broker shall inform the owner in writing of the potential for such payments to be "charged-back" by the tenant and obtain written authorization signed by the owner for the broker to accept such payments.

i. For the purposes of this subsection, "charged-back" means the recrediting of a previously charged payment to the account of a cardholder through the electronic debiting of an account of the broker.

ii. Where an owner's written authorization is secured by the listing broker, it shall be made a part of or an addendum to a listing agreement.

iii. In all cases, the owner's written authorization shall be retained by the broker to whom it was given as a business record in accordance with N.J.A.C. 11:5-5.4.

5. In the event that a dispute concerning a charged-back payment arises between a broker and a consumer, under no circumstances may the broker apply or set-off against the disputed amount any monies paid to the broker on another transaction in which the same consumer is a party.

6. Brokers who accept credit card charges in payment of deposits or rent on short term rentals shall formulate a written statement of their policy on credit card payment cancellations. All such cancellation policies shall include:

i. An indication of the time period during which the cardholder may cancel the charged payment made to the broker; and

ii. A statement that, in the event a cancellation request is not received by the broker within the specified cancellation time period, the request will not be honored and the disposition of the monies credited to the broker will be governed by the terms of the lease or rental agreement between the landlord and the cardholder.

7. In no event shall the cancellation period terminate prior to the delivery to the cardholder of a fully executed written lease containing the final terms of the rental agreement, or the full acceptance by the parties of the final terms of a verbal rental agreement.

8. Brokers shall provide copies of the written cancellation policy in the following manner:

i. To property owners upon the earlier of the broker obtaining a listing on the rental property or presenting an offer to rent the property; and

ii. To prospective tenants at the time of first accepting a payment in the form of a credit card charge. In the event that the same tenant makes subsequent payments on the same rental transaction through charges against a credit card, the broker accepting such payments shall not be required to provide additional copies of the written cancellation policy.

9. Except as otherwise provided in (j) below, brokers who accept payments in the form of credit card charges shall comply with all restrictions and requirements imposed by N.J.S.A. 45:15-17(o) and this section with regard to the deposit and maintenance of such funds.

(j) In all cases, the amount credited to a broker's special escrow or trust account as a result of a charged payment on a short term rental transaction shall be the full amount of the payment made by the tenant to the broker. All transaction fees payable

by the broker to the company which issued the credit card shall not be paid before the full amount of the charged payment is credited to the broker's special escrow or trust account. Brokers who accept payments through charges on credit cards shall also comply with one of the procedures specified in (j)1 and 2 below.

1. A business account of the broker shall be designated in the contract between the broker and any company whose credit card charges the broker shall accept as the sole source of funds for the payment by the broker of all credit card transaction fees due to the company, and the sole source of funds for all charge-backs which may be assessed against the broker by the company; or

2. The broker shall maintain a reserve amount of the broker's funds in the special escrow or trust account to which charged payments will be credited. The said reserve shall be sufficient to cover all transaction fees incurred by the broker on charged transactions and all estimated charge-backs of payments by cardholders. The maintenance of such reserve funds in the said special escrow or trust account shall not be construed as commingling. In all cases where brokers utilize this procedure:

i. Transaction fees debited from the said reserve amount shall be replenished by the broker on at least a monthly basis;

ii. In the event that a broker is notified that a charge-back has occurred after some or all of the funds received through the charged-back payment have been disbursed, the broker shall, within one business day of receipt of such notice, replenish the reserve funds in the special escrow or trust account in an amount equal to the amount debited from the reserve through the charge-back; and

iii. Brokers may replenish or increase the said reserve amount as often as necessary. Brokers may only reduce the said reserve amount on an annual basis. All credits to and debits from the special escrow or trust account made by the broker to replenish, increase or decrease the reserve amount shall be duly noted in the business records of the broker and maintained as such as required by N.J.A.C. 11:5-5.4.

As amended, R.1982 d.101, effective April 5, 1982.
See: 13 New Jersey Register 302(b), 14 New Jersey Register 345(b).
New (a) and (b) added, (c) marked "Reserved"; old (a)-(e) numbered as (d)-(h).
As amended, R.1983 d.471, effective November 7, 1983.
See: 15 New Jersey Register 1343(a), 15 New Jersey Register 1865(c).
Subsections (d) through (h) recodified as (c) through (g).
Amended by R.1993 d.8, effective January 4, 1993.
See: 24 New Jersey Register 3483(a), 25 New Jersey Register 118(a).
Exception allowed to deposit of funds entrusted to real estate broker as escrow agent.
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 New Jersey Register 2333(a), 30 New Jersey Register 3646(a).
In (c), deleted "or other property" following "money" in 1, and substituted "moneys" for "properties" in 3; in (d), deleted ", the portion of such funds" preceding "which constitute" and substituted "indicate" for "define" following "records to"; and added (h).
Amended by R.1999 d.444, effective December 20, 1999.
See: 31 New Jersey Register 2675(a), 31 New Jersey Register 4282(a).
Added (i) and (j).

Case Notes

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

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

Licensee loses license for failing to maintain separate escrow account. *New Jersey Real Estate Commission v. J. Michael Hill*, 97 N.J.A.R.2d (REC) 17.

Failure to maintain separate escrow account and lending broker's license justifies license revocation. *New Jersey Real Estate Commission v. Mertz and Dragotta*, 97 N.J.A.R.2d (REC) 13.

Real estate salesperson loses license by demonstrating unworthiness and dishonesty through criminal conviction and using escrow monies for personal use. *New Jersey Real Estate Commission v. Santoro and Miller*, 97 N.J.A.R.2d (REC) 6.

Broker was subject to license revocation and monetary penalty for commingling business and personal funds and for failing to maintain separate account to hold real estate transaction funds. *Real Estate Commission v. Potok and Island RMS, Inc.*, 96 N.J.A.R.2d (REC) 42.

Making false representation as being owner of real estate brokerage, collecting commission from person other than employing broker, and commingling of funds, revocation of salespersons' licenses and imposition of fines. *New Jersey Real Estate Commission v. Ballman*, 93 N.J.A.R.2d (REC) 17.

Commingling of funds, making misrepresentations to investigator, as well as other violations, warranted revocation of broker's license and imposition of fine. *New Jersey Real Estate Commission v. Eberhardt*, 92 N.J.A.R.2d (REC) 53.

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

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

Failure to account for deposit monies, commingling of funds, and engaging in business without license; salesperson's license revoked and fine imposed. *New Jersey Real Estate Commission v. Groff*, 92 N.J.A.R.2d (REC) 31.

Commingling trust monies and failing to maintain separate account for escrow funds, as well as other violations, warranted revocation of broker's license, suspension of salesperson's license, and assessment of fine. *New Jersey Real Estate Commission v. Woods*, 92 N.J.A.R.2d (REC) 25.

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

11:5-5.2 Funds of others; safeguards

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

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

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

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

1. His awareness of any risk or contingency;

2. The disposition of his funds or deposits; and

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

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

Case Notes

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

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

11:5-5.3 Advance fees; accounting

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

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

Case Notes

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

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

11:5-5.4 Records to be maintained by broker

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

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

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

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

2. In appropriate ledger book for all trustee accounts or escrow accounts showing, in one location in that ledger book for each separate trust transaction, the payor of all funds deposited in such accounts, the date of deposit, the names of all persons for whom the funds are or were held, the amount of such funds, the amounts and dates of all disbursements of such moneys, and the names of all persons to whom such funds were disbursed. The Commission will not deem a regular checkbook ledger as sufficient to constitute an appropriate ledger book. Such a ledger book may be maintained in a computer or similar device, so long as it is capable of reproducing the electronically stored data on paper so as to depict the complete history of all activity in each separate trust transaction, and the data can be maintained in an easily accessible form for the required six year period. A regular running balance of the individual transaction ledger sheets shall be maintained. The total of the running balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust on that transaction, and deducting the total of all moneys disbursed;

i. Brokers who accept credit card charges on short term rental transactions and who maintain a reserve in their special trust or escrow account to which funds received through such charges are credited as provided in N.J.A.C. 11:5-5.1(j) shall record in one location in their ledger book, entries specifying deposits

made to establish, replenish, and increase the reserve amount and all withdrawals made to reduce the reserve amount. Brokers who maintain reserves in such special escrow or trust accounts shall not be required to make an entry in their ledger for each transaction fee debited from the said account as a result of their acceptance of a payment through a charge on a credit card.

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

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

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

6. Copies of all leases and property management agreements;

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

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

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

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

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

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

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

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

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

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

(e) The financial books and other records as described in (a), (b), (c) and (d) above shall be maintained in accordance with generally accepted accounting practice. They shall be located at the main New Jersey office of each broker or, in situations where separate general business and/or trust or escrow accounts are maintained at licensed branch offices, either at that branch office or at the main office of the broker. Copies of all items designated as records in (a) through (d) above shall be maintained by brokers as provided in this section. Items may be maintained either on paper or stored electronically in a computer or similar device, so long as the electronically stored data can be readily reproduced on paper so as to depict the complete history of all activity and the data can be maintained in an easily accessible form for the required six-year period. This requirement shall apply to all such records, including any items generated through e-mail or any other means which does not require the creation of a paper document. All such records shall be available for inspections, checks for compliance with this section and copying by a duly authorized representative of the New Jersey Real Estate Commission. Licensees may be required to certify to the accuracy of the reproduced data.

Amended by R.1989 d.425, effective August 21, 1989 (operative November 19, 1989).
See: 21 N.J.R. 1310(a), 21 N.J.R. 2520(a).
Clear specifications added regarding the type of business records brokers are required to maintain, new (a)1, new (b)1-10, and new (c)-(e).
Amended by R.1998 d.246, effective May 18, 1998.
See: 30 N.J.R. 278(a), 30 N.J.R. 1827(a).
In (e), inserted new third and fourth sentences.
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (a), changed N.J.A.C. reference and deleted references to property; and in (b), changed N.J.A.C. references.
Amended by R.1999 d.444, effective December 20, 1999.
See: 31 N.J.R. 2675(a), 31 N.J.R. 4282(a).
In (b), inserted 2i, and rewrote 4.
Amended by R.2009 d.287, effective September 21, 2009.
See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).
In (e), substituted "Copies" for "Paper copies" and "e-mail" for "E-mail", and inserted the fourth and last sentences.

11:5-5.5 Inspection of records

(a) Every licensee shall make available for inspection by the Commission or its designated representatives all records of transactions, books of account, instruments, documents and

forms utilized or maintained by such licensee in the conduct of the licensed business, which may be pertinent to the conduct of the investigation of any specific complaint.

(b) To accomplish the objectives and carry out the duties prescribed by this Act, especially the provisions of N.J.S.A. 45:15-17, the Commission may issue subpoenas to any person, administer an oath or affirmation to any person, and conduct hearings in aid of any investigation or inquiry.

(c) All files on pending and closed sale, exchange or lease transactions, all files on listings for sales or rentals, and all property management files shall be maintained or stored at the offices of brokers licensed as employing brokers or corporate or partnership brokers. Upon terminating their employment with such a broker, and/or transferring to the employ of another such broker, no referral agent, salesperson or broker-salesperson shall remove or cause to be removed any of the contents of such files from the offices of the broker. The term "files" as used herein shall be construed to mean all transaction records required to be kept by brokers pursuant to N.J.A.C. 11:5-5.4.

As amended, R.1983 d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
Language citing statute deleted in subsection (a).
Amended by R.1988 d.410, effective September 6, 1988.
See: 20 N.J.R. 883(a), 20 N.J.R. 2295(a).
Added (c).
Petition for Rulemaking: Upon termination from employment with a broker, no salesperson or broker salesperson may remove files from the office pertaining to sale or rental listings.
See: 23 N.J.R. 1968(e).
Public Notice: Petition to amend subsection (c).
See: 23 N.J.R. 2191(b).
Amended by R.1992 d.107, effective March 2, 1992.
See: 23 N.J.R. 3428(a), 23 N.J.R. 3739(a), 24 N.J.R. 852(b).
Meaning of "files" specified at (c).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (b), deleted ", in addition to other powers conferred upon it by the Act" following "Commission"; and in (c), changed N.J.A.C. reference.
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In (c), inserted "referral agent,".

Case Notes

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

SUBCHAPTER 6. CONDUCT OF BUSINESS

11:5-6.1 Advertising rules

(a) Unless otherwise set forth herein, subsections (b) through (*o*) below shall apply to all categories of advertising including all publications, radio or television broadcasts, all electronic media including E-mail and the Internet, business stationery, business cards, business and legal forms and documents, and signs and billboards.

1. Individuals operating as sole proprietors and licensed as employing brokers shall conspicuously display on the exterior of their maintained place of business their name and the words "Licensed Real Estate Broker".

2. Firms licensed as corporate or partnership brokers shall conspicuously display on the exterior of their maintained place of business their regular business name and the name of the individual licensed as their broker of record and the words "Licensed Real Estate Broker".

(b) All advertising of any licensed individual, partnership, firm, or corporate broker shall include their regular business name which for the purposes of these rules, shall mean the name in which that individual, partnership, firm or corporation is on record with the Commission as doing business as a real estate broker. All advertising by a referral agent, a salesperson or a broker-salesperson shall include the name in which they are licensed and the regular business name of the individual, partnership, firm or corporate broker through whom they are licensed. If such advertisements contain a reference to the licensed status of the person placing the ad, their status as a referral agent, a salesperson or a broker-salesperson must be indicated through inclusion of a descriptive term as provided in (e) below. A referral agent or salesperson may not indicate in any advertisement or otherwise that he or she is licensed as a broker-salesperson.

1. In all advertisements which contain the name of a referral agent, a salesperson or a broker-salesperson, the regular business name of the individual, partnership, firm or corporate broker through whom that person is licensed shall appear in larger print or be displayed in a more prominent manner than the name of the referral agent, salesperson or broker-salesperson.

2. Where a webpage on the worldwide web established by a referral agent, a salesperson, a broker-salesperson, or a team of such licensees is not linked electronically to the webpage of the broker through whom the person or team is licensed, the webpage shall display the telephone number and may display the street address of the licensed brokerage office from which the individual or team operates as real estate licensees. That information shall appear in wording as large as the predominant size wording on the webpage.

3. Where a webpage of an individual or team is linked electronically to the webpage of the broker through whom such person or persons are licensed, the webpage of the nonbroker licensee(s) shall display information which clearly indicates how to link to the broker. That information shall appear in wording as large as the predominant size wording on the webpage.

(c) All advertising, with the exception of lawn signs placed on residential properties containing four or fewer units, shall clearly indicate after the licensee's regular business name that the advertising licensee is engaged in the real estate brokerage business. Except as prescribed by N.J.S.A. 45:15-17(j), examples of permissible language shall include, but are not limited to, "Realtor," "Realtist," "real estate broker," "broker," or "real estate agency". Examples of prohibited language when used alone shall include, but are not limited to, "realty," "real estate," "land sales," and "land investments." This provision shall not apply when the word "agency" appears in the advertisement as part of the licensee's regular business name or when the licensee has legal or equitable ownership of the property.

(d) Any advertising which contains a home telephone number, cell-phone number, beeper or pager number, home fax number, or e-mail address of an individual referral agent, salesperson or broker-salesperson, or a team of such licensees, shall also include the telephone number and may include the street address of the licensed brokerage office from which the advertising licensee(s) operate. All such advertising shall also contain language identifying each number included in the advertising. For example, a home telephone number may be followed or preceded by the word "home" or the abbreviation "res."

1. No advertising shall represent that a location is a place at which the business of a real estate licensee is conducted unless that location is the licensed main office or a licensed branch office of the broker through whom the advertising licensee is licensed. Referral agents, salespersons and broker-salespersons shall not include in their advertisements any reference to a "home office."

(e) The business card of any licensed referral agent shall indicate that this licensee is a referral agent by the use of the words referral agent or referral associate. The business card of any licensed salesperson shall indicate that this licensee is a salesperson by the use of the words salesperson or sales representative, or sales associate, or where permitted by law, realtor-associate or realtist associate. The business card of any licensed broker-salesperson shall indicate that this licensee is a broker-salesperson by the use of the words broker-associate, associate broker, realtor-associate or broker-salespersons. The business card of any licensed broker shall indicate that this licensee is a broker by use of the word broker or, where permitted by law, Realtor or Realtist.

(f) Any advertising which refers to amounts of down payment, monthly payment, or carrying charges, or which indicates that a mortgage is obtainable (where the mortgage referred to is not already a lien against the premises advertised), shall contain the words "to a qualified buyer".

(g) Any advertisement which sets forth amounts of down payment, monthly payment, carrying charges, taxes or mortgage money obtainable shall contain appropriate qualifying words such as "approximate" or "estimated," which qualifying words shall be clearly associated with the amounts set forth. If such amounts are mentioned the broker shall maintain written proof of the validity of these statements in the broker's files. Such written proof shall be maintained for a period of 12 months from the date upon which an advertisement containing such references shall have last appeared in any publication.

(h) With the exception of magazine or newspaper advertisements published under municipality headings, any advertisement for the sale, exchange or rental of real property, or any interest therein, shall designate the geographical area containing that property by specifying the municipality within which that property is located.

(i) No licensed individual, limited or general partnership, firm or corporation shall advertise or use any form of application or make any inquiry which expresses directly or indirectly any limitation, specification or discrimination as to race, religion, creed, color, sex, affectional or sexual orientation, marital status, national origin, ancestry or as to whether a person has a disability as that term is defined in N.J.A.C. 11:5-6.4(k).

(j) Any use of an insignia, emblem, logo, trade name or other form of identification in any advertising or other public utterance, either by a single licensee or any group of licensees, which suggests or otherwise implies common ownership or common management among such licensees, shall be prohibited except in the case of branch offices controlled by a single broker or licensee and duly licensed as branch offices pursuant to the provision of N.J.S.A. 45:1-1 et seq. Nothing herein provided is intended to preclude or inhibit the use, advertising or display of any insignia, emblem, logo or trade name of any bona fide trade association by any licensee provided that such licensee is a member of such trade association.

1. Any franchised licensee using in any advertising the trade name of a franchisor shall include in such advertising in a manner reasonably calculated to attract the attention of the public the franchised licensee's regular business name.

2. Any licensee including the franchisor using the trade name of franchisor in any advertising shall also include in a manner reasonably calculated to attract the attention of the public the following legend or a substantially similar legend: "each office is independently owned and operated", except in the following categories of advertising:

i. "For sale" signs located on the premises of specific properties for sale;

ii. Small "spot" classified advertising by a licensee in newspapers, magazines or other publications advertising properties. A small spot classified advertisement is defined as an advertisement which is no more than one column wide and 20 lines long and which describes no more than two properties; a line is defined as a standard newspaper classified advertising line of the newspaper, magazine or other publication in which the advertisement is published;

iii. Business cards; and

iv. Advertising placed or distributed by offices which are wholly owned by the franchisor, which contains the office address and contains language which identifies the office as being wholly owned or the franchisor.

3. The intent of this subsection is to further promote the general purpose of the Real Estate License Act of ensuring that all individuals, firms or corporations are clearly identifiable to the public as the licensed brokers who are financially and otherwise responsible to the consuming public for their real estate brokerage activities. It is not the intent of this subsection to limit or otherwise inhibit the operation of branch offices as set forth in N.J.S.A. 45:15-12 and sections 18 and 19 of this subchapter, nor is it the intent of this subsection to prevent the franchising of any group of licensees provided such franchising or other association is not inconsistent with the purpose of the Real Estate License Act as expressed herein.

(k) Any advertising by any licensed individual, partnership, firm or corporation referring generally to membership in any real estate multiple listing service operation shall specify the complete name of the listing service in which membership is held, except in the following categories of advertising:

1. "For sale" signs and small "spot" classified advertising of any licensee as described in (j) above;

2. Business cards;

3. All business signs.

(*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, P.L. 1977, c.467, 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 who 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, licensees may include offers of free, discounted or other services or products in advertisements or promotional material. No offering of free, discounted or other services or products, including the offering of a free appraisal, shall be made by a real estate licensee in any advertisement or promotional material or otherwise where the promotion or offering involves a lottery, a contest, a game or a drawing, or the offering of a lot or parcel or lots or parcels, or where the consumer is required to enter into a sale, listing or other real estate contract as a condition of the promotion or offer.

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. The prohibition upon licensees making offerings of free, discounted or other services or products as set forth in (m) above applies to all such offerings which confer a monetary benefit upon consumers. Examples of free or discounted products or services which would be prohibited if offered in a manner proscribed by (m) above include free or subsidized homeowners warranties, property, radon and pest inspections, surveys, mortgage fees, offers to pay other costs typically incurred by parties to real estate transactions, and coupons offering discounts on commissions charged by brokerage firms.

3. "Appraisal" as used herein is given its technical meaning as a study and analysis by an appraiser authorized by law to perform appraisals of New Jersey real estate to ascertain fair market value by using a process in which all factors that would fix price in the market place must be considered. A comparative market analysis or study is not an appraisal as herein defined. Any written comparative market study or analysis (CMA) provided by a licensee to a consumer shall include a statement indicating that the CMA is not an appraisal and should not be considered the equivalent of an appraisal. The said statement shall appear in print as large as the predominant size print in any writing reporting the results of the CMA.

4. Subject to (m) above, whenever a licensee participates in a promotion or offering of free, discounted, or other services or products which confers upon the recipient a monetary benefit of greater than token value, which for the purposes of this rule shall mean a value of more than $ 5.00 retail, the licensee shall provide written disclosure to the recipient of the promotional material or offering. The disclosure shall state in a clear and conspicuous manner:

i. That a consumer is not required to enter into any sale, listing or other real estate contract as a condition of their receipt and use of the free, discounted or other services or products included in the promotion or offer;

ii. Whether the consumer is required to perform any action to qualify to receive the free, discounted or other services or products offered and, if so, what specific action(s) the consumer must perform in order to do so. For the purposes of this paragraph, a consumer's attendance at any listing presentation, informational session or other meeting is considered to be an action by the consumer; and

iii. In the event that delivery of the offered services or products does not occur at the time that the disclosure is provided to the consumer, the date by which the services or products will be delivered to the consumer if the offer is accepted. If the delivery date is unknown to the licensee at the time the offer or promotion is extended to the consumer, the written disclosure to be provided by the licensee to the consumer shall so state.

5. In the event that a licensee has received, or will receive, compensation for participating in a promotion or offering of free, discounted, or other services or products, the disclosure required under (m)4 above shall also state the compensation the licensee has received or will receive. Should the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. §§ 2601 et seq., be applicable to the arrangement between the broker and the person paying the compensation to the broker, the disclosure shall be in the form and substance required by that Act.

6. The written disclosure referenced in (m)4 and 5 above shall be provided to consumers no later than when the promotion or offer is extended by the licensee to the consumer.

i. For the purposes of this subsection, an offer or promotion is extended to a consumer when the free or discounted product or service is delivered to the consumer, or when written confirmation of the consumer's right to receive the free or discounted product or service at some future time is delivered to the consumer.

7. No licensee may utilize a marketing or promotional program which requires, as a condition of the consumer's receipt of a free or discounted product or service, the taking of any action by the consumer prior to the delivery of the disclosure(s) referenced in (m)4 and 5 above other than an action necessary to accomplish the delivery of the disclosure to the consumer.

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

1. With regard to information on listings disseminated through the Internet by licensees other than the listing broker, listing brokers shall be deemed to have given the consent referred to in (n) above with the knowledge of the owner where:

i. A written listing agreement contains the seller's authorization for information on the listing to be posted on the website of the broker, or of a multiple listing service to which the broker belongs, or of another party to which the broker or such an MLS submits information on listings; and

ii. The website on which the listing information shall initially appear has instituted no measures to prevent other parties with websites from utilizing an electronic link to enable consumers to view that information while remaining in the website of the other party.

(o) No licensee shall indicate in any advertisement that a property has been sold, or that they participated in the sale of a property, until a closing has occurred at which title to the property was transferred from the seller to the buyer.

1. For the purposes of this subsection, the term "advertisement" shall include communications to other licensees through notices submitted to a multiple listing service or otherwise.

2. In the time period after a contract prepared by a licensee emerges from Attorney Review or a contract not subject to Attorney Review is fully executed and delivered to all parties, but before a closing occurs at which title is transferred, unless such a contract is canceled and the seller authorizes the listing broker to renew efforts to market the property, any advertisement of the property which is the subject of the contract shall include the term "under contract."

(p) Advertisements by licensees may, but are not required to, include a statement indicating that the advertiser is licensed by the New Jersey Real Estate Commission. Any advertisement by a licensee that includes a reference to licensure by the New Jersey Real Estate Commission shall immediately thereafter also include the following statement: "Licensure does not imply endorsement," which statement shall be included in the advertisement in a clear and conspicuous manner.

1. The foregoing shall not apply to the displays which, pursuant to N.J.S.A. 45:15-12, are required to conspicuously appear on the exterior of every place of business maintained by New Jersey real estate brokers and to include the name of the broker and, in the case of business entities licensed as brokers, the name of the individual licensed as its authorized broker, and the words "Licensed Real Estate Broker."

(q) Any advertisement which includes any reference to a commission rate or compensation amount charged by the advertising licensee's brokerage firm or by one or more other brokerage firms shall also include the following statement: "In New

Jersey commissions are negotiable." The said statement shall be included in the advertisement in a clear and conspicuous manner.

(r) No advertisement shall contain false, misleading or deceptive claims or misrepresentations. In all advertisements which make express or implied claims that are likely to be misleading in the absence of certain qualifying information such qualifying information shall be disclosed in the advertisement in a clear and conspicuous manner.

(s) No person licensed as a referral agent shall include in any advertisement any content stating or implying that he or she is authorized to engage in real estate brokerage activity beyond that which he or she is permitted under N.J.S.A. 45:15-3 or N.J.A.C. 11:5-6.10.

(t) On all advertisements, except business cards, referral agents shall include the following statement in a clear and conspicuous manner: Services limited to referring prospects to broker.

As amended, R.1976 d.276, effective August 31, 1976.
See: 8 N.J.R. 387(a), 8 N.J.R. 482(a).
As amended, R.1977 d.84, effective March 10, 1977.
See: 9 N.J.R. 91(d), 9 N.J.R. 178(a).
As amended, R.1978 d.42, effective January 31, 1978.
See: 9 N.J.R. 534(c), 10 N.J.R. 116(c).
As amended, R.1979 d.461, effective November 26, 1979.
See: 10 N.J.R. 499(a), 12 N.J.R. 44(b).
As amended, R.1980 d.52, effective January 31, 1980.
See: 12 N.J.R. 44(a), 12 N.J.R. 128(a).
As amended, R.1980 d.213, effective May 14, 1980.
See: 12 N.J.R. 44(a), 12 N.J.R. 343(a).
As amended, R.1980 d.279, effective June 26, 1980.
See: 12 N.J.R. 340(b), 12 N.J.R. 484(d).
As amended, R.1983 d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
Time limits on compliance deleted.
As amended, R.1986 d.91, effective April 7, 1986.
See: 17 N.J.R. 666(a), 18 N.J.R. 699(a).
(m)3.-5. deleted.
Amended by R.1987 d.69, effective January 20, 1987.
See: 18 N.J.R. 1679(a), 19 N.J.R. 232(b).
Amended (d) and (e).
Petition: Notice of Action upon petition for Declaratory Ruling and/or Rulemaking limiting the scope of Advertising Rules.
See: 19 N.J.R. 570(d), 19 N.J.R. 664(a).
Amended by R.1988 d.237, effective June 6, 1988.
See: 20 N.J.R. 497(a), 20 N.J.R. 1205(a).
Substantially amended subsection (j).
Amended by R.1989 d.447, effective August 21, 1989.
See: 21 N.J.R. 1312(a), 21 N.J.R. 2552(b).
Exempted residential lawn sign advertisement for properties of four or fewer units, corrected spelling of realtist and added new (n) regarding consent of exclusive listing broker.
Amended by R.1993 d.9, effective January 4, 1993 (operative May 4, 1993).
See: 24 N.J.R. 3484(a), 25 N.J.R. 178(b).
Requirements for signs, cards, etc. amended to show name of broker, identified as such.
Amended by R.1994 d.266, effective June 20, 1994 (operative July 1, 1994).
See: 26 N.J.R. 729(a), 26 N.J.R. 1194(a), 26 N.J.R. 1222(a), 26 N.J.R. 2581(b).
Amended by R.1997 d.26, effective January 21, 1997.
See: 28 N.J.R. 3064(a), 29 N.J.R. 365(a).
In (*l*), inserted reference to the seller regarding warranty payment; in (m)2, inserted reference to informational or educational; and added (m)2i.
Amended by R.1998 d.246, effective May 18, 1998.
See: 30 N.J.R. 278(a), 30 N.J.R. 1827(a).
In (a), inserted "all electronic media including E-mail and the Internet," in the introductory paragraph; in (b), added new 1 through 3; rewrote (d); and in (m), substituted "certified or licensed appraiser" for "specialist or expert" in the introductory paragraph, added ", and coupons offering discounts on commissions charged by brokerage firms" at the end of 1i, and inserted a new 1ii.
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (g), deleted "without qualification," following "mentioned" in the second sentence; and in (i), changed N.J.A.C. reference.
Amended by R.2000 d.223, effective June 19, 2000 (operative September 17, 2000).
See: 31 N.J.R. 2678(a), 32 N.J.R. 2242(b).
In (n), added 1.
Amended by R.2001 d.236, effective July 16, 2001 (operative October 15, 2001).
See: 32 N.J.R. 2205(a), 33 N.J.R. 2532(a).
In (a), substituted "(*o*)" for "(n)"; in (b)1, substituted "In" for "With the exception of business cards, in"; in (d), substituted "Any" for "With the exception of business cards, any" in the introductory paragraph; in (g), deleted "unqualified" preceding "references shall"; added (*o*).
Amended by R.2002 d.346, effective November 4, 2002 (operative February 2, 2003).
See: 33 N.J.R. 3620(a), 34 N.J.R. 3832(a).
Rewrote the section.
Amended by R.2004 d.130, effective April 5, 2004.
See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).
In (e), substituted "the words broker-associate, associate broker, realtor-associate or" for "any of the aformentioned words or by the use of" in the second sentence.
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In the introductory paragraph of (b), and in (b)1 and (b)2, inserted "referral agent, a" throughout; In the introductory paragraph of (b) and in (b)1, inserted "a" preceding "broker-salesperson" throughout; in the introductory paragraph of (b), inserted "referral agent or"; in (b)1, inserted a comma following "broker-salesperson", and inserted the second occurrence of "referral agent,"; in the introductory paragraph of (d), substituted "e-mail" for "E-mail" and inserted "referral agent,"; in (d)1, substituted "Referral agents, salespersons" for "Salespersons"; in (e), inserted the first sentence; and added (s) and (t).
Administrative correction.
See: 48 N.J.R. 494(a).

Case Notes

New Jersey Land Sales Full Disclosure Act discriminated in its plain effect against interstate commerce and violated dormant commerce clause. *Old Coach Development Corp., Inc. v. Tatzman*, C.A.3 (N.J.)1989, 881 F.2d 1227.

In a seller's suit against a real estate agent, an attorney, the purchasers, and others (the defendants), the trial court correctly dismissed, via summary judgment, the seller's claims alleging a violation of the Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to 56:8-20, with regard to certain defendants submitting a deposit paid form and indicating that the transaction was under contract when the seller nor her agent or attorney had received any such deposit as the seller failed to show that the defendants made an affirmative misrepresentation of a material fact or knowingly failed to disclose a material fact with the intent that the seller rely thereon. Further the trial court properly found that the alleged violation of N.J.A.C. 11:5-6.1(*o*)(2) did not provide a basis for a claim under the CFA since the regulation was not adopted by the Attorney General pursuant to the CFA; rather, it was adopted by the Real Estate Commission pursuant to its rule-making powers. *Stoecker v. Echevarria*, 408 N.J. Super. 597, 975 A.2d 975, 2009 N.J. Super. LEXIS 188 (2009).

Barring real estate broker's merchandise coupon program pursuant to statute was not improper regulation of competition. *Coldwell Banker Residential Real Estate Services, Inc. v. New Jersey Real Estate Com'n*, 242 N.J.Super. 354, 576 A.2d 938 (A.D.1990).

Statute prohibiting real estate brokers from using promotions involving "prizes" did not deprive broker that wished to use merchandise coupon program of property without due process. *Coldwell Banker Residential Real Estate Services, Inc. v. New Jersey Real Estate Com'n*, 242 N.J Super. 354, 576 A.2d 938 (A.D.1990).

Website offering 1% Cash-Back Bonus on the purchase of a home presented incomplete and misleading information where the prospective client was lulled into assuming that the bonus was available from all sellers and payable at closing, when in fact payment of the bonus to some clients might be made at some undefined future date (adopting 2009 N.J. AGEN LEXIS 502). *N.J. Real Estate Comm'n v. Tonge*, OAL Dkt. No. BKI 08380-08, 2009 N.J. AGEN LEXIS 740, Final Decision (September 16, 2009).

Commingling trust monies and failing to maintain separate account for escrow funds, as well as other violations, warranted revocation of broker's license, suspension of salesperson's license, and assessment of fine. *New Jersey Real Estate Commission v. Woods*, 92 N.J.A.R.2d (REC) 25.

11:5-6.2 Contracts of sale, leases and listing agreements

(a) The following paragraphs specify licensees' obligations to obtain written confirmation of the intentions of, and to deliver copies of documents to, parties to a real estate transaction.

1. Where a licensee memorializes the terms of an offer or counter-offer on a writing which will itself become an "instrument" as defined in (a)3 below, the licensee shall deliver to the maker of such an offer or counter-offer a clear copy of the executed offer or counter-offer immediately upon its being signed, and initialed if necessary as provided in this section, by the maker of the offer or counter-offer. Any addition, deletion, or other change in any such offer or counter-offer shall be initialed by the party proposing such a revision and, if accepted, by the other party to the transaction.

2. Where a licensee records the terms of an offer or counter-offer on a writing which is not intended to be binding upon either party, and which so states on its face, in the event that the licensee secures the signature and/or initials of any party on such a writing, the licensee shall provide to the signing and/or initialing party a clear copy of the writing as signed and/or initialed by them.

3. As used in this subsection, the term "instrument" means any complete and fully executed written contract of sale, lease, option agreement, or other writing affecting an interest in real estate, or any complete and fully executed addendum or amendment to any such contract, lease, option agreement or writing. The term instrument as used in this subsection does not include listing agreements and buyer brokerage agreements.

4. Licensees shall immediately deliver to all parties to any fully executed instrument a clear copy with original signatures of any such fully executed instrument. Licensees shall provide their clients with a fully executed copy of any sale or exclusive sale or rental listing contract at the time of execution thereof.

5. Licensee-prepared revisions or additions reflected on the instrument itself shall be initialed by all parties to the transaction. Licensee-prepared revisions or additions to an instrument not memorialized by changes on the instrument itself shall be reflected on amendments or addenda to the instrument signed by all parties to the transaction.

i. Licensees shall immediately deliver to the party proposing a revision or addition to an instrument a clear copy of any proposed revised instrument initialed by that party and a clear copy of any proposed amendment or addendum signed by that party.

ii. All revisions, amendments and addenda to any fully executed instrument which are prepared by licensees must comply with New Jersey law as it pertains to the attorney review of contract and lease documents prepared by real estate licensees.

6. This rule is to ensure prompt communication of the executed evidence of a transaction to all interested parties.

(b) No listing agreement or contract for the sale of real property, or any interest therein, shall contain a prescribed or predetermined fee, commission rate, or commission amount; nor shall any such writing contain a commission clause or provision which suggests (such as with a small blank space and percent sign) to a seller that the commission is a prescribed rate or amount.

(c) The commission clause or provision in all listing agreements for the sale of one to four family dwelling units or interest therein, or in all contracts for such sale, if there is no listing agreement, shall contain in print larger than the predominant size print in the writing, the language: "As seller you have the right to individually reach an agreement on any fee, commission, or other valuable consideration with any broker. No fee, commission or other consideration has been fixed by any governmental authority or by any trade association or multiple listing service." Nothing herein is intended to prohibit an individual broker from independently establishing a policy regarding the amount of fee, commission or other value consideration to be charged in transaction by the broker.

(d) Upon request, the listing broker shall advise the seller of the rate or amount of any commission split or distribution.

(e) All listing agreements of any licensed individual, partnership, firm or corporation which provide for the listing of property with any real estate multiple listing service operation shall specify the complete name of that listing service.

(f) No licensed individual, partnership, firm or corporation shall enter into a "net listing" contract for the sale of real property, or any interest therein. A "net listing" is defined as an agency agreement in which a prospective seller lists real estate for sale

with an authorization to a broker to sell at a specified net dollar return to the seller, and which provides that the broker may retain as commission the difference between the specified dollar return to the seller and the actual sales price.

(g) Licensees shall comply with the following provisions:

1. All contracts prepared by licensees for the sale of residential real estate containing one to four dwelling units and for the sale of vacant one-family lots in transactions in which the licensee has a commission or fee interest shall contain, at the top of the first page and in print larger than the predominant size print in the writing, the following language:

THIS IS A LEGALLY BINDING CONTRACT THAT WILL BECOME FINAL WITHIN THREE BUSINESS DAYS. DURING THIS PERIOD YOU MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND CANCEL THE CONTRACT. SEE SECTION ON ATTORNEY REVIEW FOR DETAILS.

2. The contract shall also contain the following language within the text of every such contract.

ATTORNEY REVIEW:

1. Study by Attorney

The Buyer or the Seller may choose to have an attorney study this contract. If an attorney is consulted, the attorney must complete his or her review of the contract within a three-day period. This contract will be legally binding at the end of this three-day period unless an attorney for the Buyer or Seller reviews and disapproves of the contract.

2. Counting the Time

You count the three days from the date of delivery of the signed contract to the Buyer and the Seller. You do not count Saturdays, Sundays or legal holidays. The Buyer and the Seller may agree in writing to extend the three-day period for attorney review.

3. Notice of Disapproval

If an attorney for the Buyer or the Seller reviews and disapproves of this contract, the attorney must notify the Broker(s) and the other party named in this contract within the three-day period. Otherwise this contract will be legally binding as written. The attorney must send the notice of disapproval to the Broker(s) by certified mail, by telegram, or by delivering it personally. The telegram or certified letter will be effective upon sending. The personal delivery will be effective upon delivery to the Broker's office. The attorney may but need not also inform the Broker(s) of any suggested revisions in the contract that would make it satisfactory.

3. The contract shall also contain the names and full addresses of all persons to whom a Notice of Disapproval must be sent in order to be effective as provided in item three of the Attorney Review Provision.

4. All leases prepared by licensees for a term of one year or more for residential dwelling units in transactions in which they have a commission or fee interest shall, at the top of the first page and in print larger than the predominant size print of the writing, contain the following language:

THIS IS A LEGALLY BINDING LEASE THAT WILL BECOME FINAL WITHIN THREE BUSINESS DAYS. DURING THIS PERIOD YOU MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND CANCEL THE LEASE. SEE SECTION ON ATTORNEY REVIEW FOR DETAILS.

5. The lease shall also contain the following language within the text of every such lease.

ATTORNEY REVIEW:

1. Study by Attorney

The Tenant or the Landlord may choose to have an attorney study this lease. If an attorney is consulted, the attorney must complete his or her review of the lease within a three-day period. This lease will be legally binding at the end of this three-day period unless an attorney for the Tenant or the Landlord reviews and disapproves of the lease.

2. Counting the Time

You count the three days from the date of delivery of the signed lease to the Tenant and the Landlord. You do not count Saturdays, Sundays or legal holidays. The Tenant and the Landlord may agree in writing to extend the three-day period for attorney review.

3. Notice of Disapproval

If an attorney for the Tenant or the Landlord reviews and disapproves of this lease, the attorney must notify the Broker(s) and the other party named in the lease within the three-day period. Otherwise this lease will be legally binding as written. The attorney must send the notice of disapproval to the Broker(s) by certified mail, by telegram, or by delivering it personally. The telegram or certified letter will be effective upon sending. The personal delivery will be effective upon delivery to the Broker's office. The attorney may but need not also inform the Broker(s)

of any suggested revisions in the lease that would make it satisfactory.

6. The lease shall also contain the names and full addresses of all persons to whom a Notice of Disapproval must be sent in order to be effective, as provided in item three of the Attorney Review Provision.

7. The failure of any licensee to include such language in any such contract of sale or lease agreement prepared by the licensee shall be construed by the Commission as engaging in the unauthorized practice of law and shall be considered by the Commission as conduct which demonstrates the licensee's unworthiness and incompetency, thereby subjecting the licensee to sanctions pursuant to N.J.S.A. 45:15-17(e).

Amended by R.1977 d.84, effective March 10, 1977.
See: 9 N.J.R. 91(d), 9 N.J.R. 178(a).
Amended by R.1977 d.391, effective October 19, 1977.
See: 9 N.J.R. 344(a), 9 N.J.R. 536(a).
Amended by R.1979 d.461, effective November 26, 1979.
See: 10 N.J.R. 499(a), 12 N.J.R. 44(b).
Amended by R.1980 d.51, effective January 31, 1980.
See: 12 N.J.R. 127(c).
Amended by R.1980 d.214, effective May 14, 1980.
See: 12 N.J.R. 342(d).
Amended by R.1980 d.274, effective June 19, 1980.
See: 12 N.J.R. 423(d).
Amended by R.1980 d.408, effective September 23, 1980.
See: 12 N.J.R. 340(b), 12 N.J.R. 665(c).
(c) substantially amended.
Amended by R.1980 d.409, effective September 24, 1980.
See: 12 N.J.R. 665(d).
(c) compliance date amended from November 1, 1981 to January 2, 1981.
Amended by R.1983 d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
Time limits on compliance deleted.
Amended by R.1987 d.159, effective April 6, 1987.
See: 18 N.J.R. 1677(a), 18 N.J.R. 2112(a), 19 N.J.R. 551(a).
Added (g).
Amended by R.1987 d.359, effective September 8, 1987.
See: 19 N.J.R. 503(b), 19 N.J.R. 1646(a).
Added (h) "Agreement to Honor".
Invalidity Annotation
N.J.A.C. 11:5-1.16(h) held invalid as an intrusion upon the State Supreme Court's constitutional authority to regulate the practice of law. Carmagnola v. Hann, 233 N.J.Super. 547 (App. Div. June 12, 1989), 559 A.2d 478.
Amended by R.1989 d.539, effective October 16, 1989.
See: 21 N.J.R. 2438(b), 21 N.J.R. 3299(a).
Subsection (h) deleted due to Appellate Court decision ... N.J.Super. ..., Dkt. No. A-2211-88T2F (App.Div.1989).
Amended by R.1993 d.10, effective January 4, 1993.
See: 24 N.J.R. 3485(a), 25 N.J.R. 179(a).
Text at (a) substantially amended to specify licensees' obligations to parties in a real estate transaction involving offers or counter-offers.
Petition for Rulemaking.
See: 25 N.J.R. 4523(c), 26 N.J.R. 505(b).
Petition for Rulemaking.
See: 32 N.J.R. 850(a), 32 N.J.R. 1085(b).
Petition for Rulemaking.
See: 40 N.J.R. 3758(b), 40 N.J.R. 4361(a).

Case Notes

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

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

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

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

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

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

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

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

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

11:5-6.3 Broker insurance placement provision

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

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

(a) All licensees are subject to and shall strictly comply with the laws of agency and the principles governing fiduciary relationships. In accepting employment as an agent, the licensee pledges himself to protect and promote, as he would his own, the interests of the client or principal he has undertaken to represent;

this obligation of absolute fidelity to the client's or principal's interest is primary but does not relieve the licensee from the obligation of dealing fairly with all parties to the transaction.

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

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

i. Inquiries to the seller or seller's agent about any physical conditions that may affect the property; and

ii. A visual inspection of the property to determine if there are any readily observable physical conditions affecting the property.

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

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

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

"NOTIFICATION REGARDING OFF-SITE CONDITIONS

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

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

Municipality_____

Address_____

Telephone Number_____"

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

2. In all residential real estate sale contracts they prepare except contracts for newly constructed residential real estate, licensees shall include a statement as set forth below. The statement shall be in print as large as the predominant size print in the document and shall read as follows:

"NOTICE ON OFF-SITE CONDITIONS

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

purchasers may wish to also examine the list maintained by the neighboring municipality."

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

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

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

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

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

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

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

(2) The latest sites known to and confirmed by the Department of Environmental Protection and included on the New Jersey master list of known hazardous discharge sites, prepared pursuant to P.L. 1982, c.202 (N.J.S.A. 58:10-23.15 et seq.);

(3) Overhead electric utility transmission lines conducting 240,000 volts or more;

(4) Electrical transformer substations;

(5) Underground gas transmission lines as defined in 49 C.F.R. 192.3;

(6) Sewer pump stations of a capacity equal to, or in excess of 0.5 million gallons per day and sewer trunk lines in excess of 15 inches in diameter;

(7) Sanitary landfill facilities as defined pursuant to section 3 of P.L. 1970, c.39 (N.J.S.A. 13:1E-3);

(8) Public wastewater treatment facilities; and

(9) Airport safety zones as defined pursuant to section 3 of P.L. 1983, c.260 (N.J.S.A. 6:1-82).

iii. "Residential real estate" means a property or structure or both which will serve as a residence for the purchaser.

(d) Information about social conditions or psychological impairments of a property is not considered information which affects the physical condition of a property. Subject to (d)3 below, licensees are not required by (c) above to disclose such information.

1. As used in this section, the term "social conditions" includes, but is not limited to, neighborhood conditions such as barking dogs, boisterous neighbors, and other conditions which do not impact upon or adversely affect the physical condition of the property.

2. As used in this section, the term "psychological impairments" includes, but is not limited to, a murder or suicide which occurred on a property, or a property purportedly being haunted.

3. Except as provided below, upon receipt of an inquiry from a prospective purchaser or tenant about whether a particular property may be affected by a social condition or psychological impairment, licensees shall provide whatever information they know about the social conditions or psychological impairments that might affect the property.

i. In accordance with N.J.S.A. 10:5-1 et seq. (the "Law Against Discrimination"), licensees shall make no inquiry and provide no information on the racial composition of, or the presence of a group home in, a neighborhood. In response to requests for such information, licensees shall inform the persons making the inquiry that they may conduct their own investigation. This paragraph does not apply to the owner of a multiple dwelling or his agent to the extent that such inquiries are necessary for compliance with N.J.A.C. 13:10.

ii. In accordance with N.J.S.A. 2C:7-6 through 11 ("Megan's Law") and the guidelines promulgated thereunder, licensees shall make no inquiry about and provide no information on notifications from a county prosecutor issued pursuant to that law. In response to requests for such information, licensees shall inform the person making the inquiry that information about registered sex offenders is maintained by the county prosecutor.

(e) In all contracts and leases on residential real estate they prepare, licensees shall include the following statement in print as large as the predominant size print in the document:

MEGAN'S LAW STATEMENT—Under New Jersey law, the county prosecutor determines whether and how to provide notice of the presence of convicted sex offenders in an area.

In their professional capacity, real estate licensees are not entitled to notification by the county prosecutor under Megan's Law and are unable to obtain such information for you. Upon closing the county prosecutor may be contacted for such further information as may be disclosable to you.

(f) Unless directed not to do so in writing by an owner as provided herein, every licensee shall fully cooperate with all other New Jersey licensees utilizing cooperation arrangements which shall protect and promote the interests of the licensee's client or principal. Collusion and discrimination with respect to commission rates and splits are prohibited as provided in N.J.A.C. 11:5-7.5 and 7.6.

1. The obligation to fully cooperate with all other licensees includes the requirements that listing brokers:

i. Notify any Multiple Listing System to which a listing is to be submitted of having acquired the listing within 48 hours of the effective date of the listing;

ii. Transmit to their principal(s) all written offers on their listings submitted by licensees with other firms within 24 hours of receipt of the written offer by their firm; and

iii. Place no unreasonable restrictions upon the showing of properties listed with them to prospective purchasers who are working through cooperating brokers. A requirement that all appointments for showings must be made through the listing broker's office is not considered an unreasonable restriction upon showings.

2. All requirements imposed by the obligation to fully cooperate shall be complied with on all listings unless the client or principal, with full knowledge of all relevant facts, expressly relieves the listing broker from one or more of those requirements in writing. Such a writing shall be signed by the owner and made an attachment to the listing agreement. Such a writing shall be made available for inspection by other brokers upon request.

3. All written listing agreements prepared by licensees shall include a provision as set forth below, which provision shall be in print larger than the predominant size print in the agreement. The provision may be included within the body of the listing agreement or attached to the listing as an addendum to it. Where the provision is made an addendum to the listing agreement it shall be signed by the owner at the same time that the owner signs the listing agreement. Prior to securing the owner's signature on the listing agreement, the listing broker shall specify the complete formula for determining the commission split in the indicated location in the provision.

COMMISSION SPLITS

LISTING BROKERS USUALLY COOPERATE WITH OTHER BROKERAGE FIRMS BY SHARING INFORMATION ABOUT THEIR LISTINGS AND OFFERING TO PAY PART OF THEIR COMMISSION TO THE FIRM THAT PRODUCES A BUYER. THIS IS GENERALLY REFERRED TO AS THE "COMMISSION SPLIT."

SOME LISTING BROKERS OFFER TO PAY COMMISSION SPLITS OF A PORTION OF THE GROSS COMMISSION, USUALLY EXPRESSED AS A PERCENTAGE OF THE SELLING PRICE, LESS A SIGNIFICANT DOLLAR AMOUNT. OTHER LISTING BROKERS OFFER A PORTION OF THE GROSS COMMISSION LESS ONLY A MINIMAL LISTING FEE OR LESS ZERO.

THE AMOUNT OF COMMISSION SPLIT YOUR BROKER OFFERS CAN AFFECT THE EXTENT TO WHICH YOUR PROPERTY IS EXPOSED TO PROSPECTIVE BUYERS WORKING WITH LICENSEES FROM OTHER BROKERAGE FIRMS.

ON THIS LISTING, THE BROKER IS OFFERING A COMMISSION SPLIT OF ..... MINUS ..... TO POTENTIAL COOPERATING BROKERS.

IF YOU FEEL THAT THIS MAY RESULT IN YOUR PROPERTY RECEIVING LESS THAN MAXIMUM EXPOSURE TO BUYERS, YOU SHOULD DISCUSS THOSE CONCERNS WITH THE LISTING SALESPERSON OR HIS/HER SUPERVISING BROKER.

BY SIGNING THIS LISTING AGREEMENT THE OWNER(S) ACKNOWLEDGE HAVING READ THIS STATEMENT ON COMMISSION SPLITS.

4. Should the client or principal direct the listing broker not to cooperate at all with all other licensees, evidence of this intent shall be in writing in the form of a WAIVER OF BROKER COOPERATION as set forth below and signed by the client or principal. Copies of this WAIVER OF BROKER COOPERATION and the listing agreement to which it relates shall be provided to the client or principal and to their authorized representative by the broker. This waiver shall become a part of the listing agreement at the time it is signed, and shall be made available for inspection by other brokers upon request. However, no direction or inducement from the client or principal shall relieve the list-

ing broker of his responsibility of dealing fairly and exercising integrity with all other licensees.

WAIVER OF BROKER COOPERATION

I UNDERSTAND THAT COOPERATION AMONGST BROKERS PRODUCES WIDER EXPOSURE OF MY PROPERTY AND MAY RESULT IN IT BEING SOLD OR LEASED SOONER AND AT A HIGHER PRICE THAN WOULD BE THE CASE WERE MY BROKER NOT TO COOPERATE WITH OTHER BROKERS. I FURTHER UNDERSTAND THAT WHEN MY BROKER COOPERATES WITH OTHER BROKERS, I CAN STILL HAVE THE ARRANGEMENTS FOR THE SHOWING OF THE PROPERTY AND ALL NEGOTIATIONS WITH ME OR MY ATTORNEY MADE ONLY THROUGH MY LISTING BROKER'S OFFICE, SHOULD I SO DESIRE.

However, despite my awareness of these factors, I direct that this property is to be marketed only through the efforts of the listing broker. This listing is not to be published in any multiple listing service. I will only consider offers on this property which are obtained by, and I will only allow showings of this property to be conducted by the listing broker or his or her duly authorized representatives. THE LISTING BROKER IS HEREBY DIRECTED NOT TO COOPERATE WITH ANY OTHER BROKER.

By signing below, the parties hereto confirm that no pressure or undue influence has been exerted upon the owners as to how this property is to be marketed by the Listing Broker.

The owner(s) further confirm receipt of fully executed copies of the listing agreement on this property and of this Waiver of Broker Cooperation form.

Dated: ..... Owner .....
Owner .....
Listing Broker .....
By: Authorized Licensee or Broker .....

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

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

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

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

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

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

(j) At the time of the taking of any listing of residential property, a licensee shall furnish to the owner a copy of a summary of the New Jersey Law Against Discrimination N.J.S.A. 10:5-1 et seq. which summary shall have been prepared and furnished by the Attorney General of the State of New Jersey, shall state the provisions of the Law Against Discrimination, and shall state which properties are covered by this law and which properties are exempt from this law. Should the owner profess an unwillingness to abide by or an intention to violate this law then the licensee shall not accept these listings.

(k) No licensee shall deny real estate brokerage services to any person for reasons of race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, familial status, sex, gender identity or expression, affectional or sexual orientation, disability, nationality, or source of lawful income used for rental or mortgage payments, and no licensee shall participate or otherwise be a party to any plan,

scheme or agreement to discriminate against any person on the basis of race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, familial status, sex, gender identity or expression, affectional or sexual orientation, disability, nationality, or source of lawful income used for rental or mortgage payments. For the purposes of this subsection, the term "disability" shall have the same meaning as the definition of "disability" codified at N.J.S.A. 10:5-5q.

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

As amended, R.1975 d.260, effective August 28, 1975.
See: 7 N.J.R. 333(d), 7 N.J.R. 469(c).
As amended, R.1976 d.10, effective January 13, 1976.
See: 7 N.J.R. 567(e), 8 N.J.R. 70(e).
As amended, R.1979 d.461, effective November 26, 1979.
See: 10 N.J.R. 499(a), 12 N.J.R. 44(b).
As amended, R.1983 d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
Statutory cite added.
Amended by R.1988 d.69, effective February 16, 1988 (operative March 1, 1988).
See: 19 N.J.R. 1621(a), 20 N.J.R. 402(a).
Amended to clearly define full cooperation.
Amended by R.1988 d.412, effective September 6, 1988.
See: 20 N.J.R. 725(a), 20 N.J.R. 2295(b).
Added text to (g) that is favorable to handicapped individuals.
Amended by R.1993 d.365, effective July 19, 1993.
See: 24 N.J.R. 3486(a), 25 N.J.R. 3219(a).
Amended by R.1994 d.266, effective June 20, 1994 (operative July 1, 1994).
See: 26 N.J.R. 729(a), 26 N.J.R. 1194(a), 26 N.J.R. 1222(a), 26 N.J.R. 2581(b).
Amended by R.1997 d.27, effective January 21, 1997.
See: 28 N.J.R. 3065(a), 29 N.J.R. 366(a).
Added (i).
Amended by R.1997 d.275, effective July 7, 1997.
See: 29 N.J.R. 300(a), 29 N.J.R. 2849(a).
Substantially amended (b), recodified former second sentence of (b) as (c) and amended; added (c)1 through 3, (d) and (e); and recodified former (c) through (i) as (f) through (*l*).
Administrative correction.
See: 29 N.J.R. 3260(a).
In (c)1, in the second paragraph, inserted "shall be sent by certified mail. The cancellation".
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (f) and (h), changed N.J.A.C. references.
Amended by R.2001 d.237, effective July 16, 2001.
See: 32 N.J.R. 2207(a), 33 N.J.R. 2533(a).
Rewrote (f) and (g).
Amended by R.2004 d.130, effective April 5, 2004.
See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).
In (g), deleted "forthwith" following "shall secure" and inserted "within 24 hours" following "in writing".
Amended by R.2009 d.287, effective September 21, 2009.
See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).
Section was "Obligation of licensees to public and to each other". Rewrote (k).

Case Notes

Trial court properly granted summary judgment to a real estate broker in a negligence suit brought by the parents of a tenant of a beach house, which involved the tenant's elderly father incurring injuries after he lost his balance and fell while stepping out onto a wooden platform, as New Jersey courts decline to extend liability to the broker in such a context, namely a short-term rental lease, beyond the limits expressed in *Hopkins v. Fox Lazo Realtors*, 132 N.J. 426 (1993).*Reyes v. Egner*, 404 N.J. Super. 433, 962 A.2d 542, 2009 N.J. Super. LEXIS 4 (2009).

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

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

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

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

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

Real estate agent violated governing law when he gave false answers to questions on a residential property condition disclosure statement relative to conditions affecting the property's drinking water and septic system including failing to include the results of drinking water tests detecting arsenic and gross-alpha levels that violated contaminant standards, which violations triggered the imposition of disciplinary action against him. On these facts, however, imposition of a one-year suspension, a fine and a continuing education requirement was appropriate. *N.J. Real Estate Comm'n v. Edge, Jr.*, OAL DKT. NO. BKI 1913-14, 2015 N.J. AGEN LEXIS 551, Initial Decision (August 17, 2015).

Realtors offering 1% Cash-Back Bonus on the purchase of a home were guilty of unworthiness, incompetency, bad faith, and dishonesty because respondents breached their fiduciary relationship to their clients, which required truthfulness and absolute fidelity; respondents were not concerned with the interest of the client, but only in drumming up business by whatever means necessary, even if it meant misleading clients (adopting 2009 N.J. AGEN LEXIS 502). *N.J. Real Estate Comm'n v. Tonge*, OAL Dkt. No. BKI 08380-08, 2009 N.J. AGEN LEXIS 740, Final Decision (September 16, 2009).

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

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

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

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

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

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

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

11:5-6.5 Residential rental referral agencies

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

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

1. The services to be performed by the agency;

2. The fee charged;

3. The date and duration of the contract;

4. The affirmative actions required of the prospective tenant to utilize the service;

5. The refund policy; and

6. A statement that the business is licensed by the New Jersey Real Estate Commission.

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

1. A non-existent address;

2. A property not verified as available as provided in (e) below;

3. A possible rental unit or location for which the licensee does not have the lessor's, or the duly authorized agent of the lessor's, oral or written consent to refer prospective tenants.

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

(e) Every licensee subject to this section shall verify the continuing availability of the rental unit with the lessor or agent as follows:

1. All units advertised in media shall be verified each day the advertisement appears; and

2. All units to which prospective tenants are referred shall be verified as available every three working days.

(f) In the event a diligent effort by the licensee to verify availability of the rental unit is unsuccessful because of a failure of a lessor or agent to respond, the prospective tenant shall be specifically advised of the date and time the unit was last verified as available.

1. Every prospective tenant shall upon request be advised of the date and time any particular unit was last verified as available.

2. No licensee subject to this section shall refer a prospective tenant to any rental unit not verified as available within the previous seven calendar days.

(g) Every licensee subject to this section shall maintain sufficient telephone lines and staff to receive and answer inquiries from contract consumers.

(h) Prior to the prospective tenant obtaining rental property through the services of the licensee, no licensee shall charge or accept a fee in excess of $ 25.00 unless:

1. Any fee charged, collected or received in excess of $ 25.00 is deposited promptly in the broker's escrow account until the services described by the contract are fully performed; or

2. The licensee posts with an approved escrow agent cash security in an amount approved by the Commission, based upon the following criteria:

i. The rental referral fees;

ii. The volume of rental referral business of the licensee;

iii. The duration of the rental referral contract; and

iv. The prior performance of the licensee or its principals in the rental referral business.

(i) Any licensee subject to this section shall maintain for one year the following records:

1. Written consent or written confirmation of oral consent of a lessor or agent to refer prospective tenants;

2. Records of the verification of availability of rental units as set forth in (e) above; and

3. Copies of contracts with prospective tenants.

(j) Every licensee subject to this section shall prominently post a copy of this regulation in its office for the information of its customers, and provide customers a copy upon request.

Repealed by R.1983 d.471, effective November 7, 1983.
See: 15 New Jersey Register 1343(a), 15 New Jersey Register 1865(c).
Section was "Rental location and operations".
New Rule, R.1985 d.93, effective March 4, 1985.
See: 16 New Jersey Register 2952(a), 17 New Jersey Register 600(a).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 New Jersey Register 2333(a), 30 New Jersey Register 3646(a).
In (b), deleted an address at the end of 6.

Case Notes

Rule governing rental location licenses held valid against challenges of unlawful rate-making by the Commission, arbitrary nature and confiscatory effect (citing former rule). *In re N.J.A.C. 11:5-1.32*, 179 N.J.Super. 294, 431 A.2d 855 (App.Div.1981).

11:5-6.6 Participation in trade associations or listing services

(a) No licensed individual, partnership, firm or corporation shall become a member of or otherwise participate in the activities or operation of any trade association or organization or of any multiple listing service operation which engages in the following policies and practices:

1. Places requirements, obligations, or standards upon licensed members or participants which conflict with the Real Estate License Act, N.J.S.A. 45:15-1 et seq., the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq., the New Jersey Antitrust Act, N.J.S.A. 56:9-1 et seq., or the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., or which otherwise relate to the comprehensive scheme of regulation already preempted by the State of New Jersey.

2. Interferes with the licensee's obligation of fidelity to his client's interests, his obligation of dealing fairly with all other parties in a transaction, or his obligation of fully cooperating with any other New Jersey licensee, as more fully set forth in N.J.A.C. 11:5-6.4;

3. Directly or indirectly imposes or attempts to impose prescribed or predetermined fees or commission rates or commission amounts, or prescribed or predetermined commission splits, between the listing broker and the selling broker.

Amended by R.1979 d.461, effective November 26, 1979.
See: 10 New Jersey Register 499(a), 12 New Jersey Register 44(b).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 New Jersey Register 2333(a), 30 New Jersey Register 3646(a).
In (a), substituted "Real Estate Sales Full Disclosure Act" for "Land Sales Disclosure Act" and changed an N.J.S.A. reference in 1, and changed N.J.A.C. reference in 2, and deleted a former (b).

11:5-6.7 Disclosures by licensees providing mortgage financing services to buyers for a fee

(a) Every real estate licensee who provides mortgage financing services to buyers must provide written disclosure to the buyer/borrower and to the seller as required in this rule as a condition to receiving, in addition to a share of the brokerage commission on the sale, any compensation, reimbursement or thing of value from the buyer, or any other source. These disclosures are required whenever the real estate brokerage agency, any division therein, or any individual licensed or employed by the agency will receive compensation or reimbursement for providing mortgage financing services related to the sales transaction, even if that particular division or individual will not share in the sales commission. Copies of all written disclosures required by this rule must be retained by the broker as business records pursuant to N.J.A.C. 11:5-5.4. The broker shall maintain records of such related mortgage transactions which shall be available to the Commission for inspection pursuant to N.J.A.C. 11:5-5.5.

(b) The licensee must provide written disclosure as required by (a) above to the buyer/borrower before charging or accepting or contracting for any fees for mortgage financing services and providing such services other than prequalification. The written disclosure to the buyer must include the following information:

1. The amount of all fees which the buyer will be expected to pay to the licensee for mortgage services, and whether and under what circumstances such fees are refundable;

2. The amount and source of any compensation or reimbursement which the licensee will receive for providing mortgage financing services to the buyer;

3. Where the licensee takes applications for or places loans exclusively with any three or fewer lenders, or is affiliated with any lender or mortgage broker as defined in N.J.A.C. 11:5-6.8, the disclosure must advise the buyer of that fact, give the names of such lenders and state:

YOU ARE UNDER NO OBLIGATION TO USE THE MORTGAGE SERVICES OFFERED BY THIS REAL ESTATE LICENSE. YOU MAY OBTAIN YOUR MORTGAGE LOAN FROM ANOTHER SOURCE.

4. Where the licensee or agency is also representing the seller in the sales transaction, the disclosure to the buyer/borrower must include the statement set forth in (e) below.

(c) Real estate licensees who are dually licensed as mortgage bankers or brokers may combine the disclosures to buyers required in this rule with the written disclosure to borrowers required by the Department of Banking and Insurance pursuant to its rules mandating such disclosures.

(d) A listing broker who represents only the seller and who offers to provide mortgage financing services to buyers for compensation or reimbursement shall provide written disclosure to the seller by including the following statement in the listing agreement. A selling broker who represents only the seller as subagent of the listing broker, and who offers to provide mortgage financing services to buyers for compensation or reimbursement, shall provide the following disclosure statement to the seller, with a copy to the listing broker, at the time any written offer is presented.

THIS REAL ESTATE AGENCY MAY OFFER TO PROVIDE MORTGAGE FINANCING SERVICES TO THE BUYER FOR A FEE IN ADDITION TO THE SALES COMMISSION. AS AGENT OF THE SELLER, THIS REAL ESTATE AGENCY HAS A FIDUCIARY DUTY TO YOU, THE SELLER, WHICH WILL NOT CHANGE SHOULD MORTGAGE FINANCING SERVICES BE PROVIDED. IN THE EVENT THAT MORTGAGE FINANCING SERVICES ARE PROVIDED TO THE BUYER, THIS AGENCY SHALL NOT UNDERTAKE REPRESENTATION OF THE BUYER IN THIS REAL ESTATE SALE.

(e) Where the licensee or agency does provide mortgage financing services to the buyer for compensation or reimbursement and also represents only the seller in the sales transaction, the following statement must be included in the written disclosure to the buyer required by (b) or (c) above. The licensee or agency must also promptly send or deliver the following written disclosure statement to the seller, with a copy to the listing broker, at the time a mortgage application is submitted on behalf of the buyer/ borrower.

.....

(name of licensee and brokerage agency)

REPRESENTS THE SELLER IN THE REAL ESTATE SALES TRANSACTION. UPON CLOSING OF TITLE, THIS REAL ESTATE AGENCY WILL RECEIVE A SALES COMMISSION FOR REPRESENTING THE SELLER. THIS REAL ESTATE AGENCY ALSO PROVIDES MORTGAGE FINANCING SERVICES TO THE BUYER FOR A FEE IN THE AMOUNT OF .. AS AGENT OF THE SELLER, THIS REAL ESTATE AGENCY HAS A FIDUCIARY DUTY TO THE SELLER WHICH IS NOT CHANGED BY PROVIDING MORTGAGE SERVICES TO THE BUYER. THIS AGENCY DOES NOT REPRESENT THE BUYER IN THIS REAL ESTATE SALE.

Where the precise amount of the compensation to the licensee or agency for providing mortgage services has not yet been established, the maximum estimated amount of compensation should be included in this disclosure. The compensation received by the licensee may not be increased above the amount disclosed here without written notice to both parties, with a copy to the listing broker.

New Rule, R.1992 d.232, effective June 1, 1992.
See: 23 New Jersey Register 3424(b), 24 New Jersey Register 2058(b).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 New Jersey Register 2333(a), 30 New Jersey Register 3646(a).
Rewrote (c), in (b), (d), and (e), deleted references to stylistic requirements, and changed N.J.A.C. references throughout the section.

Case Notes

Requiring real estate brokers give vendors and purchasers notice and disclosure and accept no more than $ 250 for providing mortgage related services was consistent with statute. *Mortgage Bankers Ass'n of New Jersey v. New Jersey Real Estate Com'n*, 283 N.J.Super. 233, 661 A.2d 832 (A.D.1995).

11:5-6.8 Disclosure of licensee's affiliation with a mortgage lender or mortgage broker to whom the licensee refers buyers

(a) Whenever a real estate licensee refers a buyer/borrower to a mortgage lender or mortgage broker with whom the licensee is affiliated, the licensee must provide written disclosure of the affiliation to the buyer. This disclosure must be made even though the licensee will receive no fees or compensation for the referral, see N.J.A.C. 11:5-7.2, and even though the licensee also refers the buyer to other, unaffiliated sources of mortgage financing. The disclosure must include the following statement:

YOU ARE UNDER NO OBLIGATION TO USE THE MORTGAGE SERVICES OF _____ WHO/WHICH IS AFFILIATED WITH THIS REAL ESTATE LICENSEE. YOU MAY OBTAIN YOUR MORTGAGE LOAN FROM ANOTHER SOURCE.

(b) For the purposes of this rule, a real estate licensee is considered to be affiliated with a mortgage lender or mortgage broker when:

1. The licensee, or the licensee's spouse, parent or child, is an officer, director or employee of the lender or mortgage broker, or works as a solicitor for the lender or mortgage broker;

2. The licensee, either alone or with spouse, parent or child, owns more than one percent of the lender or mortgage broker; the licensee is more than one percent owned by the lender or mortgage broker; or the licensee owns more than one percent or is more than one percent owned by a corporate parent, holding company or other business entity which is a majority shareholder in the lender or mortgage broker;

3. The licensee is a franchisee of a franchiser which owns more than one percent of the lender or mortgage broker or the licensee itself is the franchiser or franchisee of a mortgage lending franchise; or

4. The licensee shares office space or other facilities, or staff, with the lender or mortgage broker.

(c) Where an employing broker or broker of record of a real estate agency has an individual or corporate affiliation with a lender or mortgage broker, all licensees licensed with that real estate broker must provide the required disclosures to buyers referred to the affiliate.

1. Where an office manager has such an individual affiliation, the manager and all licensees working under his or her supervision must provide the disclosure to all buyers referred to the affiliate by that office.

2. Where a referral agent, a salesperson or a broker-salesperson has such an individual affiliation, he or she must provide the disclosure to all buyers he or she refers to the affiliate.

(d) The disclosure required by this section may be combined with the disclosure of affiliation required under RESPA, 12 U.S.C. §§ 2601 et seq. Copies of all written disclosures required by this rule must be retained by the broker as business records available for inspection pursuant to N.J.A.C. 11:5-5.4 and 5.5.

New Rule, R.1992 d.232, effective June 1, 1992.
See: 23 N.J.R. 3424(b), 24 N.J.R. 2058(b).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (a) and (d), changed N.J.A.C. references, and in (a), deleted a reference to stylistic requirements in the introductory paragraph.
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In (c)2, inserted "referral agent, a" and inserted "a" preceding "broker-salesperson".

Case Notes

Requiring real estate brokers give vendors and purchasers notice and disclosure and accept no more than $ 250 for providing mortgage related services was consistent with statute. *Mortgage Bankers Ass'n of New Jersey v. New Jersey Real Estate Com'n*, 283 N.J.Super. 233, 661 A.2d 832 (A.D.1995).

11:5-6.9 Consumer Information Statement

(a) When applied to rental transactions which are not exempt from this rule, references to sellers and buyers, and to the various types of brokerage agreements and business relationships mentioned throughout this rule should be construed as indicating their appropriate counterparts in rental transactions. For example, references to sellers should be read as lessors or owners and references to buyers should be read as lessees or tenants, etc. As used in this rule, the following terms or phrases shall have the following meanings:

1. "Brokerage agreement" means a written agreement between a brokerage firm and a party describing the terms under which that firm will perform brokerage services as specified in N.J.S.A. 45:15-3. Brokerage agreements include, but are not limited to, sale and rental listing agreements, buyer-broker, lessee-broker, transaction broker, and dual agency agreements.

2. "Brokerage firm" means a licensed corporate, partnership or sole proprietor broker, and all individuals licensed with that broker.

3. Consumer Information Statement" means the Consumer Information Statement on New Jersey Real Estate Relationships as prescribed in (h) below.

4. "Informed consent to dual agency" means the written authorization by a party for the brokerage firm which represents them as their agent in a real estate transaction to also represent the other party to that transaction as an agent. Informed consent can only be obtained after the brokerage firm has disclosed to the consenting party all material facts which might reasonably impact on that party's decision to authorize dual agency, including the extent of the conflicts of interests involved and the specific ways in which each consenting party will receive less than full agency representation from the dual agent. In order to obtain informed consent it is also necessary for the licensee to first advise the consenting party of the other business relationships offered by that licensee and of those not offered by that licensee, and of that party's right to consult an attorney.

5. "Party" shall mean actual or prospective sellers, lessors, buyers or lessees of an interest in real estate.

6. "Short term rental" shall mean the rental of a residential property for not more than the 125 consecutive day time period specified in N.J.S.A. 46:8-19 as constituting the "seasonal use or rental" of real property, under the terms of an oral rental agreement or written lease which contains a specific termination date. Month-to-month tenancies are not considered short term rentals.

7. "Transaction broker" shall mean a brokerage firm which works with both parties in an effort to arrive at an agreement on the sale or rental of real estate and facilitates the closing of a transaction, but does not represent either party, and has no agency relationship with either party to the transaction. The New Jersey Real Estate License Law, N.J.S.A. 45:15-1 et seq., and the administrative rules promulgated thereunder do not mandate that licensees must act as agents when rendering real estate brokerage services.

8. "Business relationship(s)" means real estate licensees working as a seller's agent; a buyer's agent; a disclosed dual agent; or a transaction broker.

(b) Prior to acting as a dual agent, a brokerage firm must have the written informed consent of the parties to the transaction. Informed consent is not acquired through distribution of the Consumer Information Statement on New Jersey Real Estate

Relationships as required by (e) and (k) below alone. At a minimum, licensees must also secure the signature of the party on a separate writing which confirms the party's informed consent to the licensee acting as a Disclosed Dual Agent for that party. Such a writing may be part of, or an attachment to a brokerage agreement.

(c) Licensees shall supply information with regard to their working relationship with parties to real estate transactions as provided in this section.

(d) Licensees shall comply with all requirements of this section when involved in:

1. Transactions which involve the sale of residential real estate containing one to four dwelling units or the sale of vacant one-family lots;

2. Residential lease transactions other than short term rentals. However, in short-term rental transactions, licensees shall include in all leases prepared by them a statement indicating that they are acting in the transaction either as an agent of the landlord, an agent of the tenant, a disclosed dual agent or a transaction broker; and

3. The securing of brokerage agreements on residential properties, including rental listing agreements on residential properties to be offered for short term rentals.

(e) All licensees shall supply information on business relationships to buyers and sellers in accordance with the following:

1. With respect to buyers:

i. All licensees shall verbally inform buyers of the four business relationships described in this section prior to the first discussion at which a buyer's motivation or financial ability to buy is discussed.

ii. If the first such discussion occurs during a business meeting on the buyer's real estate needs, licensees shall deliver the written Consumer Information Statement to the buyers prior to such a discussion. If the first such discussion is telephonic or in a social setting, licensees shall, after having verbally informed the buyer of the four business relationships, deliver the written Consumer Information Statement to the buyer at their next meeting. However, if prior to their first business meeting after such a discussion, any material is mailed, faxed or delivered by the licensee to the buyer, the Consumer Information Statement shall be included with such material.

iii. Where the written Consumer Information Statement has not been delivered to buyers as provided in (e)1ii above, licensees shall deliver the written statement to buyers no later than the first showing and, if no showing is conducted, no later than the preparation of an initial offer or contract.

iv. Those licensees who intend to enter into a buyer-brokerage relationship with such persons shall deliver the Consumer Information Statement no later than the commencement of their buyer-brokerage agreement presentation.

2. With respect to sellers:

i. All licensees shall verbally inform sellers of the four business relationships described in this section prior to the first discussion at which the seller's motivation or desired selling price is discussed.

ii. If the first such discussion occurs during a business meeting on the seller's real estate needs, licensees shall deliver the written Consumer Information Statement to the sellers prior to such a discussion. If the first such discussion is telephonic or in a social setting, licensees shall, after having verbally informed the seller of the four business relationships, deliver the written Consumer Information Statement to the seller at their next meeting. However, if prior to their first business meeting after such a discussion, any material is mailed, faxed or delivered by the licensee to the seller, the Consumer Information Statement shall be included with such material.

iii. On unlisted properties where the written Consumer Information Statement has not been delivered to sellers as provided in (e)2ii above, licensees shall deliver the written statement to sellers no later than their first showing of the property, and if no showing is conducted, no later than the presentation of an initial offer or contract.

iv. Those licensees who intend to enter into a listing or transaction brokerage agreement with a seller shall deliver the Consumer Information Statement no later than the commencement of their listing or transaction brokerage agreement presentation.

(f) The purpose of (e) above and (h) below is to require licensees to provide basic and introductory information to the public in a convenient and consistent manner, rather than a comprehensive explanation of agency law.

(g) The statement as supplied by the Commission shall be reproduced and delivered by licensees as required in this section as a separate item, with no deletions or additions, other than the optional additional text referred to in (g)1 and 2 below, and recited in (h) below.

1. Brokerage firms may acknowledge delivery of the Statement by procuring the signature of the party to whom it was delivered and the date of delivery in the appropriate place at the bottom of the Statement.

i. On transactions which result in fully executed contracts of sale or consummated rental transactions, copies of Consumer Information Statements on which receipt has been acknowledged as set forth in (g)1 above, shall be maintained as business records for six years in accordance with N.J.A.C. 11:5-5.4(c).

2. Brokerage firms may also indicate on the Statement the capacity in which they intend to work with the party to whom they deliver the Statement.

3. Regardless of whether brokerage firms choose to include on the Statement the additional information referred to in (g)1 and 2 above, all brokerage firms, as is required by (i) and (j) below, shall:

i. Indicate in all brokerage agreements the business relationship they intend to have with the other party to the agreement; and

ii. Indicate in all offers, contracts, or leases prepared by licensees the business relationship the firm has with respect to the parties named in those documents.

(h) The mandatory text of the Consumer Information Statement to be delivered by licensees as provided in (e) above is as follows:

CONSUMER INFORMATION STATEMENT ON NEW JERSEY REAL ESTATE RELATIONSHIPS

In New Jersey, real estate licensees are required to disclose how they intend to work with buyers and sellers in a real estate transaction. (In rental transactions, the terms "buyers" and "sellers" should be read as "tenants" and "landlords," respectively.)

1. AS A SELLER'S AGENT OR SUBAGENT, I, AS A LICENSEE, REPRESENT THE SELLER AND ALL MATERIAL INFORMATION SUPPLIED TO ME BY THE BUYER WILL BE TOLD TO THE SELLER.

2. AS A BUYER'S AGENT, I, AS A LICENSEE, REPRESENT THE BUYER AND ALL MATERIAL INFORMATION SUPPLIED TO ME BY THE SELLER WILL BE TOLD TO THE BUYER.

3. AS A DISCLOSED DUAL AGENT, I, AS A LICENSEE, REPRESENT BOTH PARTIES. HOWEVER, I MAY NOT, WITHOUT EXPRESS PERMISSION, DISCLOSE THAT THE SELLER WILL ACCEPT A PRICE LESS THAN THE LISTING PRICE OR THAT THE BUYER WILL PAY A PRICE GREATER THAN THE OFFERED PRICE.

4. AS A TRANSACTION BROKER, I, AS A LICENSEE, DO NOT REPRESENT EITHER THE BUYER OR THE SELLER. ALL INFORMATION I ACQUIRE FROM ONE PARTY MAY BE TOLD TO THE OTHER PARTY.

Before you disclose confidential information to a real estate licensee regarding a real estate transaction, you should understand what type of business relationship you have with that licensee.

There are four business relationships: (1) seller's agent; (2) buyer's agent; (3) disclosed dual agent; and (4) transaction broker. Each of these relationships imposes certain legal duties and responsibilities on the licensee as well as on the seller or buyer represented. These four relationships are defined in greater detail below. Please read carefully before making your choice.

SELLER'S AGENT

A seller's agent WORKS ONLY FOR THE SELLER and has legal obligations, called fiduciary duties, to the seller. These include reasonable care, undivided loyalty, confidentiality and full disclosure. Seller's agents often work with buyers, but do not represent the buyers. However, in working with buyers a seller's agent must act honestly. In dealing with both parties, a seller's agent may not make any misrepresentation to either party on matters material to the transaction, such as the buyer's financial ability to pay, and must disclose defects of a material nature affecting the physical condition of the property which a reasonable inspection by the licensee would disclose.

Seller's agents include all persons licensed with the brokerage firm which has been authorized through a listing agreement to work as the seller's agent. In addition, other brokerage firms may accept an offer to work with the listing broker's firm as the seller's agents. In such cases, those firms and all persons licensed with such firms are called "sub-agents." Sellers who do not desire to have their property marketed through sub-agents should so inform the seller's agent.

BUYER'S AGENT

A buyer's agent WORKS ONLY FOR THE BUYER. A buyer's agent has fiduciary duties to the buyer which include reasonable care, undivided loyalty, confidentiality and full disclosure. However, in dealing with sellers a buyer's agent must act honestly. In dealing with both parties, a buyer's agent may not make any misrepresentations on matters material to the transaction, such as the buyer's financial ability to pay, and must disclose defects of a material nature affecting the physical condition of the property which a reasonable inspection by the licensee would disclose.

A buyer wishing to be represented by a buyer's agent is advised to enter into a separate written buyer agency contract with the brokerage firm which is to work as their agent.

DISCLOSED DUAL AGENT

A disclosed dual agent WORKS FOR BOTH THE BUYER AND THE SELLER. To work as a dual agent, a firm must first obtain the informed written consent of the buyer and the seller. Therefore, before acting as a disclosed dual agent, brokerage firms must make written disclosure to both parties. Disclosed dual agency is most likely to occur when a licensee with a real estate firm working as a buyer's agent shows the buyer properties owned by sellers for whom that firm is also working as a seller's agent or subagent.

A real estate licensee working as a disclosed dual agent must carefully explain to each party that, in addition to working as their agent, their firm will also work as the agent for the other party. They must also explain what effect their working as a disclosed dual agent will have on the fiduciary duties their firm owes to the buyer and to the seller. When working as a disclosed dual agent, a brokerage firm must have the express permission of a party prior to disclosing confidential information to the other party. Such information includes the highest price a buyer can afford to pay and the lowest price a seller will accept and the parties' motivation to buy or sell. Remember, a brokerage firm acting as a disclosed dual agent will not be able to put one party's interests ahead of those of the other party and cannot advise or counsel either party on how to gain an advantage at the expense of the other party on the basis of confidential information obtained from or about the other party.

If you decide to enter into an agency relationship with a firm which is to work as a disclosed dual agent, you are advised to sign a written agreement with that firm.

TRANSACTION BROKER

The New Jersey Real Estate Licensing Law does not require licensees to work in the capacity of an "agent" when providing brokerage services. A transaction broker works with a buyer or a seller or both in the sales transaction without representing anyone. A TRANSACTION BROKER DOES NOT PROMOTE THE INTERESTS OF ONE PARTY OVER THOSE OF THE OTHER PARTY TO THE TRANSACTION. Licensees with such a firm would be required to treat all parties honestly and to act in a competent manner, but they would not be required to keep confidential any information. A transaction broker can locate qualified buyers for a seller or suitable properties for a buyer. They can then work with both parties in an effort to arrive at an agreement on the sale or rental of real estate and perform tasks to facilitate the closing of a transaction. A transaction broker primarily serves as a manager of the transaction, communicating information between the parties to assist them in arriving at a mutually acceptable agreement and in closing the transaction, but cannot advise or counsel either party on how to gain an advantage at the expense of the other party. Owners considering working with transaction brokers are advised to sign a written agreement with that firm which clearly states what services that firm will perform and how it will be paid. In addition, any transaction brokerage agreement with a seller or landlord should specifically state whether a notice on the property to be rented or sold will or will not be circulated in any or all Multiple Listing System(s) of which that firm is a member.

YOU MAY OBTAIN LEGAL ADVICE ABOUT THESE BUSINESS RELATIONSHIPS FROM YOUR OWN LAWYER.

THIS STATEMENT IS NOT A CONTRACT AND IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

(END OF MANDATORY CONSUMER INFORMATION STATEMENT TEXT)

.....

(OPTIONAL ACKNOWLEDGEMENT OF RECEIPT AFTER TEXT OF CONSUMER INFORMATION STATEMENT.)

FOR SELLERS AND LANDLORDS

"By signing this Consumer Information Statement, I acknowledge that I received this Statement from (Name of Brokerage Firm) prior to discussing my motivation to sell or lease or my desired selling or leasing price with one of its representatives."

FOR BUYERS AND TENANTS

"By signing this Consumer Information Statement, I acknowledge that I received this Statement from (Name of Brokerage Firm) prior to discussing my motivation or financial ability to buy or lease with one of its representatives."

(OPTIONAL INDICATION OF IN WHAT CAPACITY FIRM INTENDS TO WORK WITH RECIPIENT OF CONSUMER INFORMATION STATEMENT AS PERMITTED BY (g)2 ABOVE):

I, ..., as an authorized representative of ....., intend, as of this time, to work with you as a

(indicate one of the following):
seller's agent only
buyer's agent only
seller's agent and disclosed dual agent if the opportunity arises
buyer's agent and disclosed dual agent if the opportunity arises
transaction broker only
seller's agent on properties on which this firm is acting as the seller's

agent and transaction broker on other properties

(i) In all brokerage agreements, brokerage firms must include the following:

1. A statement acknowledging receipt of the Consumer Information Statement; and

2. A declaration of business relationship indicating the regular business name of the broker and in what capacity the licensee servicing the agreement and their firm will operate as real estate licensees with respect to the other party to the brokerage agreement. The declaration of business relationship in all brokerage agreements shall contain, in print larger than the predominant size print in the writing, the following language:

I, ..., as an authorized representative of ....., intend, as of this time, to work with you as a (indicate one of the following):
seller's agent only
buyer's agent only
seller's agent and disclosed dual agent if the opportunity arises
buyer's agent and disclosed dual agent if the opportunity arises
transaction broker only
seller's agent on properties on which this firm is acting as the seller's agent and transaction broker on other properties

3. Where brokerage firms secure a written acknowledgement of receipt of the Consumer Information Statement on the Statement itself as provided in (g)1 above and include on the Consumer Information Statement a declaration of the business relationship they intend to have with the other party to the brokerage agreement as provided in (g)2 above, the attachment of a copy of the Consumer Information Statement to the brokerage agreement and the inclusion of a reference to the receipt of the Consumer Information Statement in the brokerage agreement shall constitute compliance with this section.

(j) Licensees shall disclose to consumers what type of brokerage services they will provide in the following manner:

1. Buyer-brokers shall verbally disclose to sellers that they are acting on behalf of a buyer prior to their first communication with the seller during which the seller's motivation to sell or desired price is discussed.

2. All offers, contracts or leases not exempt by this rule which are prepared by licensees shall include the following statements:

"By signing below the sellers (or landlords as applicable) and purchasers (or tenants as applicable) acknowledge they received the Consumer Information Statement on New Jersey Real Estate Relationships from the brokerage firms involved in this transaction prior to the first showing of the property."

3. In all offers, contracts, or leases, including leases for short-term rentals, prepared by licensees as permitted by N.J.A.C. 11:5-6.2(g), licensees shall include the regular business name of the broker with whom they are licensed and a declaration of business relationship indicating in what capacity they and their firm are operating as real estate licensees in that real estate transaction. The declaration of business relationship in all offers to purchase or to lease property, including those made on contracts of sale or lease documents prepared by licensees, shall contain, in print as large as the predominant size print in the writing, the following language: ..... and ..... as its authorized

(Name of firm) (Name(s) of licensee(s)) representative(s) are working in this transaction as ..... (indicate one of the following):

seller's agents

buyer's agents

disclosed dual agents

transaction brokers

i. In transactions in which more than one firm is involved, all licensee-prepared offers, contracts and leases, including leases on short-term rentals, shall contain, in the same size type and immediately following the declaration of business relationship set forth above, the following clause:

Information supplied by.(Name of firm) .....

(Name of firm)

has indicated that it is operating in this transaction as a __ (indicate one of the following):

seller's agent only

buyer's agent only

transaction broker

ii. The requirement to include the clause cited in (j)3i above in licensee-prepared offers, contracts and leases shall not apply with respect to firms whose involvement in a transaction was limited to merely referring a party to another firm.

(k) Licensees shall disclose to other licensees what type of business relationship they have with the party with whom they have a brokerage agreement, and with any other parties with whom they may be working, in the following manner:

1. In all written or computer generated notices directed to other brokerage firms through a Multiple Listing Service or otherwise, the listing broker shall indicate whether they are working as a seller's agent or as a transaction broker. On listings where the listing broker is operating as a seller's agent, such notices shall also state:

i. Whether subagency is offered;

ii. Whether the seller has authorized the sharing of the listing broker's compensation with cooperating subagents and/or transaction brokers and/or buyer brokers; and

iii. The amount of compensation offered to cooperating subagents and/or transaction brokers and/or buyer brokers.

2. When a licensee with a listing broker receives an inquiry about a particular property from any other licensee, the licensee with the broker shall, before providing any information to the inquiring licensee beyond general information previously circulated about the listing, verbally ascertain from the inquiring licensee the capacity in which that licensee is operating or intends to operate (buyer-broker, subagent, disclosed dual agent or transaction broker). Inquiries from other licensees in the listing broker's firm shall also be responded to as set forth in this subsection.

(*l*) In transactions where brokers seek compensation for their brokerage services from a party to the transaction whom they are not representing or working with, the business relationship with the party they are representing or working with and the compensation arrangement shall also be disclosed to both parties as required by N.J.A.C. 11:5-7.1.

(m) Notwithstanding anything appearing in (g) and (h) above to the contrary, where a brokerage firm is itself the owner of the property being sold by individuals licensed through the broker-owner of the property, a Consumer Information Statement, revised as provided in this section, shall be delivered to prospective purchasers in accordance with the provisions of this rule.

1. On the line immediately below the title of the Consumer Information Statement, the following text shall appear in print larger than the predominant size print in the writing:

As the holder of a New Jersey real estate license, I am required by law to inform you how I will operate in this transaction, should you pursue it, and to provide this statement to you.

My employer is the owner of the property(s) in which you have expressed an interest. For the purposes of its business relationship disclosure rules, the New Jersey Real Estate Commission deems brokers selling property they own and licensees employed or retained by such broker-owners to be operating as seller's agents when they sell property owned by the broker. The statements which follow with regard to licensees who act as sellers' agents apply to me and other persons employed or retained by the owner, particularly those statements concerning the obligation of sellers' agents to pass on to the sellers all material information they obtain with regard to the buyers' ability to pay.

New Rule, R.1995 d.110, effective February 21, 1995 (operative July 1, 1995).
See: 26 N.J.R. 3113(a), 27 N.J.R. 697(a).
Administrative corrections.
See: 27 N.J.R. 1191(a); 27 N.J.R. 1618(b).
Public Notice: Petition for rulemaking; Agency disclosure.
See: 27 N.J.R. 5058(b).
Public Notice: Notice of action on petition for rulemaking.
See: 28 N.J.R. 1412(d).
Public Notice: Notice of Action on Petition for Rulemaking.
See: 29 N.J.R. 385(a).
Amended by R.1998 d.245, effective May 18, 1998.
See: 29 N.J.R. 1663(b), 30 N.J.R. 1829(a).
Rewrote (a)6; in (e), rewrote 1iii, 2iii and inserted a new iv; in (h), amended the "Consumer Information Statement"; and in (j), amended the "declaration of business relationship" document and added a new (m).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (g), (j) and (*l*), changed N.J.A.C. references.
Public Notice: Notice of Action on Petition for Rulemaking.
See: 38 N.J.R. 2533(a), 38 N.J.R. 3672(a).

Case Notes

Trial court properly granted summary judgment to a real estate broker in a negligence suit brought by the parents of a tenant of a beach house, which involved the tenant's elderly father incurring injuries after he lost his balance and fell while stepping out onto a wooden platform, as New Jersey courts decline to extend liability to the broker in such a context, namely a short-term rental lease, beyond the limits expressed in *Hopkins v. Fox Lazo Realtors*, 132 N.J. 426 (1993). *Reyes v. Egner*, 404 N.J. Super. 433, 962 A.2d 542, 2009 N.J. Super. LEXIS 4 (2009).

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

11:5-6.10 Referral agents

(a) A licensed referral agent's real estate brokerage-related activities shall be limited to:

1. Directing prospects to websites and other sources of information on real estate matters generally available to the general public; and

2. Referring prospects for the sale, purchase, exchange, leasing or rental of real estate to the real estate broker through whom they are licensed as a referral agent or, should that broker autho-

rize the referral agent to do so, to another real estate licensee. In all cases where referrals are made pursuant to such an authorization, the referral agent shall provide written or electronic notice to his or her broker or to that broker's designee, who shall be a broker-salesperson or salesperson licensee, at the time the referral is made. In accordance with N.J.S.A. 45:15-16, all compensation payable to a referral agent for any referral shall be paid by the broker through whom the referral agent is licensed.

(b) A referral agent shall not be employed by or licensed with more than one real estate broker at any given time.

(c) No person shall be simultaneously licensed as a referral agent and a real estate broker, broker-salesperson or a salesperson in this State.

(d) Referral agents shall not engage in prohibited brokerage activity for their broker or for others, and shall not receive compensation from their broker or any other person for engaging in prohibited brokerage activity. For the purposes of this section, prohibited brokerage activity includes, but is not limited to, the following:

1. Negotiating the purchase, sale, or exchange of an interest in real estate;

2. Leasing or renting or offering to lease or rent any interest in real estate;

3. Collecting rents for the use of real estate or any other monies;

4. Negotiating commissions or compensation rates and otherwise negotiating or signing listing or buyer-brokerage agreements;

5. Negotiating or signing contracts of sale or leases of real estate;

6. Accepting any funds of others to be held by a real estate broker acting in that capacity or as escrow agent or as the temporary custodian of the funds of others in a real estate transaction;

7. Conducting a public or private competitive sale of land or any interest in lands;

8. Negotiating, assisting in, or directing, the closing of any transaction which results or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate;

9. Negotiating, offering, attempting to, or agreeing to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of any real estate;

10. Conducting showings or open house presentations of properties;

11. Participating in expositions, marketing shows or other presentations where information on specific properties or real estate interests marketed through a common promotional plan, including but not limited to planned unit developments, is provided to the public;

12. Providing information on listings, either in person, or through electronic communication including telephone and the internet, beyond the information which referral agents are permitted to provide with respect to websites and other sources of information as referenced in (a) above; and

13. Producing or presenting comparative market analyses or similar studies of real estate.

New Rule, R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).

SUBCHAPTER 7. PROHIBITED ACTIVITIES

11:5-7.1 Prohibition against licensees receiving dual compensation for dual representation in the sale or rental transaction

(a) Real estate licensees are prohibited from receiving compensation from both a seller and a buyer for representing both seller and buyer in the same real estate sales transaction. This prohibition applies even when the dual agency has been fully disclosed by the licensee to both parties.

(b) Real estate licensees are prohibited from receiving compensation from both a landlord and a tenant for representing both the landlord and the tenant in the same rental transaction. This prohibition applies even when the dual agency has been fully disclosed by the licensee to both parties.

(c) Within the meaning of this section, the phrases "sales transaction" and "rental transaction" do not include any related transactions whether or not they are contingencies in the contract or lease. For example, where there is a mortgage contingency in a contract of sale, the mortgage loan is a related transaction between the buyer and lender; it is not the same transaction as the sale.

(d) A licensee who represents only one party to a sale or rental transaction may receive the entire compensation for such representation from either party or a portion of that compensation from both parties to the transaction, provided that where a licensee prepares a contract or lease full written disclosure of the agency relationship and of the compensation arrangement is made to both parties to the transaction in the contract or lease. Where a licensee does not prepare the contract or lease, but seeks compensation from a party whom he or she does not represent, that licensee's agency relationship and proposed compensation

arrangement shall be disclosed to all parties in a separate writing prior to execution of the contract or lease.

(e) A licensee who represents any party to a sale or rental transaction may receive compensation from either party for providing actual services in related transactions, provided that the licensee discloses the related services, sources and amounts of compensation in writing to the parties to the sale or rental transaction. Where the related services to be provided by the licensee are mortgage financing services provided to the buyer for compensation or reimbursement, the written disclosures must comply with N.J.A.C. 11:5-6.7. The broker shall maintain records of such related transactions including all required written disclosures, which records shall be available to the Commission for inspection pursuant to N.J.A.C. 11:5-5.5.

(f) Except as provided in (g) below, when providing mortgage financing services related to the purchase or sale of a one to six family residential dwelling, a portion of which may be used for non-residential purposes, located in New Jersey:

1. A real estate broker shall not solicit or receive compensation or reimbursement pursuant to (e) above greater than the expense amount permitted at closing by rule of the Department of Banking and Insurance unless licensed as a mortgage broker or mortgage banker by the Department of Banking and Insurance pursuant to the New Jersey Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq.; and

2. A real estate referral agent, salesperson or broker-salesperson shall not solicit or receive any compensation or reimbursement pursuant to (e) above from any person other than his or her employing real estate broker unless licensed as a residential mortgage broker or mortgage banker or a mortgage loan originator by the Department of Banking and Insurance pursuant to the New Jersey Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 et seq.

(g) Any real estate licensee who is individually employed as a mortgage solicitor by a licensed mortgage banker or mortgage broker and registered in compliance with applicable law and the rules of the Department of Banking and Insurance may solicit and accept compensation from his or her licensed mortgage employer for providing mortgage services in residential mortgage transactions.

New Rule, R.1992 d.232, effective June 1, 1992.
See: 23 N.J.R. 3424(b), 24 N.J.R. 2058(b).
Amended by R.1992 d.468, effective November 16, 1992.
See: 24 N.J.R. 1957(a), 24 N.J.R. 2129(a), 24 N.J.R. 4268(a).
Added (f), limiting solicitation and receipt of compensation for mortgage financing services to $ 250.00; and (g), permitting solicitation of mortgage banker or broker by real estate licensee who is also employed as a mortgage solicitor by said banker or broker.
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (e), changed N.J.A.C. references, and rewrote (f) and (g).
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In (f)2, inserted "referral agent", "residential" and "or mortgage loan originator", and substituted "Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 et seq." for "Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq.".

11:5-7.2 Prohibition against kickbacks for related business referrals

(a) Any real estate licensee who solicits or accepts any fee, kickback, compensation or thing of value merely for referring a customer or client to a lender, mortgage broker, or other provider of related services, shall be subject to sanction by the Commission for engaging in conduct demonstrating unworthiness, bad faith and dishonesty. Any compensation received by a real estate licensee, pursuant to N.J.A.C. 11:5-7.1(e), for services in related transactions must be for services actually performed by the licensee beyond mere referral. Compliance with the anti-kickback provisions of the Federal Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2607, the regulations thereunder, or any opinion regarding RESPA issued by the Federal Department of Housing and Urban Development will be considered to be in compliance with this subsection.

(b) Any compensation paid by a real estate broker to a referral agent shall be limited to compensation for referring prospective consumers of real estate brokerage services to the broker. Real estate brokers are prohibited from offering incentives to the referral agents, salespersons or broker-salespersons licensed under them for merely referring clients or customers to a particular lender, mortgage broker or other provider of related services. Any compensation paid by a real estate broker to a salesperson or broker-salesperson for services in transactions related to a sale or rental transaction must be for services actually performed by the salesperson beyond mere referral to a mortgage lender, mortgage broker or other provider of related services. For example, a real estate broker who provides in-house mortgage services may compensate a salesperson licensed with that broker who performs actual mortgage services. However, the broker is prohibited from offering bonuses or any extra consideration of any kind to licensees of his or her firm for merely referring buyers to the in-house mortgage service or any particular lender or mortgage broker. For example, a real estate broker shall not offer or pay a salesperson a higher commission rate on a real estate transaction because the mortgage is placed through the in-house mortgage service or affiliated lender. A broker shall not award prizes or bonuses to salespersons based upon the number of customer referrals made to the in-house mortgage service or to a particular lender.

New Rule, R.1992 d.232, effective June 1, 1992.
See: 23 N.J.R. 3424(b), 24 N.J.R. 2058(b).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (a), changed N.J.A.C. reference.

Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In (b), inserted the first sentence, inserted "referral agents," "or broker-salesperson" and "to a mortgage lender, mortgage broker or other provider of related services"; and substituted "licensees of his or her firm" for "salespersons" following "kind to".

Case Notes

Requiring real estate brokerage offices to be Mortgage Bankers and Brokers Act licensee branches was arbitrary. *Mortgage Bankers Ass'n of New Jersey v. New Jersey Real Estate Com'n*, 283 N.J.Super. 233, 661 A.2d 832 (A.D.1995).

11:5-7.3 Licensees with in-house mortgage services prohibited from excluding all outside mortgage solicitors

Real estate brokers who provide mortgage financing services to buyer/borrowers in-house, whether through computerized loan origination systems, or affiliated lenders or affiliated mortgage brokers, etc., are prohibited from limiting buyer's choices by denying outside lenders reasonable access to solicit mortgage loans in their real estate offices. Reasonable access will be presumed where three or more outside, non-affiliated lenders are permitted to send solicitors into the real estate office during business hours to contact salespersons. The reasonableness of the broker's overall office policy concerning rate sheets, and access by outside lenders, other visitors and solicitors, will also be considered. In no event shall this rule be interpreted to require any real estate broker to permit any one specific lender to solicit loans inside the real estate office or to require the real estate broker to set aside any particular space or facilities inside the real estate office for the use of outside mortgage solicitors.

New Rule, R.1992 d.232, effective June 1, 1992.
See: 23 New Jersey Register 3424(b), 24 New Jersey Register 2058(b).
Public Notice: Petition for Rulemaking.
See: 28 New Jersey Register 1412(c).
Public Notice: Action on petition for rulemaking.
See: 28 New Jersey Register 2414(a).
Public Notice: Action on petition for rulemaking.
See: 28 New Jersey Register 4816(a).

11:5-7.4 Blockbusting; solicitation

(a) No licensee shall affirmatively solicit the sale, lease or the listing for sale or lease of residential property on the grounds of alleged change of value due to the presence or prospective entry into the neighborhood of a person or persons of another race, religion or ethnic origin, nor shall distribute, or cause to be distributed, material, or make statements designed to include a residential property owner to sell or lease his property due to such change in the neighborhood.

(b) Every real estate broker who, in a personal meeting, solicits the sale, lease or the listing for sale or lease of three or more residential properties fronting on either side of any street between intersecting or cross streets or between a cul-de-sac or other like termination point and an intersecting or cross street within the same month, whether directly or through personal meetings attended by his or her firm's licensees, shall maintain a permanent record for at least one year from the date of said solicitation, which shall be available for inspection by the Commission or any representative thereof upon request, setting forth the name and address of each person so solicited, the address of the property involved, the name of the licensee actually making such solicitation, and the date upon which the solicitation took place. At the request of the Commission or any representative thereof, any such broker shall file with the Commission a copy of the permanent record, or a statement containing the same information as set forth in the permanent record. Such filing shall be made with the Commission no later than 10 days following the request therefore.

As amended, R.1972 d.127, effective June 28, 1972.
See: 4 N.J.R. 71(a).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (b), substituted "who, in a personal meeting, solicits" for "soliciting" and "personal meetings attended by his or her salespersons," for "his salesman," in the first sentence; and deleted a former (c).
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In (a), substituted "licensee" for "broker or salesman"; and in (b), substituted "firm's licensees" for "salespersons" and "10" for "ten".

11:5-7.5 Proscription of price-fixing and agreements in regard to methods of arriving at commission

(a) No licensee shall combine, conspire, suggest, or recommend to, or with any other licensee(s) that any rate, commission or fee to be charged by them, or any division of such commission by them be fixed, established, maintained, suggested or stabilized. Nothing in this section shall prohibit any intra-office communications with regard to the establishment of commissions or division of commissions.

(b) No licensee shall directly or indirectly recommend or suggest to any other licensee(s) that such person(s) adhere to any schedule or recommendation of another concerning the rates, commissions or fees to be charged or the methodology or approach by which a commission, rate or fee is arrived at, or division of fees to be made, in the conduct of business. Nothing in this section shall prohibit any intra-office communications with regard to the establishment of commissions or division of commissions. Information imparted solely for the purposes of instruction, and not for the purpose of recommending guidelines or a preferred method of pricing, at any bona fide trade association seminar or educational courses shall be excepted from the proscription set forth in this section.

New Rule, R.1981 d.261, effective July 9, 1981.
See: 13 New Jersey Register 306(a), 13 New Jersey Register 440(c).

11:5-7.6 Proscription of certain discriminatory commission splits

No licensee shall directly or indirectly take any punitive or retaliatory action against any other licensee(s) where such action is based upon the failure or refusal to adhere or to adopt any commission. No licensee shall adopt a discriminatory commission split against another broker because of such other broker's failure or refusal to adhere to or adopt any commission; if a listing broker varies his commission split policy with any selling broker on a cooperative sale, the listing broker shall maintain a file at his place of business which shall contain in writing an explanation for the variation and which reflects who made the decision and why it was made. Nothing in this section shall prohibit a listing broker from varying his commission split policy with respect to any one or more selling brokers in order to achieve equality of commission splits with such other selling broker or brokers in connection with their commission split policy with such listing broker.

New Rule, R.1981 d.261, effective July 9, 1981.
See: 13 New Jersey Register 306(a), 13 New Jersey Register 440(c).

11:5-7.7 Proscription on pressuring media

No licensee shall agree, combine or conspire with another to boycott, or threaten to boycott, or refuse to do business with any promotional medium where such refusal or boycott is based on the acceptance by any medium of advertising of price or commissions of a competitive or discount nature.

New Rule, R.1981 d.261, effective July 9, 1981.
See: 13 New Jersey Register 306(a), 13 New Jersey Register 440(c).

SUBCHAPTER 8. DISCIPLINARY ACTIONS/CONDITIONS FOR RESTORATION OF LICENSE/REAL ESTATE GUARANTY FUND CLAIMS

11:5-8.1 Disciplinary action; restitution

(a) Violation of any of these rules and regulations, or of any real estate statute, shall be sufficient cause for any disciplinary action permitted by statute.

(b) In accordance with the provisions of N.J.S.A. 45:15-9 and N.J.S.A. 45:15-17, the Commission, in appropriate circumstances, will exercise its authority to impose restitution of moneys owed others as a condition to the issuance of a license or to the reinstatement of a license after revocation or suspension.

(c) The Commission may, where the nature of the offense so warrants, impose as a condition to any future license restoration, the successful accomplishment of a written examination of the same type normally given to applicants for initial licenses.

As amended, R.1977 d.392, effective October 19, 1977.
See: 9 N.J.R. 438(a), 9 N.J.R. 536(b).
As amended, R.1983 d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
Added (c).

Case Notes

Broker's disclosure to Real Estate Commission of appellate court's decision that competing broker had tortiously interfered with exclusive contract and with prospective economic advantage implicated the public interest so as to be protected by Conscientious Employee Protection Act. *Barratt v. Cushman & Wakefield of New Jersey, Inc.*, 144 N.J. 120, 675 A.2d 1094 (1966).

Real estate agent violated governing law when he gave false answers to questions on a residential property condition disclosure statement relative to conditions affecting the property's drinking water and septic system including failing to include the results of drinking water tests detecting arsenic and gross-alpha levels that violated contaminant standards, which violations triggered the imposition of disciplinary action against him. On these facts, however, imposition of a one-year suspension, a fine and a continuing education requirement was appropriate. *N.J. Real Estate Comm'n v. Edge, Jr.*, OAL DKT. NO. BKI 1913-14, 2015 N.J. AGEN LEXIS 551, Initial Decision (August 17, 2015).

Real estate salesperson's license revoked due to acceptance of commissions from people other than the employing broker. *New Jersey Real Estate Commission v. Neumerski*, 97 N.J.A.R.2d (REC) 48.

Real estate license revoked due to broker's failure to supply records and comply with subpoena. *New Jersey Real Estate Commission v. Federico T/A United Coast Realty*, 97 N.J.A.R.2d (REC) 46.

False information on real estate license application justifies license revocation. *New Jersey Real Estate Commission v. Torres, Ruiz and Signature Properties, Inc.*, 97 N.J.A.R.2d (REC) 44.

Revoked insurance producer licensee loses real estate salesperson license after accepting auto insurance premiums and failing to remit. *New Jersey Real Estate Commission v. Mohamd*, 97 N.J.A.R.2d (REC) 41.

Former brokerage licensee's continuance of licensed activities warrants lifetime licensure revocation. *New Jersey Real Estate Commission v. Brown*, 97 N.J.A.R.2d (REC) 39.

Real estate salespersons sanctioned for failure to pay taxes. *New Jersey Real Estate Commission v. Ansell*, 97 N.J.A.R.2d (REC) 33.

Real estate broker sanctioned for trust account violations. *New Jersey Real Estate Commission v. Fayad*, 97 N.J.A.R.2d (REC) 31.

Real estate salesperson sanctioned for failure to disclose criminal indictment. *New Jersey Real Estate Commission v. Mitchko*, 97 N.J.A.R.2d (REC) 29.

Real estate salesperson sanctioned for misrepresentations on licensure application. *New Jersey Real Estate Commission v. Apsaform*, 97 N.J.A.R.2d (REC) 27.

Insufficient evidence to suspend broker's license pending trial on fraud charges. *New Jersey Real Estate Commission v. Sourlis*, 97 N.J.A.R.2d (REC) 26.

Real estate salesperson sanctioned for fraud and misrepresentations. *New Jersey Real Estate Commission v. Iezzi*, 97 N.J.A.R.2d (REC) 23.

Real estate salesperson sanctioned for accepting deposit without authorization of broker. *New Jersey Real Estate Commission v. Guzman*, 97 N.J.A.R.2d (REC) 21.

No sanctions imposed against agent when evidence did not establish she had submitted falsified documents. *New Jersey Real Estate Commission v. Ross*, 97 N.J.A.R.2d (REC) 11.

Licensed real estate salesperson's deceit in course of REC investigation was deemed not sufficiently material to set aside settlement reached in matter. *Real Estate Commission v. Mosseri*, 96 N.J.A.R.2d (REC) 39.

Broker's license was revoked for failure to disclose pending criminal charges. *New Jersey Real Estate Commission v. Diaz*, 96 N.J.A.R.2d (REC) 35.

Broker's license was properly revoked for misconduct as insurance producer. *New Jersey Real Estate Commission v. Lopez*, 96 N.J.A.R.2d (REC) 31.

Formerly licensed agent engaging in real estate transactions was fined and penalized for sales activities. *New Jersey Real Estate Commission v. Abad*, 96 N.J.A.R.2d (REC) 26.

Real estate salesperson's failure to respond honestly to application question concerning prior professional license revocation justified revocation of salesperson's license. *New Jersey Real Estate Commission v. Rolston*, 96 N.J.A.R.2d (REC) 24.

Theft conviction supported revocation of real estate salesperson's license, even where conviction was unrelated to license. *New Jersey Real Estate Commission v. Kanoff*, 96 N.J.A.R.2d (REC) 23.

Real estate salesperson's license on probation for failure to disclose prior felony conviction. *New Jersey Real Estate Commission v. Irizarry*, 96 N.J.A.R.2d (REC) 17.

Licensed real estate salesperson's failure to disclose prior convictions justifies license suspension. *New Jersey Real Estate Commission*, 96 N.J.A.R.2d (REC) 16.

Real estate salesperson fined and permanently barred from licensure for unlicensed transactions and falsifying license. *New Jersey Real Estate Commission v. Fernandes*, 96 N.J.A.R.2d (REC) 11.

Real estate license revoked where salesperson impersonates broker during agency inspection. *New Jersey Real Estate Commission v. Cron*, 96 N.J.A.R.2d (REC) 8.

Pending criminal theft charges involving insurance license justify denial of real estate license. *New Jersey Real Estate Commission v. Nelson*, 96 N.J.A.R.2d (REC) 7.

Working as real estate broker after license expired and while conducting fraudulent activities compels permanent ban from licensure. *New Jersey Real Estate Commission v. Pinilis*, 96 N.J.A.R.2d (REC) 1.

Real estate brokers suspended and fined; failure to maintain accounts. *New Jersey Real Estate Commission v. Bailey*, 94 N.J.A.R.2d (REC) 33.

Criminal conviction did not warrant revocation of broker-salesperson license. *Real Estate Commission of New Jersey v. McLeod*, 94 N.J.A.R.2d (REC) 29.

Revocation of real estate license and assessment of penalties were appropriate. *New Jersey Real Estate Commission v. Sabia*, 94 N.J.A.R.2d (REC) 23.

Real estate broker license placed on probation and fine imposed. *Real Estate Commission v. Zappia*, 94 N.J.A.R.2d (REC) 11.

Six-month suspension and imposition of penalty was justified. *New Jersey Real Estate Commission v. Donnon*, 94 N.J.A.R.2d (REC) 1.

Making false representation as being owner of real estate brokerage, collecting commission from person other than employing broker, and commingling of funds; revocation of salespersons' licenses and imposition of fines. *New Jersey Real Estate Commission v. Ballman*, 93 N.J.A.R.2d (REC) 17.

Commingling of funds, accounting failures, as well as other violations, warranted permanent revocation of broker/salesperson license and imposition of fine. *New Jersey Real Estate Commission v. Duffy*, 93 N.J.A.R.2d (REC) 13.

Failure to file income tax return, broker/salesperson license revoked. *New Jersey Real Estate Commission v. McLeod*, 93 N.J.A.R.2d (REC) 9.

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

Failure to account for deposit monies, commingling of funds, and engaging in business without license, salesperson's license revoked and fine imposed. *New Jersey Real Estate Commission v. Groff*, 92 N.J.A.R.2d (REC) 31.

Salesperson's failure to file answer to order to show cause or to make appearance before New Jersey Real Estate Commission warranted license suspension. *New Jersey Real Estate Commission v. Gremmor*, 92 N.J.A.R.2d (REC) 29.

Salesperson procured real estate license by fraud, misrepresentation and deceit by failing to reveal having pled guilty to charge one week before executing application and licensing form, suspension and fine. *New Jersey Real Estate Commission v. Cordaro*, 92 N.J.A.R.2d (REC) 17.

Failure to disclose convictions; salesperson's license suspended. *New Jersey Real Estate Commission v. Fields*, 92 N.J.A.R.2d (REC) 15.

Criminal convictions warranted revocation of real estate salesperson's license. *New Jersey Real Estate Commission v. Szatkowski*, 92 N.J.A.R.2d (REC) 13.

Federal conspiracy to falsify claims and statements and of fraud warranted salesperson's license revocation. *New Jersey Real Estate Commission v. Lanza*, 92 N.J.A.R.2d (REC) 5.

Theft conviction warranted two-year revocation of salesperson's license. *New Jersey Real Estate Commission v. Rosko*, 92 N.J.A.R.2d (REC) 2.

False voter registration and tampering with public records convictions warranted suspension of real estate salesperson's license. *New Jersey Real Estate Commission v. Federico*, 92 N.J.A.R.2d (REC) 1.

11:5-8.2 Real estate guaranty fund

(a) Every real estate licensee shall pay an additional amount as specified in N.J.S.A. 45:15-35 with their application for a license.

1. Said fees shall be paid into the real estate guaranty fund and be utilized in accordance with N.J.S.A. 45:15-34 et seq.

(b) Before making a request for the entry of a court order directing payment from the real estate guaranty fund, a judgment credit shall have a writ of execution issued and prior to its return shall make a bona fide effort to examine the judgment debtor under oath and make any and all other reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment in whole or in part. Information regarding any personal or real property or other assets liable to be sold or applied in satisfaction of the judgment which are discovered must be reported in writing to the officer to whom the writ of execution is directed.

New Rule, R.1981 d.252, effective July 9, 1981.
See: 13 N.J.R. 306(a), 13 N.J.R. 441(a).
Amended by R.1991 d.114, effective March 4, 1991.
See: 22 N.J.R. 3688(a), 23 N.J.R. 701(a).
Imposed special assessment on license renewals after January 1, 1991.
Amended by R.1993 d.153, effective April 5, 1993.
See: 25 N.J.R. 56(b), 25 N.J.R. 1548(a).
In (a), specified assessment amounts established by N.J.S.A. 45:15-35.
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
Rewrote the introductory paragraph of (a).

SUBCHAPTER 9. RULES INTERPRETING AND IMPLEMENTING THE REAL ESTATE SALES FULL DISCLOSURE ACT, N.J.S.A. 45:15-16.27 ET SEQ.

11:5-9.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the New Jersey Real Estate Commission (hereinafter, the Commission) to implement the provisions of the Real Estate Sales Full Disclosure Act (hereinafter, the Act), N.J.S.A. 45:15-16.27 et seq. These rules are applicable to all applications and matters pertaining to and/or effected by the provisions of this Act.

(b) All registration and exemption applications and all correspondence and inquiries should be directed to: New Jersey Real Estate Commission, Bureau of Subdivided Land Sales Control, 20 West State Street, PO Box 328, Trenton, New Jersey 08625-0328.

Amended by R.1998 d.497, effective October 5, 1998.
See: 30 New Jersey Register 2333(a), 30 New Jersey Register 3646(a).
In (b), updated the address at the end.

11:5-9.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Advertising" means the publication or causing to be published, of any information offering for sale or for the purpose of causing or inducing any other person to purchase or acquire, an interest in the title to subdivided lands, including the sales contract to be used and any photographs or drawings or artist's representation of physical conditions or facilities on the property existing or to exist by means of any:

1. Newspaper or periodical;

2. Radio or television broadcast;

3. Written or printed or photographic matter produced by any duplicating process producing 10 copies or more;

4. Billboards or signs;

5. Display of model homes or units;

6. Material used in connection with the disposition or offer of subdivided lands by radio, television, telephone or any other electronic means; or

7. Material used by subdividers or their agents to induce prospective purchasers to visit the subdivision; particularly vacation certificates which require the holders of those certificates to attend or submit to a sales presentation by a subdivider or its agents.

"Advertising" does not mean: stockholder communications such as annual reports and interim financial reports, proxy materials, registration statements, securities prospectuses, applications for listing securities on stock exchanges, or similar documents, prospectuses, property reports, offering statements or other documents required to be delivered to a prospective purchaser by an agency of any other state or the Federal Government; all communications addressed to and relating to the account of any person who has previously executed a contract for the purchase of the subdivider's lands except when directed to the sale of additional lands.

"Applicant" means a person who or entity which has applied for the registration of real property of interests therein with the Commission pursuant to the Act or for a total or limited exemption from those registration requirements.

"Blanket encumbrance" means a trust deed, mortgage, judgment, or any other lien or encumbrance, including an option or contract to sell, or a trust agreement affecting a subdivision or affecting more than one lot offered within a subdivision, except that term shall not include any lien or other encumbrance arising as the result of the imposition of any tax assessment by any public authority.

"Broker" or "salesperson" means any person who performs within this State as an agent or employee of a subdivider any one or more of the services or acts as set forth in this Act, and includes any real estate broker or salesperson licensed pursuant to N.J.S.A. 45:15-1 et seq. or any person who purports to act in any such capacity.

"Broker's Release" means the document issued by the Commission affirming that the broker to whom it is issued has been approved by the Commission as the designated New Jersey broker of record or as a supplemental broker of a registrant, and has been authorized by the Commission to commence solicitation and sales efforts on behalf of that registrant in New Jersey.

"Commission" means the New Jersey Real Estate Commission.

"Common promotional plan" means any offer for the disposition of lots, parcels, units or interests of real property by a single person or group of persons acting in concert, where those lots, parcels, units or interests are contiguous, or are known, designated or advertised as a common entity or by a common name regardless of the number of lots, parcels, units or interests covered by each individual offering.

"Deed in trust" means a written instrument, in recordable form and conforming to all applicable laws of the situs state, under the terms of which title to a property passes to a trustee who is independent of and unaffiliated with the applicant/registrant, and which title is to be held by that trustee on behalf of the purchaser pursuant to a trust agreement or equivalent instrument between the registrant and the trustee obligating the trustee to convey title to the purchaser promptly upon the purchaser's fulfillment of their obligations under an installment contract for the purchase of such property by the purchaser from the registrant.

"Disposition" means the sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision if undertaken for gain or profit.

"Notice" means a communication by mail from the Commission executed by its secretary or other duly authorized officer. Notice to subdividers shall be deemed complete when mailed to the subdivider's address currently on file with the Commission.

"Offer" means every inducement, solicitation or attempt to encourage a person to acquire an interest in a subdivision if undertaken for gain or profit.

"Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

"Principal" means all individual applicants or subdividers; all general partners of applicants or subdividers that are partnerships; all officers, directors and shareholders of corporate applicants or subdividers who are actively involved in the planning, management or promotion of the offering; and all other individuals who either own or control an interest of 10 percent or more in an applicant or subdivider, or who will actively participate in the planning, management or promotion of the offering, regardless of the form of organization of the applicant or subdivider.

"Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in a subdivision.

"Situs state" means the state, province, territory, protectorate, country or other jurisdiction situated outside of the State of New Jersey within which a subdivision is located.

"Subdivider" or "developer" means any owner of subdivided lands or the agent of that owner who offers the subdivided lands for disposition.

"Subdivision" and "subdivided lands" mean any land situated outside the State of New Jersey whether contiguous or not, if one or more lots, parcels, units or interests are offered as part of a common promotional plan of advertising and sale and expressly means and includes such units or interests commonly referred to as a "condominium" defined in the "Condominium Act" P.L. 1969, c. 257 (N.J.S.A. 46:8B-1 et seq.). In addition to condominiums, this definition shall also specifically include, but shall not be limited to, any form of homeowners association, any housing cooperative, and any community trust or other trust device.

Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In "Advertising", deleted "land" preceding "sales contract".
Amended by R.2009 d.222, effective July 6, 2009.
See: 40 N.J.R. 3944(a), 41 N.J.R. 2663(a).
Deleted definition "Time-share estates"; and in definition "Subdivision", inserted "and" following "cooperative," and deleted "and any form of time-sharing" following "device".

11:5-9.3 Forms of documents

(a) Rules concerning documents with respect to the registration of subdivisions with the Commission and to the sale of interests in out-of-State subdivisions pursuant to the Act are as follows:

1. All statements of record submitted to the Commission shall be bound, referenced and properly indexed with the exception of those received from the Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development.

2. With the exception of the affidavits and affirmations referenced in (a)5 below, documents submitted to the Commission may be filed on a properly bookmarked and indexed computer disc (CD ROM) or other electronic medium acceptable to the Commission. All paper documents submitted to the Commission for filing shall, wherever possible, be typewritten on one side of the paper only. One copy of each exhibit or document shall be submitted, unless the Commission requests more than one copy. All documents submitted to the Commission shall not exceed 8 1/2 x 14 inches. The Commission will make exceptions for documents which an applicant for registration cannot reasonably reduce, such as topographical maps, plat maps and surveys, if such documents can be folded to 8 1/2 x 14 inches. Where the Commission requires certified documents and the applicant cannot obtain reduced certified documents, the applicant may reduce such documents and submit therewith an affidavit verifying such document. All documents submitted pursuant to these rules shall become part of the Commission's public records.

3. An applicant may submit photographs as part of the application for registration. Photographs shall not be used in lieu of the legal description of the registered property or any other required written documents.

4. An applicant may submit verified copies of original documents.

5. An affidavit or affirmation as prescribed in the Commission's forms shall be executed for each of the following documents:

i. Statement of record, partial statement of record;

ii. Application for consolidated registration;

iii. Application for amendment to Order of Registration;

iv. Annual report of registered properties;

v. Statement of Non-conviction and partner, officer, director or principal disclosure;

vi. Consent(s) to service of process; and

vii. Broker's Affidavit and application for release.

6. A certified property report and statement of record of the Office of Interstate Land Sales Registration, Department of Housing and Urban Development, may be filed as a statement of record conforming to the requirements of the Act, provided the following documentation shall also be submitted:

i. Consent(s) to service of process;

ii. Audited financial statement(s) as provided in N.J.A.C. 11:5-6.4(a)15;

iii. A statement detailing any bonding or security agreements entered into;

iv. Broker's Affidavit and application for release;

v. A copy of each contract to be used in the sale of property in the development to New Jersey purchasers;

vi. Statement of Non-conviction and partner, officer, director or principal disclosure;

vii. A copy of the articles or certificate of incorporation;

viii. Application/affidavit of developer; and

ix. Such other additional documents or proofs that may be requested.

7. The acceptance of the certified report and statement of record of the Office of Interstate Land Sales Registration may be conditioned upon an acceptable on-site inspection by the Commission or its designee. No marketing or sales activity will be permitted in New Jersey until all the proper authorizations have been received by the applicant and broker from the Commission.

8. Any applicant who wishes to register a subdivision which has been similarly registered in this State or any other state where the requirements of that registration are substantially similar to those imposed by this subchapter, may submit a certified copy of the approved application for registration filed in such other jurisdictions. In the event the Commission finds upon review that such an application substantially conforms to the standards and requirements imposed by the Act and this subchapter, the Commission may register such property; provided, however, that prior to such registration, the Commission may require submission of such supplemental documents and information as it may deem necessary.

9. Nothing herein, or in the Act, shall be construed to require an applicant to whom an Order of Registration has previously been issued to file any additional documents or affidavits with the Commission other than notices of amendments or requests for approval of material change(s) and annual reports prior to the expiration of that Order of Registration.

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

BUREAU OF SUBDIVIDED LAND SALES FORMS

1. Broker-Developer application/affidavit

2. Statement of Non-conviction and partner, officer, director or principal disclosure

3. Consent to Service of Process

4. Annual report of registered properties

5. Application for limited exemption or complete exemption

6. New Jersey Public Offering Statement—Timeshare (may not be required where situs state Public Offering Statement is deemed acceptable)

7. New Jersey Public Offering Statement—Non-timeshare (may not be required where situs state Public Offering Statement is deemed acceptable)

8. Application for Registration Questionnaire

Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (a), rewrote 6.
Amended by R.2003 d.440, effective November 3, 2003.
See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).
Added (b).
Amended by R.2009 d.287, effective September 21, 2009.
See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).
In (a)2, inserted the first sentence and the first occurrence of "paper"; in (a)5v, substituted "Statement of Non-conviction and partner" for "Partner"; and rewrote (a)6iv and (a)6vi.

11:5-9.4 Contents of application for registration

(a) All applications for registration shall contain the following documents and information:

1. A form application provided by the Commission in which the applicant identifies the specific lots, parcels, units or interests to be registered. The application shall be accompanied by an affidavit, on a form provided by the Commission, signed by the applicant which affirms and attests that the applicant is familiar with the project being registered, the nature and content of the application for registration, the Act and the rules promulgated thereunder, and that the contents of the application are true and correct and conform with those requirements. A second affidavit to be completed by the designated New Jersey broker of record shall accompany the application. The broker's affidavit shall state that he is familiar with the registration and its contents or has physically inspected the property, or both, that he is familiar with the Act and the rules promulgated thereunder, and with the Real Estate Brokers and Salesmen Act, and that he is not aware of any information that would lead him to believe that the information in the registration application does not provide full and fair disclosure of the offering;

2. One copy of the proposed New Jersey Public Offering Statement;

3. A statement by the applicant confirming that all monies paid by New Jersey residents to the applicant or his agents prior to closing will be held in an escrow account, or in trust by an attorney licensed to practice law in this State or the state or country where the property is located, or be guaranteed by some means acceptable to the Commission. The statement shall specify the name and location of the institution where the escrow account is maintained as well as the name and address of any trustee or escrow agent. The statement shall include the applicant's acknowledgement that he shall hold all funds in escrow or in trust until the closing and delivery of the deed or until the applicant posts a bond or some other guarantee acceptable to the Commission to ensure New Jersey purchaser deposits, which bond shall be separate from and in addition to any bond or assurance for the completion of infrastructure and promised improvements. In the event that interests in the subdivision, are offered through installment sale contracts where closing and delivery of deed or deed in trust are postponed until three or more installment payments, including, but not limited to, monthly payments for licenses, memberships or other non-fee interests in the subdivision, have been paid, the statement shall confirm:

i. That all monies paid by New Jersey purchasers shall be escrowed until:

(1) The statutory seven-day rescission period has expired;

(2) A deed in trust memorializing the transaction has been offered to the purchaser, which offer shall be made within 180 days of the date on which the first installment payment was made, presuming that all payments are current as of that time, and which deed in trust will, presuming that the purchaser has performed all acts required to enable the subdivider to do so, be recorded within the said 180 day period with the appropriate recording authority in the situs state;

(3) All statutory and other rescission periods have passed; and

(4) All contingencies other than the completion of secured promised improvements have been fulfilled; or

ii. By means of evidence acceptable to the Commission, that a bond, irrevocable bank letter of credit, or other financial assurances acceptable to the Commission, but in no event bonds issued by the applicant or any affiliated company, in an amount sufficient to ensure all monies paid by New Jersey purchasers prior to the delivery of a deed or deed in trust has been posted by an acceptable third party surety or entity on behalf of the applicant. In order for a surety or entity to be deemed acceptable, it shall be authorized to do business in the situs state and engaged in the general business of providing financial assurances on the open market. Such a bond or other financial assurance shall provide that the New Jersey Real Estate Commission on behalf of all New Jersey purchasers, or the appropriate regulatory agency of the situs state on behalf of all purchasers, is the insured and shall ensure all purchasers' deposits paid and/or all installment payment made prior to the delivery of a deed in recordable form to the purchaser or trustee. Whether the amount of such instruments is acceptable shall be determined based upon past and projected sales, purchase price and other contract terms and shall be reviewed annually by the Commission if it is a named insured;

4. An irrevocable appointment of the Commission to accept, on behalf of the applicant, service of any lawful process in any proceeding arising under the Act against the applicant or his agents;

5. A statement as to the states or other jurisdictions, including the Federal government, in which an application for registration, or similar documents, have been filed, and copies of any adverse orders, judgments or decrees by any regulatory agency, court, or administrative body, with the exception of orders approving advertising, entered against the applicant, any parent or subsidiary of the applicant, or any company related to or affiliated with the applicant with respect to the property for which the application for registration is being filed;

6. The name, address and principal occupation for the past five years of every principal officer and director of the applicant, and of every partner who owns a 10 percent or greater interest in the applicant, and of every shareholder who owns 10 percent or more of the stock of the applicant as of 30 days prior to the filing of the application for registration, with an indication of the nature and extent of their interest in the applicant;

7. Copies of the certificate or articles of incorporation, with all amendments thereto, if the applicant is a corporation; copies of all instruments by which the trust is created or declared, if the developer is a trust; copies of the articles of partnership or association and all other organization papers if the applicant is organized under another form. In the event the applicant is not the legal title holder to the property being registered, the above documents shall be submitted for both the applicant and the legal title holder;

8. A legal description by metes and bounds or by lot and block numbers, section, township and range designation, or other acceptable means of the lands to be registered, together with a map showing the proposed or actual subdivision and showing the dimensions of the lots, parcels, units or interests, as available, and the relation of such lands to existing streets, roads and other improvements. The aforesaid map or plat shall be drawn to scale, signed and sealed by a licensed professional engineer or land surveyor;

9. Copies of the deed or other instruments establishing title in the developer or other record owner and any escrow agreement required pursuant to (a)3 above, and a current title search, title report, title insurance policy, title opinion from an independent attorney, or certificate or binder issued by a licensed title insurance company. The Commission may also require a copy of any agreement which grants the applicant the rights to dispose of the property interest on behalf of the title holder;

10. A statement or listing of any pending litigation, court orders, judgments or decrees which materially affect the sale or development of the offering or the financial stability of the applicant;

11. A statement that the lots, parcels, units or interests in the development will be offered to the public and sold or alienated without regard to marital status, sex, race, handicap, religion, familial status, color, ancestry, creed or national origin;

12. A statement of the present condition of access to the development and of the existence of any adverse conditions that affect the development, or unusual conditions relating to noise or safety which affect the development that are known to the applicant, or should reasonably be known, or are readily ascertainable;

13. Copies of all contracts, agreements and acknowledgements which a purchaser or lessee may be required to execute in connection with this offering;

14. In the event there is, or will be, a blanket encumbrance affecting the development or a portion thereof, a copy of the document creating it and a statement of the consequences to a purchaser of a failure of the person bound to fulfill the obligations under the instrument, and of the manner in which the interest of the purchaser is to be protected in the event of such eventuality;

15. The audited financial statements of the applicant for the fiscal year. The term "financial statements" includes, but is not limited to, the following statements: auditor's report, balance sheet, statement of income, statement of changes in retained earnings, statement of changes in financial position, statement of changes in owner's equity, notes to financial statements and current profit and loss statement. The filing of the audited consolidated financial statements of a parent company of an applicant may be permitted if the parent company is the registrant, applicant, co-registrant or guarantor. In the discretion of the Commission, it may accept or require alternative information evidencing the applicant's ability to complete the promised improvements to the development in lieu of the audited financial statements;

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

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

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

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

20. A copy of the proposed budget for the operation and maintenance of the common elements and facilities based upon full occupancy together with the estimated annual assessment and monthly charges to be assessed to each type of unit. If the proposed offering is a condominium or other interest in real estate that is subject to the authority of or to assessments by a homeowners association, or involves any common ownership interest, the budget shall specifically state the amount set aside as reserves for the replacement of the common elements and facilities, as certified by an independent public accountant, or property manager or other independent expert. The budget should also indicate whether the applicant is subsidizing the maintenance fee or plans to subsidize the maintenance fee during sales prior to transfer of control to any association, and if so, the amount of the subsidy and the probable effect of the applicant's discontinuing the making of such payments upon the maintenance fee payable by each owner. The budget shall be accompanied by a letter of adequacy issued by an independent public accountant, or certified property manager, attesting that

the budget was prepared in good faith and a letter from an independent insurance agent or broker confirming that the insurance coverage meets any standards required in the project documents and as required by situs state law;

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

i. The nature of the project;

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

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

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

Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (a), rewrote 3 and 21.
Amended by R.2009 d.222, effective July 6, 2009.
See: 40 N.J.R. 3944(a), 41 N.J.R. 2663(a).
In the introductory paragraph of (a)3, deleted "including fee simple interests in timeshare projects," following the first occurrence of "subdivision,", and in (a)20, substituted "condominium or other interest in real estate that is subject to the authority of or to assessments by a" for "condominium, time-share or".

Case Notes

New Jersey Land Sales Full Disclosure Act discriminated in its plain effect against interstate commerce and violated dormant commerce clause. *Old Coach Development Corp., Inc. v. Tanzman*, C.A.3 (N.J.)1989, 881 F.2d 1227.

11:5-9.5 Public Offering Statements

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

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

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

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

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

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

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

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

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

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

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

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

6. A statement of the proposed method of operation and management of the common elements and facilities, and of all fixed, estimated or proposed fees, assessments, and reserves for future replacement and repair of common elements. If there are no pro-

visions for reserves, a statement indicating same shall be included. If the proposed offering is a condominium or other interest in real estate that is subject to the authority of or to assessments by a homeowners association, or involves any common ownership interest, in addition to the amount set aside as reserves for the replacement or repair of the common elements and facilities, the risk to purchasers if the applicant fails to sell out shall also be stated. A statement indicating whether the applicant is subsidizing the maintenance fee or plans to subsidize the maintenance fee during sales prior to transfer of control to any association, and if so, the amount of the subsidy and the probable effect of the cessation of the payment of the subsidy upon the maintenance fee payable by each owner shall also be included;

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

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

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

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

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

12. A statement as to whether the property or any portion thereof is subject to man-made forces that would tend to adversely affect the use or enjoyment of the property such as, but not limited to, the property's proximity to airports or flight paths, railroads, noisy or polluting industrial use, landfills, dumps, nuclear or toxic waste facilities or other similar forces;

13. A statement of all current or estimated taxes;

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

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

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

17. A statement by the applicant confirming that all monies paid by New Jersey residents to the applicant or his agents prior to closing will be held in escrow or in trust or guaranteed by some other means acceptable to the Commission, and which shall include all of the information required to be provided in applications for registration by N.J.A.C. 11:5-9.4(a)3.

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

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

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

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

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

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

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

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

(i) Prior to distributing a Public Offering Statement as required by N.J.A.C. 11:5-9.14(i) written in a language other than English, registrants who advertise in a language other than English shall file with the Commission copies of the Public Offering Statement approved by the Commission printed in both English and in the language in which the advertising appears. That filing shall be accompanied by a certification attesting to the accuracy of the translation of the text of the Public Offering Statement. The certification shall be in a form as specified by the Commission and signed by an authorized representative of the registrant and a qualified translator.

Amended by R.1997 d.161, effective April 7, 1997 (operative July 1, 1997).
See: 29 N.J.R. 303(a), 29 N.J.R. 1325(a).
Added (i).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
Rewrote the section.
Amended by R.2009 d.222, effective July 6, 2009.
See: 40 N.J.R. 3944(a), 41 N.J.R. 2663(a).
In (e)6, substituted "condominium or other interest in real estate that is subject to the authority of or to assessments by a" for "condominium, time-share or".

Case Notes

New Jersey Land Sales Full Disclosure Act discriminated in its plain effect against interstate commerce and violated dormant commerce clause. *Old Coach Development Corp., Inc. v. Tanzman*, C.A.3 (N.J.)1989, 881 F.2d 1227.

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

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

1. The applicant may designate, in addition to the broker of record, other brokers who may join in the disposition of the registered property subject to filing the proper application with the Commission. The additional brokers, known as supplemental brokers, shall also execute an affidavit as required by N.J.A.C. 11:5-9.4(a). Nothing herein shall prevent any New Jersey broker from cooperating with any other New Jersey broker in any transaction, in accordance with N.J.A.C. 11:5-6.4(c). For the purposes of this section, persons who are licensed as New Jersey real estate brokers, and who have been designated by the applicant/registrant and approved by the Commission as the broker of record or as a supplemental broker for a particular subdivision, and who have been issued a current brokers release for that subdivision, are considered authorized brokers.

(b) Only authorized brokers may receive commissions from the registrant for the sale of interests in registered properties within New Jersey.

(c) Only authorized brokers and persons licensed under them may distribute literature on, or personally or via telephone solicit for prospective purchasers and only persons licensed under such authorized brokers as broker-salespersons or salespersons may offer or attempt to negotiate the sale or rental of an interest in a registered property, or provide or prepare contracts in New Jersey pertaining to registered property.

1. Where permitted by local law, unlicensed employees of a registrant working in the situs state and/or from the offices of the registrant may mail to New Jersey purchasers promotional literature on registered properties and may make appointments for New Jersey purchasers to inspect registered properties, provided that such persons make no material representations about such properties.

2. An authorized broker and only persons licensed under such authorized brokers as broker-salespersons or salespersons shall be present at any promotional booth maintained by a registrant or an agent of a registrant at any trade show or similar exhibition in New Jersey, and at any seminar promoting the sale or rental of registered property conducted by a registrant or any agent of a registrant in this State.

(d) All authorized brokers shall:

1. Prominently display the current broker's release;

2. Provide a copy of the current New Jersey Public Offering Statement to all New Jersey purchasers with whom they have had contact prior to the signing of any contract;

3. Obtain a signed and dated receipt for the same from the purchaser in all cases where the broker provides the Public Offering Statement to the purchaser, which receipt shall be maintained as a business record by the broker in accordance with N.J.A.C. 11:5-5.4; and

4. In all cases where the broker provides or prepares a contract which is signed by a New Jersey purchaser, the broker shall maintain a copy of that contract as a business record in accordance with N.J.A.C. 11:5-5.4.

(e) New Jersey brokers may not represent unregistered subdivisions or sections of unregistered subdivisions unless such projects are exempted from registration pursuant to N.J.S.A. 45:15-16.32 and N.J.A.C. 11:5-9.18.

Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
Deleted former (e); recodified former (f) as (e); and changed N.J.A.C. references throughout the section.
Amended by R.2012 d.006, effective January 3, 2012.
See: 43 N.J.R. 1791(a), 44 N.J.R. 86(b).
In the introductory paragraph of (c), substituted "and only persons licensed under such authorized brokers as broker-salespersons or salespersons may" for the second occurrence of "or"; and in (c)2, substituted "and only persons licensed under such authorized brokers as broker-salespersons or salespersons" for "or a person licensed under them".

Case Notes

New Jersey Land Sales Full Disclosure Act discriminated in its plain effect against interstate commerce and violated dormant commerce clause. *Old Coach Development Corp., Inc. v. Tanzman*, C.A.3 (N.J.)1989, 881 F.2d 1227.

11:5-9.7 Fees with respect to the registration of interstate properties

(a) All applicants for registration shall pay application fees as prescribed in N.J.S.A. 45:15-16.34 and in (f) below.

(b) All applicants for an exemption or a limited exemption shall pay application fees as prescribed in N.J.A.C. 11:5-9.18 and in (f) below.

(c) Any request for approval of a material change in, or an amendment to, an application for registration and/or an Order of Registration and/or a Public Offering Statement shall be accompanied by a fee of $ 250.00. No fee shall be charged for amendments to applications or proposed Public Offering Statements made prior to the issuance of an Order of Registration.

1. If applications for approval of a material change in and/or for an amendment to an Order of Registration and/or an amendment to a Public Offering Statement are made simultaneously, only one fee will be payable;

2. If applications are made for approval of multiple material changes, and/or multiple amendments to an Order of Registration, and/or multiple amendments to a Public Offering Statement simultaneously, only one fee will be payable.

(d) The Commission shall maintain a copy of every application for registration, together with all amendments thereto, that has been approved and shall make them reasonably available for public inspection during ordinary business hours at the Commission's office.

1. The Commission will furnish to the public, upon request, a copy of the statement of record of any registered subdivision at a cost in accordance with the copying fees set forth in N.J.S.A. 47:1A-5(b).

(e) All fees paid are non-refundable.

(f) Fees charged by the Bureau of Subdivided Land Sales Control are listed in the table below.

BUREAU OF SUBDIVIDED LAND SALES CONTROL FEES

Description	Fee
Out-of-State Property Registration application fee	$ 500.00 plus $ 35.00 per unit fee up to a maximum of $ 3,000
Limited Exemption	$ 250.00
Complete Exemption	$ 80.00
Amendments to registrations	$ 250.00

Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (b), changed N.J.A.C. reference; and in (c), deleted former 3.
Amended by R.2003 d.440, effective November 3, 2003.
See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).
In (d)1, inserted N.J.A.C. reference; added (f).
Amended by R.2004 d.130, effective April 5, 2004.
See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).
In (d)1, substituted "in accordance with the copying fees set forth in N.J.S.A. 47:1A-5b" for "of $ 0.50 per page" following "at a cost".

11:5-9.8 Issuance by the Commission of a Notice of Filing, Order of Registration, Notice of Correction, or Order of Rejection; Petition for Reconsideration, Automatic Registration

(a) Upon receipt of an application for registration in proper form and accompanied by payment of the required filing fee in the correct amount as prescribed by N.J.S.A. 45:15-16.34, the Commission shall, within 10 business days of its receipt of the same, issue a Notice of Filing to the applicant. The notice of filing shall not be construed as an approval of the registration or any portion thereof.

1. The date of filing shall be considered as the date when all required documents have been submitted in proper form and all fees, including the inspection fee, if requested, have been paid.

(b) Within 90 days from the date of a notice of filing, the Commission shall either enter an Order of Rejection or, if the Commission affirmatively determines that the requirements of N.J.S.A. 45:15-16.27 et seq. and this subchapter have been met, an Order of Registration. If within the said 90-day time period, no Order of Rejection is entered and no Notice of Deficiency as set forth in (c) below is issued, the subdivision or subdivided lands shall be deemed registered unless the applicant has consented in writing to a delay.

(c) If, during the 90 days following the date of the Notice of Filing, the Commission determines that any of the requirements

of N.J.S.A. 45:15-16.27 et seq. or of this subchapter have not been met, the Commission shall issue a Notice of Deficiency to the applicant. The Notice of Deficiency shall indicate that the properties referenced in the application for registration are not registered and that the application must be corrected in a manner specified in the notice within 30 days from the date that the Notice of Deficiency is received by the applicant.

1. In the event the requirements of the Notice of Deficiency are not met within the time allowed, the Commission may enter an order rejecting the registration. All such orders shall include the factual and legal basis for the rejection and shall provide that, unless appealed, as provided in (d) below the terms of the order shall become final after 45 days.

(d) Upon the issuance of an Order of Rejection, the applicant shall have the right to file an appeal with the Commission and shall be entitled to a hearing thereon, provided that the appeal shall be filed within 45 days of the date of the Order of Rejection.

1. In the event an appeal is filed by the applicant, the Order of Rejection shall not take effect until such time as a determination has been rendered on the appeal. While an appeal of an Order of Rejection remains pending, no property which was the subject of the Notice of Filing referenced in the Order of Rejection shall be considered registered.

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

11:5-9.9 Inspection of properties by the Commission

(a) As provided in N.J.S.A. 45:15-16.41, the Commission, at its discretion, may make on-site inspections of any subdivision which is the subject of an application for registration, either before an Order of Registration has been issued or thereafter. In any instance where an Order of Registration has been issued prior to the subdivision being inspected by the Commission, such Order shall be considered conditional and subject to the results of the Commission's inspection of the premises. The Commission may at its discretion conduct subsequent on-site inspections.

(b) The costs of inspections shall be paid by the applicant who shall provide a deposit when requested by the Commission. After the inspection the Commission shall provide the applicant/registrant with a statement of costs incurred and a refund of any portion of the deposit not expended or a request for additional funds if required.

11:5-9.10 Amendments to registration applications and Public Offering Statements

(a) The registrant shall immediately file with the Commission amendments to its registration application and/or Public Offering Statement reflecting any material change(s) in previously supplied information or documents, in order that the information provided purchasers is current.

(b) Material change means, but is not limited to, any significant change in the size or character of the development or interest being offered or anything having a significant effect on the rights, duties or obligations of the developer or purchaser.

1. Changes in selling prices and advertising, the identity of the officers and directors of a registrant, and notice of the completion of improvements on a timely basis as represented in a previously approved Public Offering Statement are not considered material changes.

2. The transfer of control of any association responsible for the maintenance of common areas and/or the operation of common facilities or amenities by the registrant to the owners of interests in the subdivision is a material change.

(c) Subsequent to the Commission having approved a Public Offering Statement, no revised Public Offering Statement shall be given to prospective purchasers without the approval of the Commission.

1. Applications for approval of an amended or corrected Public Offerings Statement shall be made by filing a red-lined copy of the proposed Revised Public Offering Statement with the Commission and an application update.

(d) The Commission shall process and review requests for amendments to Orders of Registration and Public Offering Statements in accordance with the standards and procedures established in the Act and this subchapter for the review of applications for registration. Requests for amendments shall be accompanied by a fee of $ 250.00, as provided in N.J.A.C. 11:5-9.7.

Amended by R.1998 d.497, effective October 5, 1998.
See: 30 New Jersey Register 2333(a), 30 New Jersey Register 3646(a).
Rewrote (b) and (c); and in (d), changed N.J.A.C. reference.

11:5-9.11 Annual reporting upon and the termination of registrations

(a) No later than 30 days after the anniversary date of the latest Order of Registration, and while the registrant retains any interest in the subdivision, the registrant shall file, on a form designated by the Commission, an annual report reflecting any material changes in the information contained in the original application for registration or in the most recent Annual Report previously filed.

1. This requirement shall not diminish the obligation of the registrant to notify the Commission of material changes as they occur.

2. The annual report shall contain an audited financial statement or compilation prepared by an independent public accountant showing the receipts and expenditures of any association serving the project and under the control of the registrant, which financial statements shall be compiled on a yearly basis, and certified if required by the situs state.

3. The yearly audit submitted with the annual report shall be the most current audit available. In no event may the date of the yearly audit be earlier than 18 months prior to the date of the annual report. The registrant will not have to file a separate audit with the Commission for any association controlled by the owners of interests in the subdivision.

(b) The registrant may file an application for termination of its obligations with the Commission in which the registrant shall certify the grounds for termination.

1. Upon a determination by the Commission that an annual report is no longer necessary for the protection of the public interest or that the registrant no longer retains any interest and no longer has any contractual, bond or other obligations to New Jersey purchasers in the subdivision, including having fulfilled all undertakings referred to in the Public Offering Statement, and that the registrant has ceased all marketing activity in New Jersey, the Commission shall issue an order terminating the responsibilities of the registrant under the Act upon the registrant making application for the issuance of an Order of Termination, accompanied by acceptable proofs that the above requirements have been met.

Amended by R.2003 d.440, effective November 3, 2003.
See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).
In (b)1, substituted "or that" for "because" following "the public interest", and inserted "that" following "Public Offering Statement, and".

11:5-9.12 Home builders

Unless exempt pursuant to N.J.S.A. 45:15-16.32, a home builder selling house and lot packages offered as part of a common promotional plan, regardless of whether the lots are contiguous, is a "subdivider" as defined in N.J.S.A. 45:15-16.28, and therefore such offerings are subject to the Act and to this subchapter.

11:5-9.13 Grounds for denial of registration applications and for the revocation of Orders of Registration

A finding that an applicant or registrant has previously been determined to have engaged in unfair acts and/or fraudulent or deceptive practices by the Federal Trade Commission, or as set forth in the Federal Interstate Land Sales Full Disclosure Act (82 Stat. 590; 15 U.S.C. § 1701 et seq.), or to have violated the Act and/or similar acts in other States, may constitute grounds for the Commission, after providing the applicant or registrant with the opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, to refuse to issue or to revoke an Order of Registration.

11:5-9.14 Advertising and sales promotions with respect to the sale and marketing of registered properties

(a) Advertisements that refer to the purchase price of any lot, unit, parcel or interest in real estate shall state the full purchase price and shall disclose any known or estimated additional assessments or costs to the purchaser.

1. In order to eliminate fictitious pricing or illusionary discounts, no certificates shall be distributed indicating that a discount from the advertised price shall be given. This shall not preclude the giving of a discount on the basis of any reasonable criteria.

2. Advertising shall not refer to a price increase unless the amount and date of the increase are indicated.

(b) Advertising that contains statements regarding taxes shall not use terms such as "low" and "stable", but shall state what the current taxes are, or an accurate estimate of such taxes based on current tax rates or value ratios.

1. Any reference to proposed improvements for which the purchaser will be assessed shall clearly set forth the facts of the assessment and the estimated amount of the assessment.

2. Advertising shall not state that items or services are free when the cost thereof is included in the assessment.

(c) Advertising shall not refer to any common element or facility that does not presently exist unless that fact is prominently stated in the advertising, accompanied by the proposed date of completion, which shall also appear prominently in the advertising.

(d) Advertising shall not contain photographs, sketches or artist's conceptions unless the fact that these are conceptions are stated immediately adjacent to them in the advertisement.

(e) Advertising shall not refer in wording, photograph, sketch or conception to any recreation, medical, social, shopping or other facility that is not located within the subdivision unless it clearly states that the facilities are not located in the subdivision and states the approximate distance therefrom in miles via paved roads.

(f) Any model unit that is used as part of a promotional plan shall be in substantial conformity with the units that are subsequently constructed unless otherwise noted in the contract of sale. If changes are to be made in the units other than landscap-

ing, appliances, furnishings, heating, air conditioning, electrical or plumbing, a legible notice shall be conspicuously placed in the model, or picture photo or rendering of the model, advertising prospective purchasers of the change. In the event that there are items in the model that are available only at additional cost, legible notice informing purchasers that the items are available only at additional cost should be posted in a prominent place in the model.

(g) When properties or interests therein are not registered with the Commission, nor wholly or partially exempt from the Act, and advertisements regarding such properties or interests are placed in any media which is distributed in or broadcast into the State of New Jersey, a disclaimer shall be included, indicating that the properties or interests are not registered with the New Jersey Real Estate Commission, and that the advertisement is not an offer to New Jersey residents.

1. As a result of their failure to register such properties or interests pursuant to N.J.S.A. 45:15-16.27 et seq., the owners of such properties or interests may not make, or cause to be made, an offer or disposition of the properties or interests in this State, nor direct any offer of such properties or interests originating outside of this State to a person or resident within this State.

(h) Advertisements which contain offers of premiums or of reimbursement of travel expenses in cash or merchandise shall be subject to the following:

1. The promotional material shall clearly and conspicuously state the necessity of attendance at or submission to a sales promotion, the minimum length of time required to be spent at such sales promotion in order to qualify for reimbursement or other premium or inducement, the terms and conditions of the offer, and the retail value of any premiums offered;

i. Such advertisements shall also include a statement indicating that the promotion is a solicitation for the sale of condominiums, lots, or other interests in real estate as applicable, the name of the project and the registration number assigned to the project by the Commission preceded by: "N.J. Reg. No."

2. "Travel expenses" may be reimbursed in cash or by merchandise;

3. Any advertisements, including those which contain offers of reimbursement of travel expenses, offers of premiums, or other inducements must also comply with the provisions of the New Jersey Consumer Fraud Act (N.J.S.A. 56:8-1 et seq.).

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

Amended by R.1997 d.161, effective April 7, 1997 (operative July 1, 1997).
See: 29 N.J.R. 303(a), 29 N.J.R. 1325(a).
Added (i).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
Rewrote (g) and (h).
Amended by R.2009 d.222, effective July 6, 2009.
See: 40 N.J.R. 3944(a), 41 N.J.R. 2663(a).
In (h)1i, deleted "timeshares," preceding "condominiums".

11:5-9.15 Compliance with situs state requirements

Any instrument evidencing the sale or disposition of an interest in a registered property shall be executed in accordance with the laws of the situs state. An applicant/registrant may be required to submit proof of compliance.

11:5-9.16 Improvements to be made at registered properties

(a) A property in a subdivision, or any part thereof, on which construction of a promised improvement for public use, convenience or necessity has not been completed, shall not be registered for disposition unless completion of the improvement is assured by a court order, or government approved improvement district with sufficient taxing or other authority to raise adequate capital to assure completion, or a substantial completion bond or similar undertaking acceptable to the Commission as provided in (c) below, or by adequate reserves established and maintained in a trust or escrow account meeting the following criteria:

1. Such funds shall be kept and maintained in an escrow account separate and apart from the registrant's funds and from any other escrowed funds;

2. The account shall be established in a bank or trust company doing business in this State or the situs state, and approved by the Commission; and

3. The trust or escrow agreement shall have as its purpose the protection of the purchaser or prospective purchaser in the event of a failure to complete construction of promised improvements or a failure to satisfy any obligations or liens encumbering the purchaser's title by reason of the construction.

(b) A property in a subdivision, or a part thereof, on which construction of a promised improvement not for public use, convenience or necessity is represented or implied, shall not be registered for disposition to the public where such improvement has not been completed, unless completion is assured by:

1. An adequate plan of development, including financial resources committed to carry out the plan as provided in (c) below, which plan is subject to the Commission's continuing review and approval; or

2. Adequate funds maintained in a trust or escrow account, or an irrevocable bank letter of credit.

(c) The Commission may accept surety bonds, escrow accounts, irrevocable bank letters of credit, or any other financial security adequate to assure a plan of development. In determining the security required, the Commission shall examine the status of improvements, the overall cost of improvements, the terms of purchaser contracts, the financial condition of the subdivider and such other data as it considers necessary. The Commission may consider whatever financial security has been posted with other governmental authorities in making its determination.

11:5-9.17 Contracts for the purchase of an interest in a registered property

(a) All contracts or agreements for the disposition of a lot, parcel, unit or interest in a registered subdivision shall not impose undue restrictions or hardships upon the purchaser. All contracts shall be in accordance with the laws of the situs state, except that they shall conform to the Real Estate Sales Full Disclosure Act and to this subchapter, and all conflicts shall be resolved to the satisfaction of the Commission.

(b) Any contract or agreement for the purchase of any lot, parcel, unit or interest in a registered subdivision may be cancelled without cause, by the purchaser sending or delivering written notice of cancellation by midnight of the seventh calendar day following the date on which such contract or agreement was executed. Upon receipt of such a notice of cancellation, the developer or his agent shall promptly refund all monies to the purchaser.

(c) Every contract or agreement shall contain the following notice in 10-point boldfaced type or larger, directly above the space provided for the signature of the purchaser:

NOTICE to PURCHASER or LESSEE: You have the right to cancel this contract by midnight of the seventh calendar day following the day on which you have executed this contract or agreement. You should read this entire contract and the Public Offering Statement on this project before signing any documents or paying any monies.

(d) All contracts which contain provisions requiring the payment of deposit monies shall contain a statement describing how the deposit moneys will be maintained in escrow or otherwise secured as provided in N.J.A.C. 11:5-9.4(a)3.

(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. 11:5-9.14(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.

Amended by R.1997 d.161, effective April 7, 1997 (operative July 1, 1997).
See: 29 New Jersey Register 303(a), 29 New Jersey Register 1325(a).
Added (c).
Amended by R.1998 d.497, effective October 5, 1998.
See: 30 New Jersey Register 2333(a), 30 New Jersey Register 3646(a).
Rewrote (d), and in (e), changed N.J.A.C. reference.

Case Notes

New Jersey Land Sales Full Disclosure Act discriminated in its plain effect against interstate commerce and violated dormant commerce clause. *Old Coach Development Corp., Inc. v. Tanzman*, C.A.3 (N.J.)1989, 881 F.2d 1227.

11:5-9.18 Exemptions from the provisions of N.J.S.A. 45:15-16.27 et seq.

(a) Any person who believes that property may be exempt from the provisions of the Act, or who is contemplating marketing property in New Jersey which he believes may be exempt, may apply to the Commission for a Letter of Exemption. Such application shall be in written affidavit form and shall list the reasons why such property or proposed project may be exempt from the Act. Such an application for exemption shall be accompanied by a non-refundable fee of $ 80.00.

1. In the event the Commission shall determine that such property is exempt from the Act, it shall issue a Letter of Exemption setting forth the facts upon which the determination is based.

2. In the event the Commission shall determine that such property is not exempt from the provisions of the Act, it shall deny the request for exemption in writing, setting forth therein the facts upon which the determination is based, and shall send such writing to the applicant via certified mail, return receipt requested.

3. Any person who is aggrieved by such a determination is entitled to a hearing on such determination, provided said hearing is requested in writing no later than 30 days from the date of the applicant's receiving notice of such determination.

4. The Commission shall issue a determination as to whether a property is, or is not, exempt within 30 days of its receipt of a complete request for exemption, with the appropriate fee.

(b) If the nature of the property and/or of the proposed offering indicate that the applicant would be subject to the registration requirements of the Act, the applicant may apply to the Commission for a limited exemption. If the commission determines that enforcement of the entire Act and of all of these rules

is not necessary in the public interest or for the protection of purchasers, due to the small amounts involved or the limited character of the offering, it may issue a "Limited Exemption" from registration to the applicant.

1. A limited exemption may be granted by reason of the small number of lots, parcels, units or interests to be offered only if all improvements necessary for the use of the property have been completed, or adequate surety and/or financial assurances for completion of promised improvements and amenities has been established. No limited exemption may be granted with regard to property contiguous or reasonably contiguous to property for which a limited exemption has previously been granted and which is being offered by the same applicant, or by a predecessor or successor in title to or an affiliate of that applicant.

2. A limited exemption may be granted by reason of the limited character of the offering where the nature of the property, or of the prospective purchasers to whom the property will be offered, is such that it is likely prospective purchasers will have expert advice concerning the purchase independent of that supplied by the applicant or his agents. An application for a limited exemption for this reason shall include a copy of any prospectus, offering statement or other such solicitation. A limited exemption granted for this reason shall be confined to the group of offerees specified in the application.

3. An application for a limited exemption shall specify the particular lots, parcels, units or interests for which exemption is sought. Any limited exemption granted shall be confined to those lots, parcels, units or interests so specified.

4. An application for a limited exemption shall include a narrative description that clearly describes the nature of the subdivision and the factual basis and reasons why the limited exemption should be granted.

5. The Commission shall assign a New Jersey exemption number beginning with the prefix "N.J.E." to each project to which a limited exemption is issued. This number shall thereafter appear on all publications or broadcasts of advertisements of the exempted project which include offers of a premium or to provide or reimburse the cost of travel which are directed to citizens of this State, or which appear in national or regional advertising circulated within this State.

6. Any limited exemption granted shall remain in effect for a period of two years from the date of issuance indicated in the Letter of Exemption, unless revoked as described below.

7. Any limited exemption granted shall permit the recipient to offer the property to New Jersey residents without obtaining an Order of Registration. A limited exemption shall not deprive the Commission of jurisdiction to enforce any other provision of the Act or this subchapter, or to revoke the limited exemption after notice and an opportunity to be heard.

8. A $ 250.00 non-refundable fee shall be tendered with any application for a limited exemption.

9. All applications for a limited exemption shall comply with the following minimum requirements:

i. The filing of an exemption application affidavit-questionnaire;

ii. The filing of proof of title and a plat map specifying the lots or units to be exempted, with colored shading;

iii. The requirements for the securing of all deposits, down payments, or funds of others as prescribed in this subchapter;

iv. The filing of satisfactory proof of surety and/or financial assurances for any promised improvements or amenities;

v. The advertisement standards and procedures established at N.J.A.C. 11:5-9.14; and

vi. The filing of any other documents that the Commission may deem necessary.

10. Any applicant granted a limited exemption by the Commission, pursuant to this subchapter, shall comply with the annual reporting requirements of N.J.S.A. 45:15-16.40 and N.J.A.C. 11:5-9.11.

11. No limited exemption granted hereunder shall be effective until a Letter of Limited Exemption is issued by the Commission to the applicant for the exemption.

12. A copy of the New Jersey Letter of Limited Exemption, or of a Public Offering Statement approved by the Commission, shall be provided to each New Jersey purchaser prior to their signing any contract for the purchase of an interest in property included within the limited exemption issued by the Commission, and a receipt obtained for the same shall be kept on file for seven years by the recipient of the limited exemption.

13. Any material change in the information reflected on the application for a limited exemption or on any documentation submitted in support of such application, shall immediately void any exemption issued based upon such application.

Amended by R.1998 d.497, effective October 5, 1998.
See: 30 New Jersey Register 2333(a), 30 New Jersey Register 3646(a).
In (b), rewrote 5, deleted "The Commission shall determine what constitutes a material change" from the end of 13, and changed N.J.A.C. references throughout.

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

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

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

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

SUBCHAPTER 9A. RULES INTERPRETING AND IMPLEMENTING THE NEW JERSEY REAL ESTATE TIMESHARE ACT, N.J.S.A. 45:15-16.50 ET SEQ.

11:5-9A.1 Purpose and scope

(a) The rules in this subchapter implement the provisions of the New Jersey Real Estate Timeshare Act, N.J.S.A. 45:15-16.50 et seq. These rules are applicable to:

1. Timeshare plans with an accommodation or component site in this State; and

2. Timeshare plans without an accommodation or component site in this State if these timeshare plans are offered to be sold within this State, regardless of whether the offer originates from within or outside of this State.

(b) This Act shall not apply to any of the following:

1. Timeshare plans, whether or not an accommodation or component site is located in the State, consisting of 10 or fewer timeshare interests;

2. Timeshare plans, whether or not an accommodation or component site is located in this State, the use of which extends over any period of three years or less. For purposes of determining the term of a timeshare plan, the period of any automatic renewal shall be included unless a purchaser has the right to terminate the purchaser's participation in the timeshare plan at any time and receive a pro rata refund, or the purchaser receives a notice, not less than 30 days, but not more than 60 days, prior to the date of renewal, informing the purchaser of the right to terminate at any time prior to the date of automatic renewal;

3. Timeshare plans, whether or not an accommodation or component site is located in the State, under which the prospective purchaser's total financial obligation shall be equal to or less than $ 3,000 during the entire term of the timeshare plan;

4. Component sites of specific timeshare interest multi-site timeshare plans that are neither located in nor offered for sale in this State, except that these component sites are still subject to the disclosure requirements of the Act;

5. Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any State or Federal statute; and

6. Offers or dispositions of securities currently Registered with the Bureau of Securities within the Division of Consumer Affairs in the Department of Law and Public Safety.

(c) All correspondence and inquiries related to the Act should be directed to:

New Jersey Real Estate Commission
Bureau of Subdivided Land Sales Control
20 West State Street
P.O. Box 328
Trenton, NJ 08625-0328.

11:5-9A.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Abbreviated registration" means an expedited filing procedure for those out-of-State filings that are located in a state or jurisdiction where the disclosure requirements are substantially equivalent or greater than those required under the Act.

"Accommodation" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, or other private or commercial structure containing toilet facilities therein that is designed and available, pursuant to applicable law, for use and occupancy as a residence by one or more individuals which is a part of the timeshare property.

"Act" means the New Jersey Real Estate Timeshare Act, N.J.S.A. 45:15-16.50 et seq.

"Advertisement" means any written, oral or electronic communication that is directed to or targeted to persons within the State and contains a promotion, inducement or offer to sell a timeshare plan, including, but not limited to, brochures, pamphlets, radio and television scripts, electronic media, telephone and direct mail solicitations and other means of promotion. "Advertisement" does not mean:

1. Any stockholder communication such as an annual report or interim financial report, proxy material, a registration statement, a securities prospectus, a registration, a property report or other material required to be delivered to a prospective purchaser by an agency of any local, state or Federal government;

2. Any oral or written statement disseminated by a developer to broadcast or print media, other than paid advertising or promotional material, regarding plans for the acquisition or development of timeshare property. However, any rebroadcast or any other dissemination of such oral statements to prospective purchasers by a seller in any manner, or any distribution of copies of newspaper or magazine articles or press releases, or any other dissemination of such written statements to a prospective purchaser by a seller in any manner, shall constitute an advertisement; or

3. Any communication addressed to and relating to the account of any person who has previously executed a contract for the sale or purchase of a timeshare interest in a timeshare plan to which the communication relates shall not be considered advertising under this Act, provided they are delivered to any person who has previously executed a contract for the purchase of a timeshare interest or is an existing owner of a timeshare interest in a timeshare plan.

"Assessment" means the share of funds required for the payment of common expenses which is assessed from time to time against each timeshare interest by the association.

"Association" means the organized body consisting of the purchasers of interests in a timeshare property.

"Commission" means the New Jersey Real Estate Commission.

"Common expense" means casualty and liability insurance, and those expenses properly incurred for the maintenance, operation, and repair of all accommodations and common areas and facilities constituting the timeshare plan and any other expenses designated as common expenses by the timeshare instrument.

"Component site" means a specific geographic location where accommodations which are part of a multi-site timeshare plan are located. Separate phases of a single timeshare property in a specific geographic location and under common management shall be deemed a single component site.

"Concurrent preliminary registration" means a preliminary registration filed concurrently with a substantially complete comprehensive or abbreviated registration.

"Conditional order of registration" means the authorization to allow sales of interests in a timeshare plan where the comprehensive or abbreviated registration application is substantially complete and only minor deficiencies remain.

"Consolidated filing" means the registration of additional timeshare interests pursuant to a previously registered plan by the filing of the supplemental information necessary to register the additional interests and the payment of an additional comprehensive or abbreviated registration fee, as applicable.

"Department" means the Department of Banking and Insurance.

"Developer" means and includes any person or entity who creates a timeshare plan or is in the business of selling timeshare interests, or employs agents or brokers to do the same, or any person or entity who succeeds to the interest of a developer by sale, lease, assignment, mortgage or other transfer, except that the term shall include only those persons who offer timeshare interests for disposition in the ordinary course of business.

"Dispose" or "disposition" means a voluntary transfer or assignment of any legal or equitable interest in a timeshare plan, other than the transfer, assignment or release of a security interest.

"Escrow agent" means an independent person, including an independent bonded escrow company, an independent financial institution whose accounts are insured by a governmental agency or instrumentality, or an independent licensed title insurance agent who is responsible for the receipt and disbursement of funds in accordance with the Act. If the escrow agent is not located in the State of New Jersey, then this person shall subject himself or herself to the jurisdiction of the Commission with respect to disputes that arise out of the provisions of the Act.

"Incidental benefit" means an accommodation, product, service, discount, or other benefit which is offered to a prospective purchaser of a timeshare plan or to a purchaser of a timeshare plan prior to the expiration of his or her rescission period pursuant to the Act and which is not an exchange program, provided that:

1. Use or participation in the incidental benefit is completely voluntary;

2. No costs of the incidental benefit are included as common expenses of the timeshare plan;

3. The good faith represented aggregate value of all incidental benefits offered by a developer to a purchaser shall not exceed 20 percent of the actual price paid by the purchaser for his or her timeshare interest; and

4. The purchaser is provided a disclosure that fairly describes the material terms of the incidental benefit.

The term "incidental benefit" shall not include an offer of the use of the accommodations of the timeshare plan on a free or discounted one-time basis.

"Managing entity" means the person who undertakes the duties, responsibilities and obligations of the management of the timeshare property.

"Offer" means any inducement, solicitation, or other attempt, whether by marketing, advertisement, oral or written presentation or any other means, to encourage a person to acquire a timeshare interest in a timeshare plan, for gain or profit.

"Person" means a natural person, corporation, limited liability company, partnership, joint venture, association, estate, trust, government, governmental subdivision or agency, or other legal entity or any combination thereof.

"Preliminary registration" means a procedure by which any applicant may obtain an authorization to commence a limited marketing program for the purpose of soliciting non-binding reservations in a timeshare plan prior to completing an abbreviated or comprehensive registration.

"Promotion" means a plan or device, including one which creates the possibility of a prospective purchaser receiving a vacation, discount vacation, gift, or prize, that is used by a developer, or an employee of a developer, or an agent or independent contractor acting on behalf of the developer, in connection with the offering and sale of timeshare interests in a timeshare plan.

"Purchase contract" means a document pursuant to which a person becomes legally obligated to sell, and a purchaser becomes legally obligated to buy, a timeshare interest.

"Purchaser" means any person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare plan other than as security for an obligation.

"Reservation system" means the method, arrangement or procedure by which a purchaser, in order to reserve the use or occupancy of any accommodation in a multi-site timeshare plan for one or more timeshare periods, is required to compete with other purchasers in the same multi-site timeshare plan, regardless of whether the reservation system is operated and maintained by the multi-site timeshare plan managing entity or any other person.

"Sales agent" means any person who performs within this State as an agent or employee of a developer any one or more of the services or acts as set forth in the Act, and includes any real estate broker, broker salesperson or salesperson licensed pursuant to N.J.S.A. 45:15-1 et seq., or any person who purports to act in any such capacity.

"Timeshare instrument" means one or more documents, by whatever name denominated, creating or governing the operation of a timeshare plan.

"Timeshare interest" means and includes either:

1. A "timeshare estate," which is the right to occupy a timeshare property, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof; or

2. A "timeshare use," which is the right to occupy a timeshare property, which right is neither coupled with a freehold interest, nor coupled with an estate for years with a future interest, in a timeshare property.

"Timeshare period" means the period or periods of time when the purchaser of an interest in a timeshare plan is afforded the opportunity to use the accommodations of a timeshare plan.

"Timeshare plan" means any arrangement, plan, scheme, or similar device, whether by membership agreement, sale, lease, deed, license, or right to use agreement or by any other means, whereby a purchaser, in exchange for consideration, receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year on a recurring basis, but not necessarily for consecutive years. A timeshare plan may be:

1. A "single-site timeshare plan," which is the right to use accommodations at a single timeshare property; or

2. A "multi-site timeshare plan," which includes:

i. A "specific timeshare interest," which means an interest wherein a purchaser has, only through a reservation system:

(1) A priority right to reserve accommodations at a specific timeshare property without competing with owners of timeshare interests at other component sites that are part of the multi-site timeshare plan, which priority right extends for at least 60 days, and

(2) The right to reserve accommodations on a non-priority basis at other component sites that are part of the multi-site timeshare plan; or

ii. A "non-specific timeshare interest," which means an interest wherein a purchaser has, only through a reservation system, the right to reserve accommodations at any component site of the multi-site timeshare plan, with no priority right to reserve accommodations at any specific component site.

"Timeshare property" means one or more accommodations subject to the same timeshare instrument, together with any other property or rights to property appurtenant to those accommodations.

11:5-9A.3 Forms of documents

(a) Provisions concerning documents with respect to the registration of timeshare plans with the Commission are as follows. With the exception of the affidavits or affirmations referenced in (a)6 below, the documents may be filed on a properly bookmarked and indexed computer disc (CD-ROM) or other electronic medium acceptable to the Commission.

1. All registration statements of record submitted to the Commission shall be referenced and properly indexed and, if submitted on paper, properly bound.

2. All paper documents submitted to the Commission for filing shall, wherever possible, be typewritten on one side of the paper only.

3. One copy of each exhibit or document shall be submitted, unless the Commission requests more than one copy.

4. All paper documents submitted to the Commission shall not exceed 8 1/2 x 14 inches.

5. An applicant shall submit verified copies of original documents.

6. An affidavit or affirmation as prescribed in the Commission's forms shall be executed for each of the following documents:

i. An application for preliminary, comprehensive and abbreviated registrations;

ii. An annual report;

iii. A statement of non-conviction;

iv. A consent(s) to service of process; and

v. A broker's affidavit, including an application for a broker's release.

7. The acceptance of a registration and offering statement approved in another state may be conditioned upon an acceptable on-site inspection.

11:5-9A.4 Registration filings

(a) A developer who sells, offers to sell, or attempts to solicit prospective purchasers in this State to purchase a timeshare interest, or any person who creates a timeshare plan with an accommodation in this State, shall register with the Commission, on forms provided by the Commission or in electronic formats authorized by the Commission, all timeshare plans which have accommodations located in this State or which are sold or offered for sale to any individual located in this State.

(b) Preliminary registration requirements are as follows:

1. Upon the submission of an application approved by the Commission, the Commission may grant a 90-day preliminary registration to allow the developer to begin offering and selling timeshare interests in a timeshare plan regardless of whether the accommodations of the timeshare plan are located within or outside of the State. Upon submission to the Commission of a substantially complete application for an abbreviated or comprehensive registration under the Act, including all appropriate fees prior to the expiration date of the preliminary registration, the preliminary registration shall be automatically extended during the registration review period provided that the developer is actively and diligently pursuing registration under the Act. The preliminary registration shall automatically terminate with respect to those timeshare interests covered by an approved public offering statement and by a final order of registration that is issued before the scheduled termination date of the preliminary registration. The preliminary registration shall also terminate upon the issuance of any notice of rejection due to the developer's failure to comply with the provisions of the Act.

2. Upon termination of a preliminary registration order for any reason other than the issuance of a final order of registration and public offering statement, all reservations executed under the preliminary registration shall be null and void, and all funds obtained shall be refunded to the purchaser within 15 days of termination. Evidence of such refunds must be filed with the Commission within 30 days of the date of termination.

3. To obtain a preliminary registration, the developer shall provide all of the following:

i. The reservation instrument to be used, in a form previously approved by the Commission and supplied with the preliminary registration application, which shall, at a minimum, provide for the following:

(1) The right of both the developer and the potential purchaser to unilaterally cancel the reservation at any time;

(2) The placement by the developer of any deposit paid by the purchaser into an escrow account maintained in accordance with (b)3iv below;

(3) The repayment to the potential purchaser of his or her total deposit within 15 days following the receipt of a notice of cancellation of the reservation by either party; and

(4) A statement to the effect that the reservation concerns an offering plan that has not yet received final approval from the Commission, and that no offering of the timeshare interest referenced in the reservation instrument can be made by the developer until an offering plan has been filed with, and accepted by, the Commission;

ii. A preliminary public offering statement in a form approved by the Commission with an agreement to provide each potential purchaser with a copy of the preliminary public offering statement and an executed receipt for a copy before any money or other thing of value has been accepted by or on behalf of the developer in connection with the reservation;

iii. An agreement to provide a copy of the reservation instrument signed by the potential purchaser and by or on behalf of the developer to the potential purchaser;

iv. A fully executed escrow agreement, acceptable to the Commission, stating that all funds received by the developer shall be placed into an independent escrow account to be maintained in a financial institution located within the State of New Jersey under the control of an attorney, real estate broker or title company licensed to practice in New Jersey. This agreement must state that no funds shall be released until a final order of registration has been granted unless refunded to the purchaser upon cancellation of the reservation agreement or expiration of the preliminary registration. The name and address of the financial institution, and escrow account number must also be provided;

v. The filing fee for a preliminary registration, specified at N.J.A.C. 11:5-9A.10(e), which filing fee shall be in addition to the filing fees for an abbreviated or comprehensive registration as established in that subsection;

vi. Any advertisements to be utilized by the developer while the preliminary registration is in effect. All such advertisements shall be provided to the Commission before use;

vii. If the timeshare plan is located wholly or in part outside of the State of New Jersey, a fully executed consent to service of process, along with evidence of compliance with all laws governing the offering of a timeshare plan in that jurisdiction;

viii. A statement indicating whether the applicant, or a parent or a subsidiary of the applicant, or any of their current officers or principals have, during the past 10 years, or any of their former officers or principals have during the last two years, been convicted of any criminal or disorderly persons offense involving any aspect of the real estate sales or real estate securities business; and

ix. Such other information as the Commission may require from a particular developer in order to further the provisions of the Act, to assure full and fair disclosure and protect the interests of purchasers.

(c) Comprehensive registration requirements are as follows:

1. In addition to the required documentation under N.J.S.A. 45:15-16.57(d), to obtain a comprehensive registration, the developer shall provide all of the following:

i. The developer's legal name, any alternate names or other names under which the developer has operated or is operating, and the developer's principal office location, mailing address, primary contact person and telephone number;

ii. The name, location, mailing address, primary contact person and telephone number of the timeshare plan;

iii. The name and principal address of the developer's authorized New Jersey representative who shall be a licensed real estate broker licensed to maintain offices within this State;

iv. A declaration as to whether the timeshare plan is a single-site timeshare plan or a multi-site timeshare plan and, if a multi-site timeshare plan, whether it consists of specific timeshare interests or non-specific timeshare interests;

v. The name and principal address of all brokers within New Jersey who sell or offer to sell any timeshare interests in any timeshare plan offered by the developer to any person in this State, who shall be licensed as a real estate broker pursuant to N.J.S.A. 45:15-1 et seq., and who are the authorized representatives of the developer;

vi. The name and principal address of all affiliated and non-affiliated marketing entities who, by means of inducement, promotion or advertisement, attempt to encourage or procure prospective purchasers located in this State to attend a sales presentation for any timeshare plan offered by the developer or authorized broker;

vii. The name and principal address of all managing entities who manage the timeshare plan;

viii. A public offering statement which complies with the requirements of the Act;

ix. A form application provided by the Commission in which the applicant identifies the timeshare plan and the timeshare in-

terests to be registered. The application shall be accompanied by an affidavit, on a form provided by the Commission and signed by the applicant, which affirms and attests that the applicant is familiar with the project being registered, the nature and content of the application for registration, the Act and the rules promulgated thereunder, and that the contents of the application are true and correct and conform with those requirements. A second affidavit, to be completed by the designated New Jersey broker of record, shall accompany the application. The broker's affidavit and application for a broker's release shall state that he or she is familiar with the registration and its contents or has physically inspected the property, or both, that he or she is familiar with the Act and the rules promulgated thereunder, and with the New Jersey Real Estate License Act, and that he or she is not aware of any information that would lead him or her to believe that the information in the registration application does not provide full and fair disclosure of the offering;

x. A statement by the applicant confirming that all monies paid by New Jersey residents to the applicant or his agents prior to closing shall be held in an escrow account pursuant to N.J.S.A. 45:15-16.57(e), or be guaranteed by some means acceptable to the Commission. The statement shall specify the name and location of the institution where the escrow account is maintained as well as the name and address of any trustee or escrow agent;

xi. An irrevocable appointment of the Commission to accept, on behalf of the applicant, service of any lawful process in any proceeding arising under the Act against the applicant or his agents;

xii. Copies of the developer's certificate or articles of incorporation, with all amendments thereto, if the applicant is a corporation; copies of all instruments by which the trust is created or declared, if the developer is a trust; copies of the articles of partnership or association and all other organization papers if the applicant is organized under another form. In the event the applicant is not the holder of the legal title to the property being registered, the above documents shall be submitted for both the applicant and the legal title holder;

xiii. Copies of the deed or other instruments establishing title in the developer or other record owner and any escrow agreement required pursuant to this section, and a current title search, title report, title insurance policy, title opinion from an independent attorney, or certificate or binder issued by a licensed title insurance company. The Commission may also require a copy of any agreement which grants the applicant the right to dispose of the timeshare interest on behalf of the title holder;

xiv. In the event there is, or shall be, a blanket encumbrance affecting the property or a portion thereof, a copy of the document creating it and a statement of the consequences to a purchaser of a failure of the person bound to fulfill the obligations under the instrument, and of the manner in which the interest of the purchaser is to be protected in the event of such failure;

xv. Copies of any association documents and instruments creating or affecting the timeshare plan;

xvi. A statement or listing of any pending administrative actions or litigation and pending or issued court orders, administrative orders, judgments or decrees which materially affect the sale or development of the offering or the financial stability of the applicant;

xvii. A statement that the interests in the timeshare plan shall be offered to the public and sold or alienated without regard to age, ancestry, color, creed (religion), disability (including AIDS and HIV infection), atypical hereditary cellular or blood trait, familial status, liability for military service, marital status, domestic partnership status, nationality, national origin, race, sex, and affectional or sexual orientation;

xviii. A statement of the present condition of access to the property and of the existence of any adverse conditions that affect the property, or unusual conditions relating to noise or safety which affect the property that are known to the applicant, or should reasonably be known, or are readily ascertainable;

xix. Copies of all contracts, agreements and acknowledgments which a purchaser or lessee may be required to execute in connection with this offering;

xx. The audited financial statements of the applicant for the immediately preceding fiscal year. The term "financial statements" includes, but is not limited to, the following statements: auditor's report, balance sheet, statement of income, statement of changes in retained earnings, statement of changes in financial position, statement of changes in owner's equity, notes to financial statements and current profit and loss statement. The filing of the audited consolidated financial statements of a parent company of an applicant may be permitted if the parent company is the registrant, applicant, co-registrant or guarantor. In the discretion of the Commission, it may accept or require alternative information evidencing the applicant's ability to complete the promised improvements to the development in lieu of the audited financial statements;

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

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

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

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

(1) The nature of the project;

(2) The individual to whom all correspondence should be directed, with an address; and

(3) The individual to whom annual report notices and forms should be sent, with an address and telephone number;

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

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

(d) Abbreviated registration requirements are as follows:

1. In addition to the required documentation under N.J.S.A. 45:15-16.57(f), to obtain an abbreviated registration, the developer shall provide all of the following:

i. A broker of record affidavit in which the broker states that he or she is familiar with the registration and its contents or has physically inspected the property, or both, that he or she is familiar with the Act and the rules promulgated thereunder and with the Real Estate Brokers and Salesmen Act, and that he or she is not aware of any information that would lead him or her to believe that the information in the abbreviated application does not permit full and fair disclosure of the offering;

ii. A statement confirming that all monies paid by New Jersey residents to the applicant or his agents prior to closing shall be held in an escrow account pursuant to N.J.S.A. 45:15-16.57(e) or be guaranteed by some other means acceptable to the Commission. The statement shall specify the name and location of the institution where the escrow account is maintained as well as the name and address of any trustee or escrow agent;

iii. An irrevocable appointment of the Commission to accept, on behalf of the developer, service of any lawful process in any proceeding arising under the Act against the applicant or his agents;

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

v. Copies of all contracts, agreements and acknowledgements which a purchaser or lessee may be required to execute in connection with the offering. The Commission may require additional or supplemental documentation in order to resolve any discrepancies between local law and the requirements of the Act;

vi. A statement or listing of any pending administrative actions, litigation and pending or issued court orders, administrative orders, judgments or decrees which materially affect the

sale or development of the offering or the financial stability of the applicant; and

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

11:5-9A.5 Amendments to registrations and to public offering statements

(a) The registrant shall file with the Commission amendments to its registration application and/or public offering statement reflecting any material or adverse change(s) in previously supplied information or documents in accordance with N.J.S.A. 45:15-16.60b(1), in order to ensure that the information provided to purchasers is current.

(b) Material change means any significant change, whether beneficial or adverse, in the size or character of the interest being offered or anything having a significant affect on the regular duties or obligations of the registrant, developer or purchaser.

1. Material change includes, but is not limited to:

i. A change of the developer or registrant;

ii. A change of exchange company or association with an additional exchange company;

iii. Any substantial change in the accommodations and/or amenities that are part of the timeshare plan;

iv. An increase or decrease in the number of timeshare interests in the timeshare plan;

v. A change of escrow agent, type of escrow or alternative assurance, or a change in any substantive provisions of the escrow agreement between the registrant and escrow agent;

vi. An increase in assessments of 15 percent or more;

vii. A change in management company or a change to a substantive provision of the management agreement;

viii. The transfer of control of the association to the owners of interests in the timeshare plan by the registrant;

ix. A filing of bankruptcy on the part of the developer, registrant, or management entity;

x. Substantive changes in the procedures for obtaining reservations or access to the accommodations that are part of the timeshare plan;

xi. The refinancing of or the placing of any additional mortgages or blanket encumbrances on the timeshare property or interests subsequent to registration approval; and

xii. Any special assessments.

(c) Adverse changes include any material change to the timeshare plan that substantially reduces benefits or increases costs to purchasers.

1. If the change is determined by the Commission to be both material and adverse to the purchasers of the timeshare plan as a whole, no closing shall occur until the amendment relating to the material and adverse change has been approved by the Commission.

(d) "Material" or "adverse" changes do not include:

1. Correction of any typographical errors that do not affect the rights or obligations of purchasers;

2. Changes in selling prices or advertising materials;

3. Timely completion of promised improvements as represented in a previously approved public offering statement; and

4. With the exception of special assessments, any increase in fees payable by a purchaser of less than 15 percent.

(e) Unless otherwise permitted by the Act, no revised public offering statement shall be given to prospective purchasers without the approval of the Commission.

1. Applications for approval of an amended or corrected public offering statement shall be made by filing a red-lined copy or other submission utilizing a similar method of clearly showing the differences between the current and previously submitted drafts of the proposed revised public offering statement with the Commission and an application update.

(f) The Commission shall process and review requests for amendments to orders of registration and public offering statements in accordance with the standards and procedures established in the Act and this subchapter for the review of applications for registration. Requests for approval of amendments to orders of registration and revisions to public offering state-

ments shall be accompanied by a fee of $ 300.00 as provided in N.J.A.C. 11:5-9A.10.

(g) The developer shall update the public offering statement to reflect any changes to the timeshare plan that are not material or adverse at the time of the filing of next annual report.

11:5-9A.6 Public offering statements

(a) No person shall dispose of any timeshare interest in a registered timeshare plan unless he or she delivers a current public offering statement and affords the purchaser a reasonable opportunity to read the same before the purchaser signs the contract or purchase agreement.

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

(b) The public offering statement shall disclose fully and accurately the characteristics of the timeshare plan offered and shall make known to prospective purchasers all unusual and material circumstances and features affecting the timeshare plan. The public offering statement shall be in clear and concise language and combine simplicity and accuracy in order to fully advise purchasers of their rights, privileges, obligations and restrictions.

1. The public offering statement shall be in a form authorized by the Commission. No change in form shall be made without the consent of the Commission.

2. The Commission may require an applicant to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers.

3. A public offering statement shall not be deemed current unless it contains all amendments approved by the Commission.

4. Applicants and registrants shall report to the Commission any material change, as defined in N.J.A.C. 11:5-9A.5, in the information contained in any proposed or approved public offering statement in accordance with N.J.S.A. 45:15-16.60b(1) and shall simultaneously submit a request for approval of the appropriate amendments.

5. The Commission shall process and review requests for amendments to public offering statements in accordance with the standards and procedures established in N.J.A.C. 11:5-9A.5.

6. The public offering statement shall not be used for any promotional purposes before registration of the project, and thereafter only if used in its entirety.

7. No public offering statement shall indicate, and no person shall represent or imply, that the Commission approves the merits of, or recommends the purchase of, an interest in the properties described in the offering.

8. Prior to distributing a public offering statement as required under the Act 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. The 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.

9. The public offering statement shall contain a statement, printed in 10 point type or larger and conspicuously located, indicating that within seven days after receipt of the public offering statement or execution of the purchase contract, whichever is later, a purchaser may cancel any purchase contract for a timeshare interest from the developer. The statement shall also contain the name and street address to which the purchaser shall mail any notice of cancellation. If by agreement of the parties in the contract, and/or if local law in the jurisdiction where the timeshare interest is located provides for a cancellation period of greater than seven days, then the longer cancellation period shall apply and the public offering statement shall so state.

10. All public offering statements shall contain a glossary defining the key terms in the offering statement and timeshare plan. This glossary shall be located prior to the narrative portion of the offering statement.

11. The following documents, if applicable, shall be contained in the public offering statement or simultaneously provided to the purchaser:

i. The timeshare instrument;

ii. The association articles of incorporation;

iii. The association bylaws;

iv. The association rules;

v. Copies of any leases or contracts, excluding the purchase contract and loan documents, required to be signed by the purchaser;

vi. The actual or estimated operating budget for the timeshare plan containing the information required under N.J.S.A. 45:15-16.59(b)13, and the schedule of purchaser's expenses;

vii. The form of any applicable agreement for the escrow of ad valorum tax escrow payments;

viii. Documents detailing the procedures and methods by which a purchaser's use and access to the accommodations is scheduled; and

ix. For accommodations located in New Jersey, all documentation required to be given to purchasers under the New Jersey Condominium Act, N.J.S.A. 46:8B-1 et seq., and any other laws governing the transfer of interests in real property, including interests in common interest ownership communities in New Jersey.

12. A signed and dated receipt for the public offering statement and required documents shall be maintained by the developer, along with an executed copy of the purchaser contract for a period of seven years. If the documents are delivered in an alternative format as permitted under N.J.S.A. 45:15-16.59(a), a signed receipt evidencing the purchaser's acceptance of the documents in the alternative format, shall also be maintained by the developer.

11:5-9A.7 Exemptions

(a) Any person who believes that an offering may be exempt from the provisions of the Act, or who is contemplating marketing property in New Jersey which he or she believes may be exempt, may apply to the Commission for a letter of exemption. Such application shall be in written affidavit form and shall list the reasons why the offering or proposed offering may be exempt from the Act. Such an application for exemption shall be accompanied by a non-refundable fee of $ 100.00.

1. In the event the Commission shall determine that the offering is exempt from the Act, it shall issue a letter of exemption setting forth the facts upon which the determination is based.

2. In the event the Commission shall determine that the offering is not exempt from the provisions of the Act, it shall deny the request for exemption in writing, setting forth therein the facts upon which the determination is based, and shall send such writing to the applicant via certified mail, return receipt requested.

3. The Commission shall issue a determination as to whether an offering is or is not exempt within 30 days of its receipt of a complete request for exemption, with the appropriate fee.

4. Any person who is aggrieved by such a determination is entitled to a hearing, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, on the determination, provided said hearing is requested in writing no later than 30 days from the date of the applicant's receipt of notice of such determination.

(b) If the nature of the proposed offering indicates that the applicant would be subject to the registration requirements of the Act, the applicant may apply to the Commission for a limited exemption. If the Commission determines that enforcement of the entire Act and all of these rules is not necessary in the public interest or for the protection of purchasers due to the small amounts involved or the limited character of the offering, it shall issue a limited exemption from registration to the applicant.

1. A limited exemption may be granted by reason of the limited character of the offering where the nature of the property, or of the prospective purchasers to whom the timeshare interest shall be offered, is such that it is likely prospective purchasers shall have expert advice concerning the purchase independent of that supplied by the applicant or his agents. An application for a limited exemption for this reason shall include a copy of any prospectus, offering statement or other such solicitation. A limited exemption granted for this reason shall be confined to the group of offerees specified in the application.

2. An application for a limited exemption shall specify the particular timeshare interests for which exemption is sought. Any limited exemption granted shall be confined to those timeshare interests so specified.

3. An application for a limited exemption shall include a narrative description that clearly describes the nature of the offering and the factual basis and reasons why the limited exemption should be granted.

4. Any limited exemption granted shall remain in effect for a period of two years from the date of issuance indicated in the letter of exemption, unless revoked as described below.

5. Any limited exemption granted shall permit the recipient to offer the timeshare interests covered by the limited exemption to New Jersey residents without obtaining an order of registration. A limited exemption shall not deprive the Commission of jurisdiction to enforce any other provision of the Act or this subchapter, or to revoke the limited exemption after notice and opportunity to be heard.

6. A $ 300.00 non-refundable fee shall be tendered with any application for a limited exemption.

7. All applications for a limited exemption shall comply with the following minimum requirements.

i. The filing of a limited exemption application affidavit-questionnaire;

ii. The filing of proof of title specifying the units or interests to be exempted;

iii. The filing of satisfactory proof of surety and/or financial assurances for any promised improvements or amenities;

iv. The advertisement standards and procedures established by this Act; and

v. The filing of any other documents that the Commission shall deem necessary.

8. No limited exemption granted hereunder shall be effective until a letter of limited exemption is issued by the Commission to the applicant for the exemption.

9. Any material change in the information reflected on the application for a limited exemption or on any documentation submitted in support of such application, shall immediately void any exemption issued based upon such application.

(c) Any offering under this subsection may only be made to those persons who are current bona fide owners of an interest in a timeshare plan currently registered under the Act or previously registered under the Act, or under N.J.S.A. 45:15-16.27 et seq. or the Planned Real Estate Development Full Disclosure Act, N.J.S.A. 45:22A-21 et seq., by the same developer making the offer. A developer of a timeshare plan that either is or was so registered may offer and dispose of an interest in another timeshare plan created by that developer that is located outside of this State and not registered under the Act to a person in this State who is a current owner of an interest in the currently or previously registered timeshare plan provided that:

1. The developer files a notice with the Commission identifying the timeshare plan that it intends to offer;

2. The developer certifies that all purchasers shall be provided with all disclosure documentation required by law to be provided in the jurisdiction in which the timeshare plan is located;

3. The developer certifies that New Jersey purchasers shall be provided with a right to rescind their purchase within seven days after the purchase contract is signed and all documents required under this Act and local and municipal law are delivered, whichever is later. If local or municipal law grants a longer rescission period, then the longer period would apply;

4. The developer submits a fee of $ 300.00 per notice filed in accordance with (c)1 above, and

5. If the offer is made to owners of interests in a previously registered timeshare plan, the registration of that plan was terminated in good standing as provided in N.J.S.A. 45:15-16.60c, 45:15-16.40c or 45:22A-31, as applicable.

11:5-9A.8 Advertising and sales promotions with respect to the sale and marketing of registered timeshare plans

(a) Advertisements that refer to the purchase price of a timeshare interest shall state the full purchase price and shall disclose any known or estimated additional assessments or costs to the purchaser.

1. No advertisement shall refer to a price increase unless the amount and date of the increase are indicated.

(b) No advertisement shall refer to any common element or facility that does not presently exist unless that fact is prominently stated in the advertisement, accompanied by the proposed date of completion, which shall also appear prominently in the advertisement.

(c) No advertisement shall contain photographs, sketches or artist's conceptions unless the fact that these are conceptions is stated immediately adjacent to them in the advertisement.

(d) Unless otherwise noted in the contract of sale, any model unit that is used as part of a promotional plan shall be in substantial conformity with the units that have been or are subsequently constructed.

(e) The owners of timeshare plans that are not registered with the Commission, nor wholly or partially exempt from the Act, shall not make or cause to be made an offer or disposition of any timeshare interest in such a plan to a person or resident within this State regardless of whether the offer or disposition originates within or outside of this State.

1. When advertisements for such properties or interests are placed in any media which is distributed in or broadcast into this State, a disclaimer shall be included indicating that the properties or interests are not registered with the New Jersey Real Estate Commission and that the advertisement is not an offer to New Jersey residents.

(f) Any advertisement, including those which contain offers of reimbursement of travel expenses and/or offers of premiums or other inducements, shall also comply with the provisions of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

(g) 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.

11:5-9A.9 Inspection of timeshare offerings

(a) As provided in N.J.S.A. 45:15-16.84, the Commission, at its discretion, may make on-site inspections of any timeshare

plan which is the subject of an application for registration, either before an order of registration has been issued or thereafter. The Commission may in its discretion conduct subsequent on-site inspections.

(b) The costs of inspections shall be paid by the applicant who shall provide a deposit when requested by the Commission. After the inspection, the Commission shall provide the applicant/registrant with a statement of costs incurred and a refund of any portion of the deposit not expended or a request for additional funds if required.

11:5-9A.10 Fees

(a) All applicants for registration shall pay application fees as prescribed in N.J.S.A. 48:15-16.64 and in (e) below.

(b) Any request for approval of a material change in, or an amendment to, an application for registration on the basis of which an order of registration has been issued and/or an order of registration and/or a public offering statement shall be accompanied by a fee of $ 300.00. No fee shall be charged for amendments to applications or proposed public offering statements made prior to the issuance of an order of registration.

1. If applications are made simultaneously for approval of a material change and/or an amendment to an order of registration and/or an amendment to a previously approved public offering statement, only one fee shall be payable.

2. If applications are made for approval of multiple material changes, and/or multiple amendments to an order of registration, and/or multiple amendments to a public offering statement simultaneously, only one fee shall be payable.

(c) In accordance with the provisions of N.J.A.C. 15:3, the Commission shall maintain a copy of every application for registration of a timeshare plan that is currently registered together with all amendments thereto and shall make them reasonably available for public inspection during ordinary business hours at the Commission's office.

1. The Commission shall furnish to the public, upon request, a copy of the statement of record of any registered subdivision at a cost in accordance with the copying fees set forth in N.J.S.A. 47:1A-5(b).

(d) All fees paid are non-refundable.

(e) Fees charged pursuant to the Act are listed in the table below:

Description	Fee
Comprehensive registration	$ 1,000 plus $ 50.00 per timeshare interest, up to a maximum of $ 7,500
Preliminary registration	$ 3,000 if filed separately
Concurrent preliminary registration	$ 500.00 in addition to comprehensive or abbreviated registration fee
Abbreviated registration	$ 1,000 plus $ 50.00 per timeshare interest, up to a maximum of $ 7,500
Amendments to registration	$ 300.00
Exemption to market to current owners	$ 300.00
Limited exemption	$ 300.00
Statutory exemption	$ 100.00

(f) The fee for a consolidation filing shall be the same as for a comprehensive or abbreviated registration as set forth in (e) above.

SUBCHAPTER 10. RULEMAKING AND PETITIONS FOR RULEMAKING

11:5-10.1 Rulemaking—scope

Unless otherwise specified in this subchapter, the procedures governing the promulgation of administrative rules by the New Jersey Real Estate Commission pursuant to the authority granted in N.J.S.A. 45:15-6, 45:15-10.14, 45:15-16.49, 45:15-17(t), 45:15-17.4 and 45:15-42 shall be those established in the Administrative Procedure Act, P.L. 1968, c.410 (N.J.S.A. 52:14B-1 et seq.) and the Rules for Agency Rulemaking, N.J.A.C. 1:30.

New Rule, R.2003 d.440, effective November 3, 2003.
See: 34 New Jersey Register 4043(a), 35 New Jersey Register 5109(a).
Section was "Petitions for rulemaking—scope" was recodified to N.J.A.C. 11:5-10.5.

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

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

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

1. Notice to the news media maintaining a press office to cover the New Jersey State House complex;

2. Notice posted on the bulletin board of the office of the New Jersey Real Estate Commission;

3. Notice posted on the website of the New Jersey Real Estate Commission at http://www.naic.org/nj/realcom.htm; and

4. Notice mailed to all persons who have submitted written or e-mail requests to the Commission for advance notice of its rulemaking proposals.

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

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

New Rule, R.2003 d.440, effective November 3, 2003.
See: 34 New Jersey Register 4043(a), 35 New Jersey Register 5109(a).
Former N.J.A.C. 11:5-10.2, Procedure for the submission of petitions for rulemaking, was recodified to N.J.A.C. 11:5-10.6.

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

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

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

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

1. Whether comments received indicated a previously unrecognized impact on regulated entities or persons; or

2. Whether comments received raise unanticipated issues related to the notice of proposal.

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

New Rule, R.2003 d.440, effective November 3, 2003.
See: 34 New Jersey Register 4043(a), 35 New Jersey Register 5109(a).
Section was "Procedure for the consideration and disposition of rulemaking petitions", was recodified to N.J.A.C. 11:5-10.7.

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

(a) The Commission may hold a public hearing to gather information concerning any proposed rule, amendment, or repeal.

(b) The Commission shall publish a notice of the place, date and time of the hearing at least 15 business days before the date of the hearing.

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

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

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

i. The person's name, address, telephone number, agency or association (if applicable);

ii. The citation and title of the proposed rule and the date the notice of proposal was published in the New Jersey Register; and

iii. The reasons a public hearing regarding the notice of proposal is considered necessary pursuant to (e) below.

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

Amended by R.2003 d.440, effective November 3, 2003.
See: 34 New Jersey Register 4043(a), 35 New Jersey Register 5109(a).
Added (c) through (e).

11:5-10.5 Petitions for rulemaking—scope

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

Recodified from N.J.A.C. 11:5-10.1 and amended by R.2003 d.440, effective November 3, 2003.
See: 34 New Jersey Register 4043(a), 35 New Jersey Register 5109(a).
Rewrote the section.

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

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

1. The full name and address of the petitioner;

2. The substance or nature of the rulemaking action which is requested;

3. The reasons for the request;

4. The petitioner's interest in the request, including, without limitation, any relevant organizational affiliation or economic interest; and

5. References to the Commission's authority to take the requested action.

(b) A petitioner shall submit a petition to the following address:

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

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

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

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

Recodified from N.J.A.C. 11:5-10.2 and amended by R.2003 d.440, effective November 3, 2003.
See: 34 New Jersey Register 4043(a), 35 New Jersey Register 5109(a).
Rewrote the section.

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

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

1. The name of the petitioner;

2. The substance or nature of the rulemaking action which is requested;

3. The problem or purpose which is the subject of the request; and

4. The date that the petition was received.

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

1. The name of the petitioner;

2. The New Jersey Register citation for the notice of petition, if that notice appeared in a previous Register;

3. Certification by the Commission that the petition was duly considered pursuant to law;

4. The nature or substance of the Commission's action upon the petition; and

5. A brief statement of reasons for the Commission's action.

(c) Commission action on a petition shall either:

1. Deny the petition, and give a written statement of the Commission's reasons for such denial;

2. Grant the petition and file a notice of proposed rule or a notice of preproposal with the Office of Administrative Law within 90 days of granting the petition; or

3. Refer the matter for further deliberations, the nature of which shall be specified to the petitioner and in the notice of action and which deliberations shall be concluded within 90 days of referring the matter for further deliberations. Upon conclusion of such further deliberations, the Commission shall either deny the petition and provide a written statement of its reasons for such denial or grant the petition and initiate a rulemaking proceeding within 90 days or such other time period as may be provided for in N.J.A.C. 1:30-4. The Commission shall mail the results of these further deliberations to the petitioner and submit the results to the Office of Administrative Law for publication in the New Jersey Register.

Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (a), changed N.J.A.C. reference.
Recodified from N.J.A.C. 11:5-10.3 and amended by R.2003 d.440, effective November 3, 2003.
See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).
Rewrote the section.
Amended by R.2009 d.287, effective September 21, 2009.
See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).
In (c)3, inserted "or such other time period as may be provided for in N.J.A.C. 1:30-4" and inserted the last sentence.

SUBCHAPTER 11. PROCEDURES ON DISCIPLINARY ACTIONS, CONTESTED APPLICATIONS, DECLARATORY RULING REQUESTS

11:5-11.1 Pleadings enumerated and defined

(a) Pleadings before the Commission shall be orders to show cause, complaints, answers, petitions, and motions, which for purposes of these rules are defined as follows:

1. "Orders to show cause" means orders issued by the Director on behalf of the New Jersey Real Estate Commission compelling the persons to whom the order is directed to appear and show cause before the Commission why certain actions, including but not limited to the imposition of sanctions, should not be taken by the Commission pursuant to the Real Estate Licensing Act, N.J.S.A. 45:15-1 et seq. and the rules promulgated thereunder.

2. "Complaint" means a filing by the Office of the Attorney General of New Jersey alleging violations of one or more of the provisions of N.J.S.A. 45:15-1 et seq. and/or of the Commission's rules.

3. "Answer" means the pleading filed by a licensee or other party against whom an order to show cause or complaint is directed which sets forth the respondent's position with the respect to each factual and legal allegation in the order or complaint and specifies all affirmative defenses raised by the respondent.

4. "Petition" means the pleading filed by an interested person to request a rulemaking action or declaratory ruling by the Commission or the pleading filed by an interested person seeking to intervene in any rulemaking or declaratory ruling proceeding.

5. "Motion" means the application filed incidental to an action before the Commission for the purpose of obtaining a ruling or order directing that some action be taken in favor of the movant.

(b) Documents, affidavits or other evidentiary matter submitted with or attached to a pleading other than a motion shall not be deemed evidentiary. Such materials must be offered into evidence at a hearing and admitted as such in order to be considered as part of the evidentiary record.

11:5-11.2 Answers

(a) Any party against whom an order to show cause or complaint is directed and who desires to contest the same or make any representation to the Commission in connection therewith shall file an answer in writing with the Commission.

(b) The answer shall apprise the Commission fully and completely of the nature of all defenses and shall admit or deny specifically and in detail all material allegations of the order to show cause or complaint.

(c) Matters alleged by way of affirmative defense shall be separately stated and numbered in the answer.

(d) An Answer must be filed within 20 days after service of the Order to Show Cause or complaint unless the deputy attorney general or staff member who represents the complainant consents, or the Commission orders an extension of time to Answer.

(e) Filing of an Answer shall be made by forwarding an original and two copies to the Director of the Commission and a copy

to the deputy attorney general or staff member who is representing the complainant in the matter.

Amended by R.1998 d.497, effective October 5, 1998.
See: 30 New Jersey Register 2333(a), 30 New Jersey Register 3646(a).
In (d), inserted "or staff member" following "attorney general"; and rewrote (e).

11:5-11.3 Adversary hearing determination by the Commission

(a) Promptly after the answer is filed, the Commission will review the pleadings at a Commission meeting and decide whether any material fact or issue of law is contested. If the Commission determines that a matter is contested, a hearing will be scheduled. On its own motion or at the request of either party, the Commission may, in its discretion, transmit the case to the Office of Administrative Law for hearing and initial decision.

(b) If, upon review of the pleadings, the Commission determines that no material facts or issues of law are contested, the Commission shall afford the respondent an opportunity to be heard and to present witnesses and documentary evidence, which presentation shall be limited to the issue of the severity of any sanction or penalty to be imposed. By stipulation or other means, the deputy attorney general or staff member representing the complainant shall present evidence sufficient to establish the factual basis for all alleged violations and may present documentary evidence or witnesses in rebuttal of any mitigation testimony or evidence presented by the respondent.

Amended by R.1998 d.497, effective October 5, 1998.
See: 30 New Jersey Register 2333(a), 30 New Jersey Register 3646(a).
In (b), inserted "or staff member" following "attorney general" in the second sentence.

11:5-11.4 Motions

(a) In all matters heard by the Commission, motions and replies shall be made in the manner and form prescribed by the rules which establish the procedures for motion practice before the Office of Administrative Law, N.J.A.C. 1:1-12. In construing those rules, the terms "Executive Director" and "Commission" are substituted for the terms "Clerk" and "Judge", respectively.

(b) Filing of a motion or reply shall be made by forwarding an original and 15 copies to the Director of the Commission and a copy to all other attorneys and pro se parties, if any, in the matter.

(c) A motion shall be considered by the Commission at a regularly scheduled meeting pursuant to the requirements of N.J.A.C. 1:1-12.

(d) Oral argument on a motion when permitted or directed by the Commission shall be presented to the Commission by the parties or their representatives in person at a Commission meeting; motions will not be heard by telephone conference.

(e) Motions for the reconsideration of sanctions imposed by the Commission must be filed within 30 days of the date upon which notice of the decision imposing sanctions was provided to the movant. Such motions must be accompanied by a recitation of the particular facts and legal basis which purportedly support the application.

Amended by R.1998 d.497, effective October 5, 1998.
See: 30 New Jersey Register 2333(a), 30 New Jersey Register 3646(a).
In (a), changed N.J.A.C. reference.

11:5-11.5 Hearing procedure

The Director may, on behalf of the Commission, issue an Order to Show Cause requiring a licensee or other person to appear before the Commission for a hearing, pursuant to the rules of the Office of Administrative Law, in circumstances where violations of N.J.S.A. 45:15-17d, 17n, 17o and/or 19.1 are alleged to have occurred or where there is danger of imminent harm to the public.

Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
In (a), added an N.J.S.A. reference.
Amended by R.2009 d.287, effective September 21, 2009.
See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).
Section was "Conference hearing procedure". Rewrote the section.

11:5-11.6 Sanctions: failure to answer or appear; default

(a) In all matters heard by the Commission, the imposition of sanctions for the failure to appear and/or to comply with any order of the Commission or the requirements of these procedural rules shall be governed by the procedures established for the imposition of sanctions in matters heard by the Office of Administrative Law at N.J.A.C. 1:1-14.4.

(b) The Commission shall have the discretionary authority to grant extensions of the time to file an answer or appear.

11:5-11.7 Settlements

(a) The parties to a proposed settlement shall present the settlement to the Commission pursuant to the requirements of N.J.A.C. 1:1-19.1.

(b) Such a settlement shall be presented to the Commission during the public session of a Commission meeting. Should a proposed settlement be rejected by the Commission, the proposal shall not be considered or used for any purpose in any subsequent hearing. Any settlement approved by the Commission shall be a public record.

11:5-11.8 Decisions in enforcement actions, motions for reconsideration

(a) All final decisions of the Real Estate Commission on contested and uncontested matters shall be reduced to writing, in

the form of an Order of the Commission, which shall be served upon all parties to the matter either personally or by registered or certified mail sent to the last known business address of all parties. Unless otherwise ordered, all fines imposed by order of the Commission shall be payable within 30 days of the effective date of the order as established by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(b) Motions for reconsideration of final decisions of the Real Estate Commission shall be made within the time frame specified in N.J.A.C. 11:5-11.4. All such motions shall be considered on the papers unless oral argument is requested and that request is granted by the Commission or the Commission directs oral argument on the motion.

Amended by R.1998 d.497, effective October 5, 1998.
See: 30 New Jersey Register 2333(a), 30 New Jersey Register 3646(a).
Added a new last sentence.
Amended by R.2003 d.440, effective November 3, 2003.
See: 34 New Jersey Register 4043(a), 35 New Jersey Register 5109(a).
Designating existing paragraph as (a) and added (b).

11:5-11.9 Applications for temporary suspension

(a) The Commission may on its own motion, and upon the terms and conditions as set forth in N.J.S.A. 45:15-17.1 and as the Commission deems appropriate, enter an order temporarily suspending the license of any licensee upon making a finding that prima facie evidence exists that:

1. The licensee has failed to account for or to pay over any moneys belonging to others that have come into the possession of the licensee, in violation of N.J.S.A. 45:15-17(d); or

2. The licensee has commingled his or her personal money or property with the money or property of others or has failed to maintain and deposit such moneys in a special account, separate and apart from personal or other business accounts, when acting in the capacity of a real estate broker, or escrow agent, or as the temporary custodian of the funds of others, in a real estate transaction, in violation of N.J.S.A. 45:15-17(o).

(b) At least 24 hours prior to ordering a temporary suspension, the Commission shall give notice to the licensee of the application for the order and provide the licensee an opportunity to appear before the Commission to show cause why the license should not be suspended pending a full hearing of the matter. Such notice shall be given in writing or telephonically.

1. Written notice shall be served personally or sent by certified mail to the last known business address of the licensee.

2. Telephonic notice shall be confirmed in a writing sent to the licensee's last known business address as soon as practicable after the delivery of the telephonic notice.

3. The person who personally or telephonically delivers notice of an application for a temporary suspension shall execute a certification confirming that he or she has provided the notice, which certification shall be submitted into the record of the proceeding on the application for the temporary suspension.

(c) At the hearing on the application for the temporary suspension, the Commission shall consider evidence presented by the licensee to explain, disprove or rebut the prima facie evidence upon which the application for the temporary suspension is based. Unless otherwise provided in N.J.S.A. 45:15-17.1, the provisions of N.J.A.C. 1:1-12.6(f) shall apply to proceedings on applications for temporary suspensions.

(d) Prior to entering any order imposing a temporary suspension as provided in (a) above, the Commission shall also make findings that:

1. An adequate good faith effort to provide notice to the licensee was made and that the licensee was afforded an opportunity to be heard. Submission of the certification referred to in (b) above shall be sufficient to establish that an adequate good faith effort was made to provide notice of the proceeding;

2. Based on the evidence presented, there is a substantial likelihood that the charging party will prevail on the merits when the matter is fully argued before the Commission; and

3. Immediate and irreparable harm will probably result before the licensee can be fully heard. Prima facie evidence of a violation of N.J.S.A. 45:15-17(d) or (o) shall be considered sufficient to satisfy this criterion.

(e) All orders imposing temporary suspensions shall advise the suspended licensee of the date upon which the Commission shall hold a full evidentiary hearing on the violations upon which the temporary suspension is based, which date shall be no more than 30 days following the effective date of the temporary suspension. Such a hearing shall be a plenary hearing, conducted in accordance with N.J.A.C. 1:1-14.1 through 14.7.

(f) The temporary suspension shall become effective upon issuance by the Commission, and the licensee and his or her broker shall promptly be notified of its issuance, whereupon the license of the suspended person shall immediately be returned to the Commission. The Commission shall confirm the suspension in a written order which shall be served upon the licensee and his or her broker via personal service or by certified mail, return receipt requested at the licensee's last known business address.

(g) In order to entertain applications for temporary suspensions made during time periods when the Commission is not scheduled to meet, or when a quorum cannot be obtained, the Commission may delegate to three commissioners, at least one

of whom shall be either the President or Vice-President of the Commission and at least one of whom shall be a public member, the authority to temporarily suspend a license as provided in (a) through (f) above. In such circumstances, all references in these rules to the Commission shall be construed as referring to the three commissioners so designated by the Commission.

New Rule, R.1994 d.270, effective June 20, 1994 (operative July 1, 1994).
See: 26 New Jersey Register 737(a), 26 New Jersey Register 1222(a), 26 New Jersey Register 2586(a).

Case Notes

Conviction of crime of theft compelled revocation of real estate salesperson's license. *NJREC v. Belle*, 96 N.J.A.R.2d (REC) 22.

Pending criminal trial for theft justified suspension of real estate salesperson's license. *NJREC v. Reich*, 96 N.J.A.R.2d (REC) 21.

11:5-11.10 Procedures applicable to appeals of initial denials of licensing applications

(a) Initial denials of the following applications may be appealed to the Real Estate Commission through compliance with all of the requirements established in (b) below:

1. License applications;

2. Applications from disabled veterans for education waivers and/or broker experience requirement waivers;

3. Applications for the issuance of education waivers by persons other than disabled veterans;

4. Applications for the issuance of broker experience requirement waivers by broker licensees of other states; and

5. Applications by broker license candidates for the Commission's approval of their experience as a salesperson so as to qualify to challenge the broker license examination.

(b) All appeals to the Real Estate Commission provided for in (a) above shall be filed by the appealing applicant submitting to the Commission within 45 days of the date of the notice of denial an original and two copies of all of the documentation noted below:

1. A covering letter stating the factual and legal basis of the appeal, to which shall be attached a copy of the application and the denial letter which forms the basis of the appeal. The said covering letter shall also state whether the applicant desires to appear and present oral argument and/or testimony when the appeal is considered by the Commission;

2. Where the denial was based upon an applicant's prior criminal history and/or their loss of a professional license, all judgments of conviction on the convictions which form the basis of the denial and a letter from their probation or parole officer, if within one year of making the application they were under such supervision, which letter shall state the extent of the applicant's compliance with the terms and conditions of his or her probationary sentence or parole supervision, and/or a copy of the order or memorandum of settlement evidencing the loss of the professional license;

3. On all applications as described in (b)2 above, a letter from the broker with whom the applicant intends to be licensed, evidencing that person's full knowledge of the factors which formed the basis of the initial denial;

4. Any other relevant documentation which the applicant desires the Commission to consider when hearing the appeal; and

5. Any other documentation which the Commission determines is required in order to allow it to make a fully informed decision on the appeal.

(c) Upon the proper filing of an appeal as described in (b) above, the appeal package shall be reviewed and the applicant advised of the following:

1. The date, time and place at which the appeal will be considered by the Real Estate Commission; or

2. That based upon the content of the appeal documents a determination has been made to approve the application; or

3. The appeal package is deficient in certain respects, which shall be specified to the applicant, with an indication that upon receipt of the missing documentation the appeal will be given further consideration.

(d) All applicants have the opportunity to be represented by counsel when submitting an appeal and/or appearing before the Real Estate Commission and to call witnesses to testify on their behalf at the time of its consideration of their appeal.

(e) Upon the conclusion of a hearing on an appeal, the Commission shall either render a decision or take the matter under advisement and render a decision at a future date. The ruling of the Commission shall be communicated to the applicant in written form promptly upon the decision being rendered.

Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
Rewrote (a).
Amended by R.2011 d.030, effective January 18, 2011.
See: 42 N.J.R. 1991(a), 43 N.J.R. 189(a).
In the introductory paragraph of (a) and of (b), and in (c)1, deleted "full" preceding "Real Estate Commission"; in (a)1, deleted ", with the exception of reinstatement applications submitted beyond the statutory established time limitations upon such reinstatements" following "applications"; and in the introductory paragraph of (b), substituted "two" for "15".

SUBCHAPTER 12. CONTINUING EDUCATION

11:5-12.1 Purpose and scope

(a) The purpose of this subchapter is to implement N.J.S.A. 45:15-16.2a et seq. by establishing continuing education requirements for real estate brokers, broker-salespersons and salespersons as a condition of biennial licensure renewal, and by establishing standards for the approval of continuing education courses, course providers and course instructors.

(b) This subchapter shall apply to all individuals licensed as real estate brokers, and to all broker-salespersons and salespersons licensed in this State, and to all applicants for the approval of continuing education courses or for approval as continuing education course instructors or providers.

11:5-12.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"ARELLO" means the Association of Real Estate License Law Officials, which may be contacted at 334-260-2928 and at mailbox@arello.org.

"Commission" means the New Jersey Real Estate Commission.

"Continuing education coordinator" means the individual designated by an approved continuing education provider as the person responsible for assuring compliance with the provisions of N.J.S.A. 45:15-16.2a et seq., and the rules in this chapter that are applicable to continuing education providers.

"Distance learning" means any educational process based on the geographical separation of instructor and learner (for example, CD-ROM, disk, on-line courses, correspondence courses, webinars or video conferencing).

"Real estate broker" or "broker" means a person, firm or corporation as defined at N.J.S.A. 45:15-3.

"Real estate broker-salesperson" or "broker-salesperson" means a person as defined at N.J.S.A. 45:15-3.

"Real estate salesperson" or "salesperson" means a person as defined at N.J.S.A. 45:15-3.

"Volunteer Advisory Committee" means the committee established pursuant to N.J.S.A. 45:15-16.2a.b(1)(b), which is responsible for recommending continuing education course providers, instructors and courses for approval by the Commission.

11:5-12.3 Continuing education requirements

(a) Unless granted a waiver pursuant to N.J.A.C. 11:5-12.5, commencing with the July 1, 2013 renewal and continuing for every renewal thereafter, in order to qualify for license renewal every individual licensed as a real estate broker and every licensed broker-salesperson or salesperson shall, during the 24-month period prior to that renewal, have completed 12 hours of approved continuing education as set forth in this subchapter, two hours of which shall have been on the topic of ethics, except that:

1. A Commission-licensed real estate instructor or Commission-approved continuing education course instructor shall earn credit for teaching an approved continuing education course offered by an approved provider. Notwithstanding the number of times the instructor teaches an approved course during a two-year license term, the instructor shall earn the number of continuing education credits granted to a licensee who attends and completes that course one time during that license term;

2. A person who successfully completes one or more broker pre-licensure education courses as set forth in N.J.A.C. 11:5-2.1 shall be deemed to have fulfilled the continuing education requirement applicable to the license that such person may seek to renew upon the conclusion of the license term during which the broker pre-licensure course was completed; and

3. A person who is initially licensed as a salesperson in the second year of a biennial license term shall not be required to fulfill any continuing education requirements in order to renew the salesperson's license upon the conclusion of that license term. A person who is initially licensed as a salesperson during the first year of a biennial license term shall complete all applicable continuing education requirements in order to renew the salesperson's license upon the conclusion of that license term.

(b) A licensee for whom a renewal application is timely submitted who completes the continuing education requirements between May 1 and June 30 of the second year in a biennial license term, and a licensee for whom a late renewal application as referenced in N.J.S.A. 45:15-15 is submitted who completes the continuing education requirements between May 1 of the second year of a biennial license term and the conclusion of the late renewal period, shall pay a processing fee of $ 200.00 in order to qualify for the renewal of his or her license. Renewing licensees who complete the continuing education requirements on or before April 30 of the second year of a biennial license term shall not be required to pay this processing fee.

(c) The successful completion of an approved continuing education course shall not be considered for continuing education credit more than once within a two-year license term.

(d) When applying to renew their licenses, licensees shall certify to the Commission, either directly or through their broker, that they have either complied with the continuing education requirement, were not required to do so for one of the reasons set forth in (a) above, or have received a waiver as set forth in N.J.A.C. 11:5-12.5.

Petition for Rulemaking.
See: 47 N.J.R. 2312(c), 2643(b).
Petition for Rulemaking.
See: 48 N.J.R. 88(c).

11:5-12.4 Curricula

(a) The continuing education requirement may be fulfilled by acquiring credits exclusively in the core topic areas listed below in this subsection. Licensees shall acquire at least six of the 12 continuing education credits required for license renewal pursuant to this subchapter in one or more of the following core topic areas:

1. Agency;

2. Disclosure;

3. Legal issues, for example, listing agreements, contracts of sale, leases, attorney review, forms of ownership and deed restrictions;

4. Ethics;

5. Fair housing and the New Jersey Law Against Discrimination;

6. New Jersey real estate brokers and salesmen statute and rules;

7. New Jersey and Federal environmental laws/rules pertinent to the practice of real estate brokerage; and

8. Legal requirements regarding escrow monies and financial recordkeeping.

(b) The remaining number of continuing education credits may be acquired through the acquisition of continuing education credits in excess of the core topic area minimum requirement referenced in (a) above through the completion of elective courses approved in accordance with this subchapter.

(c) All courses in core topics other than ethics shall include instruction on the manner in which ethics relates to the subject matter of the course.

11:5-12.5 Waiver of continuing education requirements

(a) An applicant for license renewal who was unable to fulfill the continuing education requirements imposed by N.J.S.A. 45:15-16.2a and this subchapter may request and be granted a waiver, in whole or part, of the continuing education requirement by the Commission.

(b) An applicant requesting a waiver of the continuing education requirement shall certify that the applicant was unable to fulfill the continuing education due to:

1. An incapacitating illness;

2. Active duty service in the armed forces of the United States for one year or more of the two-year licensure period;

3. Emergency; or

4. Other substantial and unavoidable hardship. Financial hardship, unreasonable delay, and conflicts with business or personal obligations shall not constitute a basis on which the continuing education requirement may be waived pursuant to this section.

(c) An applicant for a waiver of the continuing education requirements shall request the waiver in writing on a form prescribed by the Commission and provide documentation that corroborates the applicant's certification as to the basis upon which the waiver is sought.

(d) With the exception of requests based on an emergency, requests for a waiver shall be filed with the Commission on or before March 15 of the second year of a two-year license term. Requests for a waiver based on an emergency shall be filed within a reasonable time given the circumstances.

(e) The Commission may seek additional information regarding the basis of an applicant's request for a waiver of the continuing education requirement under this section, including, but not limited to, the provision of sworn statements or testimony under oath by the waiver applicant.

(f) With the exception of waivers granted to active duty military personnel, licensees who receive a waiver of any portion of the core course continuing education requirement shall make up the waived core course(s), in addition to all continuing education credits required for the current license term, as a condition of renewing their license for the license term immediately following the license term for which the waiver was issued. (For example, if a licensee receives a waiver of six core credits in the first licensing term, then the licensee must complete those six previously waived core credits and the full 12 continuing education credits, for a total of 18 credits, in the immediately following licensing term in order to be eligible for renewal upon the conclusion of that license term.)

(g) Licensees who receive a waiver of the elective course requirement shall not be required to make up the waived elective course(s).

11:5-12.6 Continuing education providers; standards and application process

(a) An applicant seeking approval from the Commission to become an approved continuing education provider shall submit a completed application on forms provided by the Commission with the required fee. The application shall include the following:

1. A non-refundable application fee of $ 300.00;

2. The business name which the Commission is to record as the official business name of the provider and any trade name or alternate name under which the provider will operate;

3. A description of the type(s) of courses to be provided (in-person or distance learning, including the specific type(s) of distance learning course(s));

4. A designation of an individual, including their phone number and e-mail address, who will serve as the provider's primary contact person with the Commission for matters relating to continuing education and who shall be designated as the provider's New Jersey continuing education coordinator; and

5. If the provider will offer in-person courses, the address(es) and a description of the known location(s) where the course(s) will be offered.

(b) Upon the assignment to them of a New Jersey continuing education provider identification number, the following shall be deemed to be approved providers of real estate continuing education courses without being required to file an application for approval as a continuing education provider or pay the provider approval application fee specified at N.J.A.C. 11:5-12.17:

1. Real estate prelicensure schools licensed by the Commission pursuant to N.J.S.A. 45:15-10.4 and N.J.A.C. 11:5-2.2; and

2. The New Jersey Real Estate Commission.

(c) Public adult education programs and all accredited colleges and universities shall be deemed to be approved providers upon application. Public adult education programs and public accredited colleges and universities shall not be required to pay an application fee.

(d) If an applicant is disapproved, the reasons for disapproval shall be set forth in a written notice provided to the applicant by the Commission as set forth in N.J.A.C. 11:5-12.15.

(e) All approvals of providers that are conferred by the Commission prior to June 30, 2016 shall remain in effect until that date. Providers whose approval is expiring may seek re-approval by complying with all of the requirements set forth in this section, including payment of the non-refundable application fee. Applications for re-approval may be submitted commencing on January 1 of the year in which approval is scheduled to expire. Subsequent to June 30, 2016, approvals shall expire on June 30, 2020 and at four-year intervals thereafter.

11:5-12.7 Continuing education providers; responsibilities

(a) Providers' responsibilities shall include the following:

1. The general supervision of the continuing education courses;

2. Ensuring the offered course and instructor have been approved by the Commission;

3. Ensuring that the instructor is knowledgeable in the subject matter of each course offered by the provider that is taught by that instructor;

4. Securing, maintaining, and reporting upon evaluations of courses and instructors as set forth in N.J.A.C. 11:5-12.8(h) and (i);

5. All recordkeeping and supplying of information to the Commission or its designee in accordance with the provisions of this subchapter; and

6. Ensuring that all course offerings comply with the requirements imposed by this subchapter (for example, appropriate facilities).

(b) Providers shall notify the Commission in writing prior to any change in the provider's business name(s), its continuing education coordinator and the contact information for that individual, the provider's business telephone number, or any material change in its qualifications (for example, a change in the provider's location at which classroom-based courses are offered).

(c) Each non-distance learning course shall be conducted at a location and in such facilities as shall be appropriate to properly present the course. The providers of such courses shall ensure that they are conducted at times and in locations that are conducive to learning, free of excessive distractions and segregated from non-course related activity, including any solicitation activity directed to attendees of the course. The facilities at which such courses are offered shall comply with all local, state and Federal laws and regulations.

(d) Providers shall be responsible for verifying attendance at each continuing education course delivered in a classroom or conference room setting, or verifying completion of each continuing education course delivered via distance learning, by the licensee who, based upon information reported by the provider, will receive credit for having completed the course.

1. Providers of non-distance learning continuing education courses shall verify the identity of all individuals attending such courses. Providers may do so by requiring such individuals to present a driver's license or other form of photographic identification and their real estate license pocket card to a representative of the course provider at the location where the course is offered, or through other means that assure that the individual attending the course is the licensee who registered for the course.

(e) Prior to a student's completion of the process of registering for a continuing education course and a provider's acceptance of any fee related to such registration, the course provider shall provide prospective students with a notice which specifies the number of credits for which the course is approved and whether the course is on a core or elective topic. The notice shall also include information about course fees, refund policies, course subject matter and learning objectives, procedures and requirements for satisfactory course completion.

(f) Continuing education course providers shall enable representatives of the Commission to attend an in-person course or review a distance learning course in the form it is offered at no cost to the Commission.

11:5-12.8 Continuing education providers; reporting and recordkeeping requirements

(a) Providers shall provide to licensees who successfully complete an approved course a certificate of completion signed or affirmed by the provider, which shall include the licensee's name, the course name, date of completion, New Jersey continuing education course number, number of credits earned for the course and the provider's New Jersey continuing education provider identification number.

(b) For a period of six years, providers shall maintain and be capable of producing for inspection by a Commission representative the course and instructor evaluations referenced in (h) and (i) below and the information on the satisfactory completion of continuing education courses by licensees set forth in (d) below. In addition, providers shall maintain and be capable of producing for inspection copies of all course-specific written material provided to students who attend a course. Presuming there is no change in such written material, only one set of copies need be maintained, regardless of the number of times the provider offers the course.

(c) Providers shall use recordkeeping systems that are capable of producing written reports on attendance at approved continuing education courses which include all of the information set forth in (a) above.

(d) Providers shall electronically submit data to the Commission or its designee on a weekly basis identifying those licensees who have completed continuing education courses offered by the provider during the preceding reporting period and shall include, at a minimum, the following information in each record of the completion of a continuing education course by a licensee:

1. The licensee's name and license reference number;

2. The license term for which the licensee is seeking credit for having completed the continuing education course;

3. The provider's name and identification number; and

4. The continuing education course name, course number, course category (core or elective), completion date and number of credit hours.

(e) The data referenced in (d) above shall be submitted on forms or in a computer readable format provided by the Commission or its designee.

(f) Providers who offer distance learning courses shall utilize systems that assure that students have actually performed all tasks designated to assure student participation and otherwise comply with all applicable provisions of N.J.A.C. 11:5-12.12 and 12.14.

(g) An approved provider shall notify the Commission in the event that it intends to cease offering continuing education courses. Such notice shall be submitted in writing no later than 30 days prior to the provider's cessation of operations as a continuing education course provider and shall specify that the records required by this section will be maintained by the provider for the six-year period referenced in (b) above, and the location at which those records will be maintained.

(h) Providers shall request all students who complete the continuing education courses they provide to submit evaluations of the course(s) attended by the student and, for all courses except distance learning or correspondence courses that are not taught by an instructor, of the instructor of the course. All students who supply such evaluations shall remain anonymous. The evaluations shall provide for the students to indicate their favorable, neutral or negative assessments of the performance factors referenced in (h)4 and 5 below.

1. Providers of non-distance learning courses may request that students manually complete such evaluations during the

concluding minutes of the course or electronically subsequent to the completion of the course.

2. Providers of distance learning courses shall request that students complete such evaluations electronically upon completing the course.

3. All evaluations shall specify the name and identification number of the provider and the name and identification number of the instructor and course being evaluated.

4. All evaluations of instructors shall include:

i. A question on the quality of the instructor's presentation of the material;

ii. A question on the level of knowledge of the subject matter of the course displayed by the instructor; and

iii. An opportunity for the licensee to comment upon the instructor's performance.

5. All evaluations of courses shall include:

i. A question on the quality of the materials and the content of the course;

ii. A question on the quality of the manner in which the information in the course is organized and presented; and

iii. An opportunity for the licensee to comment upon the course.

(i) Within 30 days after offering a course, providers shall report to the Commission's Education Bureau instances where more than 50 percent of the evaluations received on a course or instructor indicate negative assessments on one or more of the performance factors to be evaluated as referenced in (h)4 and 5 above for instructors and courses, respectively.

11:5-12.9 Continuing education providers; advertising

(a) Any advertisement or promotional material used by a provider shall include the provider's official name or trade or alternate name on file with the Commission.

(b) No advertisement shall contain false, misleading or deceptive claims or misrepresentations. In all advertisements which make express or implied claims that are likely to be misleading in the absence of certain qualifying information, such qualifying information shall be disclosed in the advertisement in a clear and conspicuous manner.

11:5-12.10 Continuing education instructors; standards and application process

(a) An applicant seeking approval from the Commission to become an approved continuing education instructor shall submit a completed application on forms provided by the Commission with the required fee. An application for approval as a continuing education instructor shall include:

1. A non-refundable application fee of $ 150.00;

2. An indication of the core and/or elective topics the applicant considers him or herself qualified to teach;

3. A resume and other material evidencing the applicant's qualifications for approval as an instructor in accordance with one or more of the criteria set forth in (d) below; and

4. Such additional information as the applicant may wish to provide in support of their application, for example, letters of professional reference.

(b) Real estate instructors licensed pursuant to N.J.S.A. 45:15-10.5 and N.J.A.C. 11:5-2.2 shall, upon the assignment to them of a continuing education instructor identification number, be deemed approved as continuing education instructors in core topics as defined in this subchapter.

(c) ARELLO-approved instructors of ARELLO-approved courses in elective topics shall, upon the assignment to them of a continuing education instructor identification number, be deemed approved as continuing education instructors in such courses.

(d) An individual applying to become an approved continuing education instructor shall meet at least one of the following criteria:

1. A college or university professor in real estate, finance, business, economics or a related field;

2. A specialist with a college degree or experience teaching one or more subjects in the topic(s) noted in their application for approval as an instructor;

3. Possess at least three years of experience in a profession, trade or technical occupation in the real estate field related to the subject matter of proposed instruction;

4. A real estate instructor licensed or otherwise authorized by the agency with regulatory authority over real estate licensees in another jurisdiction who can show subject matter expertise;

5. A member in good standing of the State Bar of New Jersey who is engaged in the field of real estate related law; or

6. Persons who otherwise evidence their teaching qualifications by education or experience or a combination of the two.

(e) If an applicant is disapproved, the reasons for disapproval shall be set forth in a written notice provided to the applicant by the Commission as set forth in N.J.A.C. 11:5-12.15.

(f) An approved instructor shall promptly notify the Commission in the event of a material change in his or her qualifications for continuing in the status of an approved instructor (for example, disbarment as an attorney).

(g) All approvals of instructors conferred by the Commission prior to June 30, 2016 shall remain in effect until that date. Instructors whose approval is expiring may seek re-approval by complying with all of the requirements set forth in N.J.A.C. 11:5-12.10, including payment of the non-refundable application fee. Applications for re-approval may be submitted commencing on January 1 of the year in which approval is scheduled to expire. Subsequent to June 30, 2016, approvals shall expire on June 30, 2020 and at four-year intervals thereafter.

11:5-12.11 Continuing education courses; application process

(a) Except as set forth in (b) below, all continuing education courses shall require approval by the Commission. An applicant seeking approval of a course by the Commission shall submit a complete application on a form provided by the Commission with the required fee. An application for approval of a continuing education course shall include:

1. A non-refundable application fee of $ 200.00;

2. The name, address and telephone number of the applicant;

3. The title of the course to be offered;

4. The number of hours required to complete the course, which shall be expressed in increments of entire hours;

5. A detailed outline of the subject matter of the course;

6. A description of the materials to be distributed to the participants; and

7. With respect to distance learning courses, such other information as is referenced in N.J.A.C. 11:5-12.14.

(b) All distance learning courses certified by the ARELLO that are of a duration of at least one hour and that provide instruction on one of the elective topic areas listed in N.J.A.C. 11:5-12.13 shall, upon payment of the required fee, submission of an application as set forth in (a) above, and approval of their content by the Voluntary Advisory Committee, be approved by the Commission. All distance learning courses certified by the ARELLO shall be deemed to have fulfilled the criteria applicable to such courses set forth in N.J.A.C. 11:5-12.14(b)1, 3, 4 and 7.

(c) If an application for course approval is denied, written notice of such a denial shall be provided to the applicant, which notice shall include a statement of reasons for the denial in accordance with N.J.A.C. 11:5-12.15.

(d) All approvals of continuing education courses shall expire on December 31 of the fifth year following the year in which the course was approved by the Commission. Applications for re-approval of a course shall comply with all requirements set forth in (a) above.

11:5-12.12 Continuing education courses; standards and requirements

(a) All courses shall be instructional and contribute to the professional competence of individuals engaged in the practice of real estate brokerage.

(b) In order to qualify for approval, courses may but are not required to compel a licensee to pass a comprehensive examination testing the licensee's knowledge of the entire course content as a condition of the receipt of credit for the completion of the continuing education course.

(c) Approved continuing education courses may be offered in a traditional classroom setting or as distance learning courses.

(d) The following shall not qualify for approval as a continuing education course:

1. Real estate salesperson prelicensure courses offered pursuant to N.J.S.A. 45:15-10.1 and N.J.A.C. 11:5-2.1;

2. General education or review courses offered to prepare a student to take a real estate broker's or salesperson's examination;

3. Sales meetings;

4. Motivational classes or seminars; and

5. Offerings in mechanical office and business skills, such as typing, computer training, instructional navigation of the world wide web and internet, instructional use of generic computer software, speed reading, memory improvement, report writing, salesmanship and sales psychology.

(e) To qualify for approval, a continuing education course shall have a duration of at least one hour and be designed to confer credits in whole credit increments. All courses shall consist of no less than 50 minutes of actual instruction for each hour of the course's duration, with no more than 10 minutes of each hour

utilized for attendance, the completion of or an explanation of the anonymous evaluations required pursuant to N.J.A.C. 11:5-12.8(h) and (i), and other administrative work.

(f) Material revisions in course content cannot be made without prior approval by the Commission, except that changes in course content made solely for the purpose of updating a course to reflect recent developments such as the enactment of new or amended laws or rules do not require prior approval. Any such non-approved changes shall be disclosed in any application for re-approval of the course submitted immediately subsequent to the making of such changes.

11:5-12.13 Continuing education courses; elective courses

(a) The following are approved topic areas for elective continuing education courses:

1. Commercial real estate;

2. Property management;

3. Seasonal rentals;

4. Requirements of and transactions subject to the Real Estate Sales Full Disclosure Act and the New Jersey Real Estate Timeshare Act;

5. Financing;

6. Land use;

7. Real estate valuation;

8. Foreclosures and short-sale transactions; and

9. Specific aspects of residential real estate transactions.

(b) Continuing education courses offered in the elective topics set forth in (a) above shall be deemed approved by the Commission upon application if they are:

1. Offered by a public adult education program or an accredited college or university that has obtained from the Commission a New Jersey real estate continuing education provider identification number;

2. Courses that are offered by providers who have obtained a New Jersey real estate continuing education provider identification number and that are approved as pre-licensure or continuing education courses in this State in professions related to real estate brokerage, for example, courses approved for prelicensure or continuing education under the New Jersey Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 et seq. or the Real Estate Appraisers Act, N.J.S.A. 45:14F-1 et seq.; or

3. Courses for which continuing education credit is conferred for their completion upon real estate licensees by another state, provided that:

i. The course is approved as a continuing education course by the agency exercising regulatory authority over the real estate licensees of the other state;

ii. The course is instructional and contributes to the enhancement of the integrity and/or professional competence of the attending real estate licensees; and

iii. The course provider obtains a New Jersey course provider identification number and provides the Commission or its designee with satisfactory evidence of a licensee's participation in and completion of such course in accordance with N.J.A.C. 11:5-12.8.

(c) The Commission shall confer credit for the satisfactory completion of a continuing education course offered by an approved provider on a topic deemed of a timely nature which has not previously been approved by the Commission provided that:

1. The course is submitted for approval no later than March 1 of the second year in a biennial license term for real estate licensees and the course is subsequently approved prior to April 30 of that year;

2. The course provider delivers a written statement to licensees prior to their attendance at the course notifying them that the course is pending approval by the Real Estate Commission and, if the course is advertised prior to the time of offering, all advertisements state in a prominent manner that the course is pending approval by the Real Estate Commission; and

3. The course provider provides the Commission or its designee with satisfactory evidence of a licensee's attendance at and completion of such course in accordance with N.J.A.C. 11:5-12.8 and complies with all other requirements applicable to the providers of continuing education courses as set forth in this subchapter.

11:5-12.14 Distance learning continuing education courses; additional requirements

(a) The Commission may approve distance learning continuing education courses that include periodic progress assessments and the achievement of a satisfactory level of performance by the licensee on such progress assessments as a condition to continuing to a succeeding segment of the course.

(b) Except as limited in (b)1 below, distance learning courses shall meet the following criteria:

1. The course is designed to promote students' active participation in the instructional process by utilizing techniques

that provide for substantial student interaction with the instructor, other students or a computer program. However, upon the recommendation of the Voluntary Advisory Committee, the Commission may approve a correspondence course or a course offered through a video modality that does not provide for such substantial interaction but fulfills all other requirements for course approval as set forth in this section and in N.J.A.C. 11:5-12.12 and 12.13;

2. The course, when taken without interruption, consists of no less than one hour of distance learning education, in accordance with N.J.A.C. 11:5-12.12(e);

3. The time required for a student of average ability to complete the course shall be at least equal to the number of course credit hours to be assigned in accordance with N.J.A.C. 11:5-12.12(e), as verified by the results of studies or field tests or other means;

4. Providers of distance learning courses shall, in addition to providing to students the notice containing all of the information referenced in N.J.A.C. 11:5-12.7(e), include in that notice information on how interaction is accomplished in the course and on any special requirements related to computer hardware, software or any other equipment needed to complete the distance learning course;

5. Providers of distance learning courses shall make provisions for handling equipment failures, including hardware or software failures or transmission interruptions, and provide appropriate instructor and/or technical support, as necessary, to enable students to satisfactorily complete the course in the event of such a failure or interruption;

6. Providers of distance learning courses shall use procedures that provide reasonable assurance of student identity and verification that the student receiving the continuing education credit for completing the course is actually the individual who performed all of the work required to complete the course;

7. Distance learning courses shall be equipped with a time-default mechanism for inactivity so that a student is not credited when not actively participating in the program; and

8. The provider of a distance learning course shall obtain, electronically or through other means, a signed and dated statement from each student certifying that he or she personally completed the course.

11:5-12.15 Denials, suspension or revocation of approvals

(a) The Commission may conduct investigations as may be necessary to enforce the provisions of N.J.S.A. 45:15-16.2a et seq. and this subchapter and may deny an application for approval and issue a reprimand to or suspend or revoke the approval of a real estate continuing education provider, instructor, including an instructor otherwise deemed approved pursuant to N.J.A.C. 11:5-12.10, or course, as applicable, if it is determined that:

1. An applicant, an instructor or a provider, individually or through any of the provider's employees, has failed to comply with applicable law or this subchapter;

2. A course submitted for approval or previously approved does not adequately reflect and present current and accurate information;

3. The provider or instructor or applicant for approval has engaged in misrepresentation in advertising or otherwise;

4. The provider or instructor has failed to timely and accurately download data on course completion;

5. The provider or instructor or applicant for approval has included false information in an application or reported false data to the Commission or its designee;

6. The provider or instructor is affiliated with a real estate broker or broker-salesperson licensee that has used or threatened to use a penalty or other form of coercion to compel a licensee to take a continuing education course from the affiliated provider or instructor;

7. A payment to the Commission was dishonored or, if made by credit card, reversed;

8. The provider or instructor has been disciplined by the Commission or any other occupational licensing agency in New Jersey or another jurisdiction;

9. The provider has collected money from licensees for a continuing education course, but refused or failed to provide the promised instruction; or

10. The provider or instructor has provided to a licensee any false or misleading information related to real estate licensing or education matters or to the licensee's education needs or license status.

(b) In the event that a provider or instructor who is also a New Jersey real estate licensee is found to have engaged in any of the conduct set forth in (a) above, the provider or instructor shall also be subject to discipline pursuant to N.J.S.A. 45:15-17 or 45:15-10.11, as applicable.

(c) If an application for approval is denied or disciplinary action is initiated, written notice of the grounds for denial, suspension or revocation of approval shall be issued by the Commission

to the affected party. The applicant or respondent shall thereafter have the opportunity to be heard by the Commission in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

11:5-12.16 Appeals of initial denials of applications for continuing education course, instructor and provider approval and of applications for a waiver of the continuing education requirement

(a) Complete applications for continuing education course, instructor and provider approval shall be reviewed by the Voluntary Advisory Committee. Should the Voluntary Advisory Committee recommend denial of the application, the Executive Director of the Commission shall so notify the applicant in writing, which notification shall include the specific grounds on the basis of which the Voluntary Advisory Committee determined to recommend the denial of the application. Such a notification shall constitute an initial denial of the application and shall advise the applicant of their opportunity to appeal the initial denial to the Real Estate Commission as set forth in this section.

(b) Applications for a waiver of the continuing education requirement shall be initially reviewed by the Commission staff. Should it be determined that an applicant does not qualify for such a waiver, the Executive Director of the Commission shall issue an initial denial in writing so notifying the applicant. The initial denial shall include the specific grounds on the basis of which it was determined that the applicant did not qualify for a waiver and shall advise the applicant of their opportunity to appeal the initial denial to the Real Estate Commission as set forth in this section.

(c) An applicant may appeal an initial denial as referenced in (a) or (b) above to the Commission by submitting an original and two copies of a written submission requesting such an appeal.

1. All appeal submissions shall include a copy of the initial denial of the Executive Director denying the application.

2. Appeal submissions may include any other relevant written material tending to support the appeal.

3. Appeals shall be filed within 30 days of the date of the initial denial issued by the Executive Director. A failure by the applicant to timely appeal an initial denial of an application shall result in the application being deemed withdrawn.

(d) Unless the Commission determines that there is a genuine issue of material fact in dispute, the Commission shall consider all appeals referenced in this section on the papers. Should the Commission determine that a genuine issue of material fact does exist, the applicant shall be notified of the date and place at which an evidentiary hearing, which shall include live testimony and which shall be conducted in accordance with N.J.A.C. 1:1-14, will be held.

(e) Upon the conclusion of a hearing on the papers or with live testimony on an appeal as referenced in this section, the Commission shall issue a written order, which may be in the form of a letter, either affirming the initial denial of the application or granting the application.

11:5-12.17 Fees

(a) The fees for applications related to the requirements imposed by this subchapter are as follows:

1. Application for approval as a continuing education provider - $ 300.00.

2. Application for approval as a continuing education instructor - $ 150.00.

3. Application for approval of a continuing education course - $ 200.00.

4. Fee to process completion of continuing education requirement subsequent to May 1 in the second year of a biennial license term - $ 200.00.

(b) All fees referenced in (a) above shall be payable in the form of a certified or bank check or money order or business account check until such time as an on-line or otherwise automated payment system is established. Upon the implementation of such a system, payment shall be made via credit or debit card or otherwise in accordance with the instructions for the use of such a system posted on the website of the Commission. Personal checks shall not be accepted.

11:5-12.18 Voluntary Advisory Committee

(a) The Voluntary Advisory Committee created pursuant to N.J.S.A. 45:15-16.2a.b(1)(b) shall elect a chairperson and a vice-chairperson from among its members. Any member of the Committee shall be eligible for election to either position.

(b) The Voluntary Advisory Committee shall form committees and subcommittees to review complete applications for the approval of courses in the various core and elective topics set forth in N.J.A.C. 11:5-12.4 and 12.13 and complete applications for approval as a continuing education instructor or provider.

(c) The Voluntary Advisory Committee shall promptly report to the Commission's Executive Director its recommendations to approve or disapprove all of the complete applications it reviews. Each subcommittee of the Voluntary Advisory Committee shall report the results of its reviews of applications to the Voluntary Advisory Committee promptly upon completing such reviews

and shall provide to the Executive Director copies of all recommendations for approval or disapproval contained in such reports. In the event that the Voluntary Advisory Committee fails to recommend approval or disapproval of a continuing education course, instructor or provider within 30 days of the completion of a subcommittee's review of such a complete application, the Commission may take action based upon the recommendation of the subcommittee.

(d) A majority of the appointed members of the Committee shall constitute a quorum and a majority vote by the members taken when a quorum is present shall constitute an action taken by the Committee.

1. The Voluntary Advisory Committee may meet in person or via teleconference, video conference or through the use of similar technologies.

(e) Members of the Voluntary Advisory Committee shall recuse themselves from the consideration of any application for approval to be considered by the Committee where grounds for recusal as set forth in the New Jersey Uniform Code of Ethics are present.

THE NEW JERSEY

REAL ESTATE LICENSE ACT

STATUTE AND RULES

Phil Murphy, Governor

Sheila Oliver, Lt. Governor

Marlene Caride, Commissioner
Department of Banking and Insurance

Aurelio Romero, Executive Director
NJ Real Estate Commission

REVISED 11/2019

NEW JERSEY STATUTES ANNOTATED

NEW JERSEY ADMINISTRATIVE CODE

STATE OF NEW JERSEY

REAL ESTATE COMMISSION MANUAL

FOREWORD

This Reference Manual contains the entire New Jersey Real Estate License Law, N.J.S.A. 45:15-1 et seq., as amended through P.L. 2019 Chapter 266 and J.R. 22 of the Second Annual Session of the New Jersey 218th Legislature, and all rules issued under the statute through the New Jersey Register, Vol. 51, No. 21, November 4, 2019. The text of the statute is an exact duplication of the official text of the law. The text of the rules is an exact duplication of the official text found in Title 11, Chapter 5 of the New Jersey Administrative Code.

Please direct any questions regarding this manual to: New Jersey Real Estate Commission, P.O. Box 328, Trenton, New Jersey 08625-0328.

Please direct any questions regarding the New Jersey Administrative Code and/or New Jersey Register to: Office of Administrative Law, P.O. Box 049, Trenton, New Jersey 08625.

PREFACE

This reference manual is being furnished to real estate licensees. It is being provided so that licensees may have the benefit of a current publication of the New Jersey License Law and the Rules promulgated thereunder.

The Real Estate Commission urges all brokers to make this manual part of their office library, conveniently available to all licensees.

This reference manual project was authorized pursuant to N.J.S.A. 45:15-16.2 as an educational and informational project. The Commission gratefully acknowledges the cooperation of the Commissioner of Banking and Insurance in releasing earnings from the New Jersey Guaranty Fund to enable this project to be accomplished at no cost to New Jersey taxpayers. Thus, all licensees can see tangible evidence of the benefits which accrue to them by their contributions to the Real Estate Guaranty Fund.

The New Jersey Real Estate Commission was created in 1921 by an act of the Legislature, N.J.S.A. 45:15-1 et. seq., entitled "An Act to define, regulate and license real estate brokers and salesmen, to create a State Real Estate Commission and to provide penalties for the violation of the provisions hereof." Five members of the Commission must be real estate brokers, licensed for a period of at least ten years, two members are public members and one member is a representative of an appropriate department of state government. All members of the Commission serve for a term of three years except the government representative who serves at the pleasure of the Governor.

CURRENT COMMISSIONERS – 2019

Linda Stefanik, President, Broker Member, since 2010 (Seaside Park)

Eugenia K. Bonilla, Vice-President, Broker Member, since 2012 (Mount Laurel)

Denise Illes, Department Representative, since 2015 (Trenton)

Christina Banasiak, Broker Member, since 2017 (Manalapan)

Darlene Bandazian, Broker Member, since 2018 (Ramsey)

Jacob Elkes, Public Member, since 2016 (Freehold)

Kathryn Godby Oram, Broker Member, since 2016 (Morristown)

Carlos Lejnieks, Public Member, since 2018 (Newark)

REVISED 11/2019

REAL ESTATE COMMISSION PERSONNEL AND PHONE NUMBERS

General Phone Numbers	
Licensing	**(609) 292-7272**
Administration	**(609) 292-7272**
Fax Number	**(609) 292-0944**
E-mail	**(General) realestate@dobi.nj.gov**
	(Licensing) relic@dobi.nj.gov
Website	**www.dobi.nj.gov**
Executive Director Aurelio Romero	**(609) 292-7272**
Licensing and Education Bureau Gwendolyn T. Cobb, Supervisor	**(609) 292-7272** Ext. 50536
Investigations Bureau Lauren Glantzberg, Supervisor	**(609) 292-7272** Ext. 50145
Bureau of Subdivided Land Sales Control Jaqueline Ferri	**(609) 940-7396**

REVISED 11/2019

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CHAPTER 15.

Phil Murphy, Governor
State of New Jersey

Sheila Oliver, Lt. Governor
State of New Jersey

Marlene Caride, Commissioner
Department of Banking and Insurance

Aurelio Romero, Executive Director
NJ Real Estate Commission

TITLE 45. PROFESSIONS AND OCCUPATIONS

SUBTITLE 1. PROFESSIONS AND OCCUPATIONS SUBJECT TO STATE BOARDS OF REGISTRATION AND EXAMINATION

CHAPTER 15. REAL ESTATE BROKERS, BROKER-SALESPERSONS, AND SALESPERSONS

ARTICLE 1. GENERAL PROVISIONS

45:15-1. License required

No person shall engage either directly or indirectly in the business of a real estate broker, broker-salesperson, or salesperson, temporarily or otherwise, and no person shall advertise or represent himself as being authorized to act as a real estate broker, broker-salesperson, or salesperson, or to engage in any of the activities described in R.S.45:15-3, without being licensed so to do as hereinafter provided.

Amended 1953, c. 229, § 1; 1993, c. 51, § 1; 2009, c. 238, § 1, eff. July 1, 2011; 2018, c. 71, § 1, eff. Jan. 1, 2018.

45:15-1.1. Role of housing referral aide

A person employed in a participant position as a housing referral aide under any program established and funded pursuant to the Comprehensive Employment and Training Act of 1973, Pub.L. 93-203, 29 U.S.C. 801 et seq., while performing his duties in such position, shall not be deemed to be engaged in the business of a real estate broker, broker-salesperson or salesperson under the provisions of chapter 15 of Title 45 of the Revised Statutes.

L. 1978, c. 5, § 1; amended 1993, c. 51, § 2.

45:15-1.2. License required for acceptance of compensation for providing assistance in locating rental housing

Any person who, before a lease has been fully executed or, where no lease is drawn, before possession is taken by the tenant, charges or accepts any fee, commission or compensation in exchange for providing assistance in locating rental housing, including providing written lists or telephone information on purportedly available rental units, without being licensed pursuant to this act shall be a disorderly person and shall be subject to a fine of not less than $200 or to imprisonment for not more than 30 days or both.

The provisions of this section shall not be construed to prohibit a licensed real estate broker, or an owner of rental properties or his agents and employees, from requiring the payment of a deposit to reserve a particular unit or from charging and accepting a fee for processing an application to rent an apartment or for performing a credit check or other investigation upon prospective tenants prior to the execution of a lease or the taking of possession of a rental unit by a prospective tenant.

L. 1993, c. 51, § 41.

45:15-2. "Engaging in business" defined

Any single act, transaction or sale shall constitute engaging in business within the meaning of this article.

45:15-3. Terms defined, license required for bringing action for compensation

A real estate broker, for the purposes of R.S.45:15-1 et seq., is defined to be a person, firm or corporation who, for a fee, commission or other valuable consideration, or by reason of a promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate or solicits for prospective purchasers or assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate or negotiates, or offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon or transfer of any real estate for others, or any person who, for pecuniary gain or expectation of pecuniary gain conducts a public or private competitive sale of lands or any interest in lands. In the sale of lots pursuant to the provisions of R.S.45:15-1 et seq., the term "real estate broker" shall also include any person, partnership, association or corporation employed or contracted by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate. A real estate broker shall also include any person, firm, or corporation who supervises a real estate referral company.

A real estate salesperson, for the purposes of R.S.45:15-1 et seq., is defined to be any natural person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed or contracted by and operates under the supervision of a licensed real estate broker to sell or offer to sell, buy or offer to buy or negotiate the purchase, sale or exchange of real estate, or offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate, or to lease or rent, or offer to lease or rent any real estate for others, or to collect rents for the use of real estate, or to solicit for prospective purchasers or lessees of real estate, or who is employed or contracted by a licensed real estate broker to sell or offer to sell lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell real estate, or any parts thereof, in lots or other parcels, or in the case of a salesperson licensed with a real estate referral company refers prospective consumers of real estate brokerage services to a particular broker. For the purposes of R.S.45:15-1 et seq., the definition of real estate salesperson

shall include a salesperson licensed with a real estate referral company unless otherwise indicated.

A real estate broker-salesperson, for the purposes of R.S.45:15-1 et seq., is defined to be any natural person who is qualified to be licensed as a real estate broker but who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed or contracted by and operates under the supervision of a licensed real estate broker to perform the functions of a real estate salesperson as defined herein.

A real estate salesperson licensed with a real estate referral company, for the purposes of R.S.45:15-1 et seq., is defined to be any natural person employed or contracted by and operating under the supervision of a licensed real estate broker through a real estate referral company whose real estate brokerage-related activities are limited to referring prospects for the sale, purchase, exchange, leasing or rental of real estate or an interest therein. Salespersons licensed with a real estate referral company shall only refer such prospects to the real estate broker who supervises the real estate referral company through whom they are licensed and shall only accept compensation for their activity from that broker. A salesperson licensed with a real estate referral company shall not be employed or contracted by or licensed with more than one real estate broker or real estate referral company at any given time. No salesperson licensed with a real estate referral company may simultaneously be licensed as a real estate broker or broker-salesperson and no salesperson licensed with a real estate referral company may engage in the business of a real estate broker or broker-salesperson to an extent beyond that authorized by their status as a licensed salesperson.

A real estate referral company, for the purposes of R.S.45:15-1 et seq., is defined to be a business entity established and supervised by a licensed real estate broker, separate and apart from any business entity maintained by the licensed real estate broker to conduct real estate brokerage-related activities other than the referral of prospective consumers of real estate brokerage services to that broker, for the purpose of employing or contracting licensed salespersons who strictly engage in the referral of prospects for the sale, purchase, exchange, leasing or rental of real estate or an interest therein solely on behalf of the supervising real estate broker.

No person, firm, partnership, association or corporation shall bring or maintain any action in the courts of this State for the collection of compensation for the performance of any of the acts mentioned in R.S.45:15-1 et seq. without alleging and proving that he was a duly licensed real estate broker at the time the alleged cause of action arose.

No person claiming to be entitled to compensation as a salesperson or broker-salesperson for the performance of any of the acts mentioned in R.S.45:15-1 et seq. shall bring or maintain any action in the courts of this State for the collection of compensation against any person, firm, partnership or corporation other than the licensed broker with whom the salesperson or broker-salesperson was employed or contracted at the time the alleged cause of action arose and no action shall be brought or maintained without the claimant alleging and proving that he was a duly licensed real estate salesperson or broker-salesperson at the time the alleged cause of action arose.

Amended 1953, c. 229, § 2; 1993, c. 51, § 3; 2009, c. 238, § 2, eff. July 1, 2011; 2018, c. 71, § 2, eff. Jan. 1, 2018.

45:15-3.1. Payment of referral fee, commission to person licensed in another jurisdiction

A duly licensed real estate broker of this State may pay a referral fee or referral commission to a person not licensed if the person is a licensed real estate broker of another jurisdiction in which the licensed broker maintains a bona fide office. A licensed real estate broker of another jurisdiction may make a referral, receive a referral fee or referral commission, and bring or maintain an action in the courts of this State against a duly licensed real estate broker of this State for the collection of the fee or commission.

For the purposes of this section, "referral" means the introduction, assisting, or directing of a person by one broker to another broker for real estate brokerage services, aid, or information; "referral fee" or "referral commission" means the compensation paid or received for the referral.

L. 1979, c. 322, § 1; amended 1993, c. 51, § 4.

45:15-3.2. Written agreement

a. No broker-salesperson or salesperson shall commence business activity for a broker and no broker shall authorize a broker-salesperson or salesperson to act on the broker's behalf until a written agreement, as provided in this subsection, has been signed by the broker and broker-salesperson or salesperson. Prior to an individual's commencement of business activity as a broker-salesperson or salesperson under the authority of a broker, the broker and broker-salesperson or salesperson shall both sign a written agreement which recites the terms under which the services of the broker-salesperson or salesperson have been retained by the broker.

b. Notwithstanding any provision of R.S.45:15-1 et seq. or any other law, rule, or regulation to the contrary, a business affiliation between a broker and a broker-salesperson or salesperson may be that of an employment relationship or the provision of services by an independent contractor. The nature of the business affiliation shall be defined in the written agreement required pursuant to subsection a. of this section.

L. 2018, c. 71, § 3, eff. Aug. 10, 2018.

45:15-4. Application of provisions of article limited

The provisions of this article shall not apply to any person, firm, partnership, association or corporation who, as a bona fide owner or lessor, shall perform any of the aforesaid acts with ref-

erence to property owned by him, nor shall they apply to or be construed to include attorneys at law, receivers, trustees in bankruptcy, executors, administrators or persons selling real estate under the order of any court or the terms of a deed of trust, state banks, federal banks, savings banks and trust companies located within the state, or to insurance companies incorporated under the insurance laws of this state.

45:15-5. New Jersey Real Estate Commission continued

The New Jersey Real Estate Commission, hereinafter in this article designated as the "commission," created and established by an act entitled "An act to define, regulate and license real estate brokers and salesmen, to create a State real estate commission and to provide penalties for the violation of the provisions hereof," approved April 5, 1921 (P.L.1921, c. 141, s. 370), as amended by an act approved April 23, 1929 (P.L.1929, c. 168, s. 310), is continued. The commission shall constitute the division of the New Jersey Real Estate Commission in the Department of Insurance. The commission shall consist of eight members, appointed by the Governor pursuant to the provisions of P.L.1971, c. 60 (C. 45:1-2.1 et seq.), each of whom shall have been a resident of this State for a period of at least 10 years. Five members shall have been real estate brokers for a period of at least 10 years; two members shall be public members; and one member shall be a representative of an appropriate department. The department representative shall serve at the pleasure of the Governor. Upon the expiration of the term of office of any other member, his successor shall be appointed by the Governor for a term of three years. A majority of the voting members of the commission shall constitute a quorum thereof. Each member shall hold his office until his successor has qualified. Members to fill vacancies shall be appointed by the Governor for the unexpired term. The Governor may remove any commissioner for cause, upon notice and opportunity to be heard.

Amended 1948, c. 88, § 4; 1977, c. 331, § 1; 1993, c. 51, § 5.

45:15-6. Commission salaries

The commission shall select from its members a president, and may do all things necessary and convenient for carrying into effect the provisions of this article, and may promulgate necessary rules and regulations pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.) The president shall receive a salary of $15,000.00 per year and each other member of the commission shall receive a salary of $10,000.00 per year, except the department representative who serves without compensation pursuant to section 2 of P.L. 1971, c. 60 (C. 45:1-2.2). No commissioner shall receive any other compensation, either directly or indirectly, for his services.

Amended by L. 1954, c. 193, p. 724, 1; L. 1985, c. 137, 1, eff. April 12, 1985.

45:15-7. Provision, duties of personnel

The Commissioner of Insurance shall provide the commission with such personnel as he shall deem necessary, after consultation with the commission, for the proper discharge of the duties imposed by the provisions of this article. The Commissioner of Insurance shall prescribe the duties of persons thus assigned to the commission, and shall fix their compensation, within the limits of available appropriations therefor. The Commissioner of Insurance shall provide the commission with such office space, furniture and stationery as he shall determine, after consultation with the commission, to be reasonably necessary for carrying out the provisions of this article.

Amended 1948, c. 88, § 5; 1993, c. 51, § 6.

45:15-8. Seal; certified copies of records as evidence; public inspection of records

The commission shall adopt a common seal by which it shall authenticate its proceedings. Copies of all records and papers in the office of the commission, duly certified and authenticated by its seal, shall be received in evidence in all courts with like effect as the original. All records kept in the office of the commission under the authority of this article shall be open to public inspection under regulations prescribed by the commission.

45:15-9. Real estate licenses

a. All persons desiring to become real estate brokers, broker-salespersons, or salespersons shall apply to the commission for a license under the provisions of R.S.45:15-1 et seq. Every applicant for a license as a broker, broker-salesperson, or salesperson shall be of the age of 18 years or over, and in the case of an association or a corporation the directors thereof shall be of the age of 18 years or over. Application for a license, whether as a real estate broker, broker-salesperson, or salesperson, shall be made to the commission upon forms prescribed by it and shall be accompanied by an application fee of $50 which fee shall not be refundable. Every applicant for a license whether as a real estate broker, broker-salesperson, or salesperson shall have the equivalent of a high school education. The issuance of a license to an applicant who is a nonresident of this State shall be deemed to be his irrevocable consent that service of process upon him as a licensee in any action or proceeding may be made upon him by service upon the secretary of the commission or the person in charge of the office of the commission. The applicant shall furnish evidence of good moral character, and in the case of an association, partnership or corporation, the members, officers or directors thereof shall furnish evidence of good moral character. The commission may make such investigation and require such proof as it deems proper and in the public interest as to the honesty, trustworthiness, character and integrity of an applicant. Any applicant for licensure pursuant to this section and any officer, director, partner or owner of a controlling interest of a corporation or partnership filing for licensure pursuant to this section shall submit to the commission the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The commission is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and

the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for the purposes of facilitating determinations concerning licensure eligibility. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commissioner in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed. Every applicant for a license as a broker or broker-salesperson shall have first been the holder of a New Jersey real estate salesperson's license and have been actively engaged on a full-time basis in the real estate brokerage business in this State as a real estate salesperson for three years immediately preceding the date of application, which requirement may be waived by the commission where the applicant has been the holder of a broker's license in another state and actively engaged in the real estate brokerage business for at least three years immediately preceding the date of his application, meets the educational requirements and qualifies by examination. No license as a broker shall be granted to a general partnership or corporation unless at least one of the partners or officers of said general partnership or corporation qualifies as and holds a license as a broker to transact business in the name and on behalf of said general partnership or corporation as its authorized broker and no such authorized broker shall act as a broker on his own individual account unless he is also licensed as a broker in his individual name; the license of said general partnership or corporation shall cease if at least one partner or officer does not hold a license as its authorized broker at all times. A change in the status of the license of an authorized broker to an individual capacity or vice versa shall be effected by application to the commission accompanied by a fee of $50. No license as a broker shall be granted to a limited partnership unless its general partner qualifies as and holds a license as a broker to transact business in the name of and on behalf of the limited partnership. In the event that a corporation is a general partner of a limited partnership, no license as a broker shall be granted to the limited partnership unless the corporation is licensed as a broker and one of the officers of the corporation qualifies as and holds a license as the corporation's authorized broker.

b. An application for licensure as a salesperson licensed with a real estate referral company and for any renewal thereof shall include a certification signed by the licensed real estate broker by whom the applicant is or will be employed or contracted, on a form and in a manner prescribed by the commission, which certification shall confirm that: the broker and the applicant or renewing salesperson licensed with a real estate referral company have reviewed the restrictions imposed by law upon the activities of a salesperson licensed with a real estate referral company; and the applicant or salesperson licensed with a real estate referral company has acknowledged that he is aware that such activity is limited to referring prospective consumers of real estate brokerage services to that broker.

c. In the event that a person who held a broker, broker-salesperson or salesperson license fails to renew that license and then, in the two years immediately following the expiration date of the last license held, seeks to reinstate such license, the commission shall require, as a condition to such reinstatement during that two-year period, that the applicant submit proof of having completed the continuing education requirement applicable to that license type in the preceding license term.

d. In the event that any person to whom a broker's or broker-salesperson's license has been or shall have been issued shall fail to renew such license or obtain a new license for a period of more than two but less than five consecutive years after the expiration of the last license held, prior to issuing another broker or broker-salesperson license to the person, the commission shall require such person to complete the continuing education requirements applicable to salesperson licensees in the preceding license term, to work as a licensed salesperson on a full-time basis for one full year, to pass the broker's license examination, and to successfully complete a 90-hour general broker's prelicensure course at a licensed real estate school, as the commission shall prescribe by regulation. In the event that any person to whom a broker's or broker-salesperson's license has been or shall have been issued fails to maintain or renew the license or obtain a new license for a period of more than five consecutive years after the expiration of the last license held, prior to issuing another broker or broker-salesperson license to the person the commission shall require the person to pass the salesperson's license examination and then to work as a licensed salesperson on a full-time basis for three years, to fulfill all of the educational requirements applicable to first time applicants for a broker or broker-salesperson license and to pass the broker's license examination. The commission may, in its discretion, approve for relicensure the former holder of a broker or broker-salesperson license who has not renewed the license or obtained a new license for two or more consecutive years upon a sufficient showing that the applicant was medically unable to do so. All applicants so approved shall pass the broker's license examination and complete the continuing education requirements applicable to broker licensees in the preceding licensure term prior to being relicensed. This subsection shall not apply to a person reapplying for a broker's or broker-salesperson's license who was licensed as a broker or broker-salesperson and who allowed his license to expire due to subsequent employment in a public agency in this State with responsibility for dealing with matters relating to real estate if the person reapplying does so within one year of termination of that employment.

e. In the event that any person to whom a salesperson's license, including a salesperson's license with a real estate referral company, has been or shall have been issued shall fail to maintain or renew such license or obtain a new license for a period of two consecutive years or more after the expiration of the last license held, the commission shall require such person to attend a licensed school and pass the State examination prior to issuance of a further license. The commission may, in its discretion, approve for relicensure a salesperson applicant, including

a salesperson applicant licensed with a real estate referral company, who has not renewed his license or obtained a new license for two or more consecutive years upon a sufficient showing that the applicant was medically unable to do so. All salesperson applicants, including salesperson applicants licensed with a real estate referral company, so approved shall pass the salesperson's license examination and, with respect to salespersons, except those salespersons licensed with a real estate referral company, complete the continuing education requirements applicable to salesperson licensees in the preceding licensure term prior to being relicensed. Nothing in this section shall be construed to require a salesperson licensed with a real estate referral company to complete the continuing education requirements applicable to salesperson licensees as a condition of license renewal under this section or section 23 of P.L.2009, c.238 (C.45:15-16.2a). This subsection shall not apply to a person reapplying for a salesperson's license, including a salesperson reapplying for licensure with a real estate referral company, who was a licensed salesperson, including a salesperson licensed with a real estate referral company, and who allowed his license to expire due to subsequent employment in a public agency in this State with responsibility for dealing with matters relating to real estate if the person reapplying does so within one year of termination of that employment.

f. A salesperson licensed with a real estate referral company who was not previously licensed as a broker, broker-salesperson, or salesperson and who has been a salesperson licensed with a real estate referral company for the six immediately preceding years or any lesser period of time shall, in order to qualify for licensure as a salesperson, complete up to 30 hours of continuing education as prescribed by commission rule.

g. A salesperson licensed with a real estate referral company who was not previously licensed as a broker, broker-salesperson or salesperson and who has been a salesperson licensed with a real estate referral company for more than the six immediately preceding years shall, in order to qualify for licensure as a salesperson, be required to complete the pre-licensure education requirement applicable to candidates for licensure as a salesperson and pass the State license examination. A person who was previously licensed as a broker, broker-salesperson or salesperson and who has been a salesperson licensed with a real estate referral company shall, in order to qualify for relicensure as a broker, broker-salesperson or salesperson, as applicable, complete up to 30 hours of continuing education as prescribed by commission rule.

h. Any salesperson licensed with a real estate referral company seeking licensure as a real estate broker, broker-salesperson or salesperson shall make application for such license on a form as prescribed by the commission, pay all application and licensure fees as set forth herein, furnish to the commission evidence of the salesperson's good moral character, and be subject to investigation by and required to produce to the commission such proof of the salesperson's honesty, trustworthiness and integrity as the commission deems proper and in the public interest.

i. Upon the effective date of P.L.2018, c.71 (C.45:15-3.2 et al.), any person licensed as a referral agent through a real estate referral company shall be deemed to be a salesperson licensed with a real estate referral company until the next renewal of licenses by the commission. All requirements set forth in subsections f., g., and h. of this section with respect to licensure and length of experience as a salesperson licensed with a real estate referral company shall include licensure and length of experience as a referral agent licensed with a real estate referral company.

Amended 1938, c. 227, § 1; 1953, c. 77, § 1; 1953, c. 229, § 3; 1966, c. 10; 1977, c. 331, § 2; 1983, c. 456, § 1; 1989, c. 126, § 1; 1993, c. 51, § 7; 2003, c. 117, § 31, eff. July 1, 2003; 2003, c. 199, § 26, eff. Dec. 24, 2003; 2009, c. 238, § 3, eff. July 1, 2011; 2018, c. 71, § 4, eff. Jan. 1, 2018.

45:15-10. Examination required for initial licensure; term, renewal

Before any such license shall be granted, the applicant, and in the case of a partnership, association or corporation, the partners, directors or officers thereof actually engaged in the real estate business as a broker, broker-salesperson, or salesperson, shall submit to an examination to be conducted under the supervision of the commission which examination shall test the applicant's general knowledge of the statutes of New Jersey concerning real property, conveyancing, mortgages, agreements of sale, leases and of the provisions of R.S.45:15-1 et seq., the rules and regulations of the commission and such other subjects as the commission may direct. The commission may make rules and regulations for the conduct of such examinations. Upon satisfactorily passing such examination and fulfilling all other qualifications a license shall be granted by the commission to the successful applicant therefor as a real estate broker, broker-salesperson, or salesperson, and the applicant upon receiving the license is authorized to conduct in this State the business of a real estate broker, broker-salesperson, or salesperson, as the case may be. Such license shall expire on the last day of a two-year license term as established by the commission; such license shall be renewed, without examination, biennially thereafter, upon the payment of the fee fixed by R.S.45:15-15, and in the case of a broker, broker-salesperson or salesperson license, upon completion of the continuing education requirements applicable to the holders of such licenses, except that a salesperson licensed with a real estate referral company shall not be required to complete the continuing education requirements as a condition of license renewal under this section or section 23 of P.L.2009, c.238 (C.45:15-16.2a).

Amended 1972, c. 94, § 1; 1977, c. 331, § 3; 1993, c. 51, § 8; 1996, c. 38, § 1, eff. Dec. 18, 1996; 2009, c. 238, § 4, eff. July 1, 2011; 2018, c. 71, § 5, eff. Jan. 1, 2018.

45:15-10.1. Educational requirements

a. As a prerequisite to admission to an examination, every individual applicant for licensure as a real estate salesperson shall give evidence of satisfactory completion of 75 hours in the aggregate of such courses of education in real estate subjects at

a school licensed by the commission as the commission shall by regulation prescribe. At least three hours of that course of study shall be on the subject of ethics and ethical conduct in the profession of a real estate salesperson, and at least one hour of that course of study shall be on the subject of fair housing and housing discrimination.

b. As a prerequisite to admission to an examination, every individual applicant for licensure as a real estate broker or broker-salesperson shall give evidence of satisfactory completion of 150 hours in the aggregate of such courses of education in real estate and related subjects at a school licensed by the commission as the commission shall by regulation prescribe. Thirty hours of that course of study shall be on the subject of ethics and ethical conduct in the profession of a real estate broker, and at least one hour of that course of study shall be on the subject of fair housing and housing discrimination.

The commission may approve courses in specialized aspects of the real estate brokerage business offered by providers who are not the holders of a real estate school license pursuant to section 47 of P.L.1993, c.51 (C.45:15-10.4), the completion of which may be recognized as fulfilling a portion of the total broker pre-licensure education requirements.

L. 1966, c. 227, § 1; amended 1977, c. 331, § 4; 1983, c. 456, § 2; 1989, c. 126, § 2; 1993, c. 51, § 9; 2009, c. 238, § 5, eff. July 1, 2011; 2018, c. 71, § 6, eff. Jan. 1, 2018; 2019, c. 177, § 1, eff. Oct. 17, 2019.

45:15-10.2. Waiver of educational requirements for licensure

The commission may waive some or all of the educational requirements for licensure established pursuant to subsection a. of section 1 of P.L.1966, c. 227 (C. 45:15-10.1) in the case of an applicant whose education or experience is in the judgment of the commission substantially equivalent to those educational requirements. The commission shall prescribe by regulation the requirements which an applicant shall meet in order to qualify for the waiver of educational requirements pursuant to this section.

L. 1966, c. 227, § 2; amended 1993, c. 51, § 10.

45:15-10.3. Bureau of Real Estate Education

There is established within the Division of the New Jersey Real Estate Commission in the Department of Insurance a Bureau of Real Estate Education which shall be responsible for the licensure of real estate pre-licensure schools and instructors.

L. 1993, c. 51, § 46.

45:15-10.4. Licensure of real estate school

a. No school shall conduct real estate education courses, the attendance and successful completion of which shall constitute the fulfillment of the educational prerequisites for licensure established pursuant to section 1 of P.L.1966, c. 227 (C. 45:15-10.1) unless licensed as a real estate school pursuant to P.L.1993, c. 51 (C. 45:15-12.3 et al.).

b. A school shall not be licensed as a real estate school unless its owners, management and facilities meet all of the qualifications for licensure established pursuant to this amendatory and supplementary act and which the commission may by regulation prescribe. An applicant for a license to operate a real estate school, and in the case of a partnership or corporation the members, officers, directors and owners of a controlling interest thereof, shall affirmatively demonstrate their good moral character to the commission. The commission may make such investigation and require such proof as it deems proper and in the public interest as to the honesty, trustworthiness, character and integrity of an applicant.

L. 1993, c. 51, § 47.

45:15-10.5. Licensure as real estate instructor

a. No person, with the exception of a guest lecturer, may teach real estate education courses, the attendance and successful completion of which shall constitute the fulfillment of the educational prerequisites for licensure established pursuant to section 1 of P.L.1966, c. 227 (C. 45:15-10.1) unless licensed as a real estate instructor pursuant to this amendatory and supplementary act.

b. A person shall not be licensed as a real estate instructor unless the person affirmatively demonstrates to the commission his good moral character, successfully completes a real estate instructor course approved by the commission, successfully completes a written examination conducted under the auspices of the commission, and meets all other qualifications as the commission may prescribe by regulation.

L. 1993, c. 51, § 48.

45:15-10.6. Application for, issuance of license as real estate school, fees

a. Every application for licensure as a real estate school shall be accompanied by an application fee of $100 and a criminal history record check fee for all individual owners, members of a partnership, or officers, directors and owners of a controlling interest in a corporation, which fees shall be non-refundable. Any applicant filing for licensure pursuant to this section and any officer, director, partner or owner of a controlling interest of a corporation or partnership filing for licensure pursuant to this section shall submit to the commission, the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The commission is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for the purposes of facilitating determinations concerning licensure eligibility. The applicant

shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commissioner in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background was performed.

b. All licenses issued to real estate schools shall expire on a date fixed by the commission which date shall not be more than two years from the date of issuance of the license. The license fee for each real estate school license issued in the first 12 months of any two-year real estate school license term established by the commission shall be $400 for the first location and $200 for each additional location licensed. The license fee for each real estate school license issued in the second 12 months of any two-year real estate school license term established by the commission shall be $200 for the first location and $100 for each additional location licensed. The fee for the renewal of each real estate school license for an additional two-year license term shall be $400 for the first location and $200 for each additional location.

c. Any accredited college or university located in this State or any public adult education program conducted by a board of education in this State which otherwise qualifies for licensure as a real estate school shall be issued a license without the payment of any license or license renewal fee.

L. 1993, c. 51, § 49; amended 2003, c. 117, § 32, eff. July 1, 2003; 2003, c. 199, § 27, eff. Dec. 24, 2003.

45:15-10.7. Application for, issuance of license as real estate instructor; fees

Every application for licensure as a real estate instructor shall be accompanied by an application fee of $50 and a criminal history record check fee, which fees shall be non-refundable. Any applicant filing for licensure pursuant to this section and any officer, director, partner or owner of a controlling interest of a corporation or partnership filing for licensure pursuant to this section shall submit to the commission the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The commission is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for the purposes of facilitating determinations concerning licensure eligibility. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commissioner in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background was performed. All licenses issued to real estate instructors shall expire on a date fixed by the commission which shall be no more than two years from the date of issuance of the license. The license fee for each real estate instructor license issued in the first 12 months of any two-year real estate instructor license term established by the commission shall be $200 and the fee for an instructor license issued in the second 12 months of the cycle shall be $100. The fee for the renewal of each real estate instructor license for an additional two-year license term shall be $100. Upon payment of the renewal fee and the submission of evidence of satisfactory completion of any continuing education requirements which the commission may by regulation prescribe, the commission shall renew the license of a real estate instructor for a two-year period.

L. 1993, c. 51, § 50; amended 2003, c. 117, § 33, eff. July 1, 2003; 2003, c. 199, § 28, eff. Dec. 24, 2003.

45:15-10.8. Director of real estate school

A school shall not be licensed as a real estate school unless it is under the management and supervision of a director who is approved by the commission and who is licensed as a real estate instructor in accordance with the provisions of this act. In the event of the death or mental or physical incapacity of the director of a licensed real estate school, which leaves no other owner or employee of the school licensed as a real estate instructor and willing to assume the responsibilities of the director on an interim or permanent basis, the commission may issue temporary authorization to another person to enable that person to carry on the duties of the director until such time as either another licensed instructor is designated by the school and approved by the commission as the director, or until such time as the real estate courses in progress at the time of the former director's death or incapacity are completed. A school shall not commence any new real estate courses until a qualified licensee is designated and approved as the school's director.

The provisions of this section shall not apply to any public adult education program conducted under the auspices of a board of education in this State or any accredited college or university licensed as real estate schools.

L. 1993, c. 51, § 51.

45:15-10.9. Director of public adult education program

No public adult education program conducted under the auspices of a board of education in this State and no accredited college or university in this State shall be licensed as a real estate school unless its real estate pre-licensure education program is under the supervision of a director who is a licensed real estate instructor or an individual who has affirmatively demonstrated to the commission his good moral character and has attended a real estate instructor course approved by the commission within two years of applying to the commission for approval as the director of the real estate program. In the event of the death or physical or mental incapacity of the director of a public adult education program or the director of a college or university licensed as a

real estate school, which leaves no other employee licensed as a real estate instructor or otherwise qualified to be the director of the program and willing to assume the responsibilities of the director on an interim or permanent basis, the commission may issue a temporary authorization to another person to enable that person to carry on the duties of the director until such time as either another licensed instructor or qualified person is designated by the school and approved by the commission as the director, or until such time as the real estate courses in progress at the time of the former director's death or incapacity are completed. New courses shall not be commenced by the school until a qualified person is designated and approved as the director of the school.

L. 1993, c. 51, § 52.

45:15-10.10. Real estate school, instructor license

Upon application to the commission and payment of the prescribed license fee no later than January 1, 1994, any school and instructor then designated by the commission as an approved school or instructor shall, subject to the results of the commission's investigation into the good moral character of the applicant, be issued a real estate school or instructor license.

L. 1993, c. 51, § 53.

45:15-10.11. Grounds for suspension, revocation of real estate school instructor license

The commission may suspend or revoke the license of any real estate school or instructor or impose fines as provided in R.S.45:15-17 upon satisfactory proof that the licensee is guilty of:

a. Making any false promise or substantial misrepresentation;

b. Pursuing a flagrant and continued course of misrepresentation or making false promises through agents, advertisements or otherwise;

c. Engaging in any conduct which demonstrates unworthiness, incompetency, bad faith or dishonesty;

d. Failing to provide a student with a copy of a written agreement which designates the total tuition charges for attendance at a real estate pre-licensure or continuing education course offered by a licensed school, or other charges imposed upon students who enroll in the course, and the refund policy of the school in regard to tuition and other charges;

e. Using any plan, scheme or method of attracting students to enroll in a real estate pre-licensure or continuing education course which involves a lottery, contest, game, prize or drawing;

f. Being convicted of a crime, knowledge of which the commission did not have at the time of last issuing a license to the licensee;

g. Procuring a real estate license for himself or anyone else by fraud, misrepresentation or deceit;

h. Making any verbal or written statement which falsely indicates that a person attended or successfully completed any real estate pre-licensure or continuing education course conducted by the licensee; or

i. Any other conduct whether of the same or of a different character than specified in this section which constitutes fraud or dishonest dealing.

L. 1993, c. 51, § 54; amended 2009, c. 238, § 6, eff. July 1, 2011.

45:15-10.12. Restrictions on persons with revoked license

A person whose license has been revoked pursuant to section 54 of P.L.1993, c. 51 (C. 45:15-10.11) shall not be a general partner, officer, director or owner, either directly or indirectly, of a controlling interest in any licensed school, nor shall the person be retained or employed in any capacity, or compensated in any manner by a licensed school, nor shall the person occupy or share office space in a licensed school location for any purpose during the period of revocation.

L. 1993, c. 51, § 55.

45:15-10.13. Revocation of license of school; exceptions

Upon the revocation of the instructor license issued to any partner, officer, director or owner of a controlling interest in any licensed school, the commission shall revoke the license of the school unless, within a period of time fixed by the commission, the following conditions are fulfilled: a. in the case of a licensed school owned by a partnership, the connection of the partner whose instructor license has been revoked to the school shall be severed and his interest in the school shall be divested; or b. in the case of a licensed school owned by a corporation, the officer, director or owner of a controlling interest whose instructor license has been revoked shall be terminated from the position and, where an owner of a controlling interest, his ownership of the interest shall be divested; or c. in the case of a limited partnership, if the person whose instructor license has been revoked was a general partner, his interest in the school shall be divested or, if the person whose instructor license was revoked was a limited partner, his interest in the school shall be divested if it constituted a controlling interest as defined herein. For the purposes of this section, the term "controlling interest" means 5% or more of the equity of a licensed corporation or of the ownership of a partnership.

L. 1993, c. 51, § 56.

45:15-10.14. Power, authority of commission

The commission is expressly vested with the power and authority to promulgate and enforce all necessary rules and regulations for the conduct of the business of real estate schools offering pre-licensure and continuing education courses consistent with the provisions of this amendatory and supplementary act.

L. 1993, c. 51, § 57.

45:15-11. Disabled war veterans; granting of licenses

Any citizen of New Jersey who has served in the armed forces of the United States or who served as a member of the American Merchant Marine during World War II and is declared by the United States Department of Defense to be eligible for federal veterans' benefits, who has been honorably discharged, and who, having been wounded or disabled in the line of duty, has completed a program of courses in real estate approved by the New Jersey Real Estate Commission, and who has successfully passed an examination conducted by said commission qualifying him to operate as a real estate broker, broker-salesperson, or salesperson, may, upon presentation of a certificate certifying that he has completed such program of courses as aforesaid, obtain without cost from the commission and without qualification through experience as a salesperson, a license to operate as a real estate broker, broker-salesperson, or a real estate salesperson, as the case may be, which licenses shall be the same as other licenses issued under R.S.45:15-1 et seq. Renewal of licenses may be granted under this section for each ensuing license term, upon request, without fees therefor.

Amended 1953, c. 77, § 2; 1977, c. 331, § 6; 1991, c. 389, § 33; 1993, c. 51, § 11; 1996, c. 38, § 2, eff. Dec. 18, 1996; 2009, c. 238, § 7, eff. July 1, 2011; 2018, c. 71, § 7, eff. Jan. 1, 2018.

45:15-11.1, 45:15-11.2. Repealed by L. 1970, c. 255, § 2, eff. Nov. 2, 1970

45:15-11.3. Issuance of temporary broker's license

In the event of the death or mental or physical incapacity of a licensed real estate broker where no other member or officer in the agency, copartnership, association or corporation of which he was a member or officer is the holder of a broker-salesperson's license or where an individual broker operating as a sole proprietor dies or is mentally or physically incapacitated leaving no employee holding a real estate broker-salesperson's license, then the Real Estate Commission may issue a temporary broker's license on a special form to another person for the purpose of enabling such other person to continue the real estate activities on behalf of and under the same designation of said agency, copartnership, association, corporation or individual, as the case may be, upon the filing of an application and a certified copy of the death certificate or a certification of mental or physical incapacity executed by a duly licensed physician or officer of a medical institution, together with payment of the regular license fee; provided such other person has been the holder of a real estate salesperson's license for at least three years immediately preceding the date of the application and provided that said application shall have been made within 30 days from date of the demise or incapacity of said broker.

Such temporary license shall continue only until the licensee is afforded an opportunity of pursuing the approved broker's course in accordance with the provisions of subsection b. of section 1 of P.L.1966, c. 227 (C. 45:15-10.1) and qualifying by examination. Such license may be issued and effective for a period of one year from the date of issuance. Such temporary license shall not be extended or renewed.

L. 1970, c. 255, § 1; amended 1993, c. 51, § 12.

45:15-12. Broker to maintain office

Every real estate broker shall maintain a designated main office open to the public. A real estate broker's main office shall have prominently displayed therein the license certificate of the broker and all licensed persons in his employ and shall be deemed the business address of all licensed persons for all purposes under chapter 15 of Title 45 of the Revised Statutes. In case a real estate broker maintains more than one place of business, a branch office license shall be issued to such broker for each branch office so maintained in this State; provided, however, that the said branch office or offices are under the direct supervision of a broker-salesperson. The branch office license or licenses shall be issued upon the payment of a fee of $50 for each license so issued. Every place of business maintained by a real estate broker shall have conspicuously displayed on the exterior thereof the name in which the broker is authorized to operate and, in the case of a corporation or partnership, the name of the individual licensed as its authorized broker, and the words Licensed Real Estate Broker. A real estate broker whose main office is located in another state shall maintain a valid real estate broker's license in good standing in the state where the office is located.

The provisions of this section shall apply to any real estate broker who supervises a real estate referral company as defined under R.S.45:15-3.

Amended 1953, c. 229, § 4; 1966, c. 11, § 1; 1993, c. 51, § 13; 2003, c. 117, § 34, eff. July 1, 2003; 2018, c. 71, § 8, eff. Jan. 1, 2018.

45:15-12.1. Bars to issuance of license

No license shall be issued by the commission to any person known by it to have been, within five years theretofore, convicted of forgery, burglary, robbery, any theft offense other than shoplifting, criminal conspiracy to defraud, or other like offense or offenses, or to any copartnership of which such person is a member, or to any association or corporation of which said person is an officer, director, or employee, or in which as a stockholder such person has or exercises a controlling interest either directly or indirectly. No license shall be issued or renewed by the commission to any person known by it to have been convicted of any sex offense that would qualify the person for registration pursuant to section 2 of P.L.1994, c.133 (C.2C:7-2) or under an equivalent statute of another state or jurisdiction.

L. 1953, c. 229, § 8; amended 1989, c. 126, § 6; 1993, c. 51, § 14; 2018, c. 71, § 9, eff. Jan. 1, 2018.

45:15-12.2. Repeal

Sections 45:15-30 to 45:15-33, inclusive, of the Revised Statutes are repealed.

L. 1953, c. 229, p. 1693, 9.

45:15-12.3. Revoked license, disability to act

A person whose license has been revoked pursuant to R.S. 45:15-17 or section 6 of P.L.1953, c. 229 (C. 45:15-19.1) shall not be a general partner, officer, director or owner, either directly or indirectly, of a controlling interest in a licensed partnership, limited partnership or corporation, nor shall the person be retained or employed in any capacity, or compensated in any manner by a licensee, nor shall the person occupy or share office space in a licensed office location for any purpose during the period of revocation.

L. 1993, c. 51, § 21.

45:15-12.4. Revocation of partnership, corporate license

Upon the revocation of the license issued to any partner, officer, director or owner of a controlling interest in any licensed partnership, limited partnership or corporation, the commission shall revoke the license of the partnership or corporation unless, within a period fixed by the commission, the following conditions are fulfilled: a. in the case of a partnership, the connection of the partner whose license has been revoked to the licensee shall be severed and his interest in the licensee shall be divested; b. in the case of a corporation, the officer, director or owner of a controlling interest whose license has been revoked shall be terminated from the position and, where an owner of a controlling interest, his ownership of the interest shall be divested; or c. in the case of a limited partnership, if the person whose license has been revoked is the general partner, the connection of that person to the licensee shall be severed and his interest in the licensee shall be divested or, if the person whose license was revoked is a limited partner, his interest in the licensee shall be divested if it constituted a controlling interest as defined herein. For the purposes of this section, the term "controlling interest" means 5% or more of the equity of a licensed corporation or of the ownership of a partnership.

L. 1993, c. 51, § 22.

45:15-12.5. Maintenance of special account required

a. Every individual, partnership or corporation licensed as a real estate broker shall maintain in a State or federally chartered bank, savings bank, savings and loan association or other depository institution physically located and authorized to transact business in this State and approved by the commission a special account into which the broker shall deposit and maintain all monies received while acting in the capacity of a real estate broker, or as escrow agent, or as the temporary custodian of funds of others in real estate transactions in this State. The account shall be maintained in the name in which the individual, partnership or corporation is licensed to do business as a broker and shall be designated as either the broker's "trust account" or "escrow account" and shall be maintained separate and apart from all other personal and business accounts. All checks and deposit slips produced as a result of the establishment of the account shall contain the words "trust account" or "escrow account." The provisions of this subsection shall not apply to an individual licensed as a broker-salesperson.

b. A real estate broker may establish a special interest bearing escrow account under the broker's control in a depository institution approved by the commission for the deposit of monies from a specific transaction provided the account is clearly identified as pertaining to that transaction. Such accounts shall be maintained separate and apart from all other escrow, business and personal funds.

L. 1993, c. 51, § 42.

45:15-12.6. Approval of depository institution

The commission shall approve a depository institution as required pursuant to section 42 [C.45:15-12.5] of this amendatory and supplementary act upon the institution providing written confirmation to the commission that it shall immediately notify the commission of any issuance of a notice to a licensed broker that a check or other instrument written upon the broker's escrow or trust account has been dishonored or returned for insufficient funds.

L. 1993, c. 51, § 43.

45:15-12.7. Agent, custodian may not use interest on escrow funds

A real estate broker acting in the capacity of an escrow agent or as the temporary custodian of the funds of others in any real estate transaction shall not receive, obtain or use any interest earned on the funds for the broker's own personal or business use.

L. 1993, c. 51, § 44.

45:15-12.8. Acceptance of monies

Every real estate licensee who, in the performance of any of the activities described in R.S. 45:15-3, receives any monies of others as a representative of a broker acting as an escrow agent or as the temporary custodian of the funds of others in a real estate transaction, shall only accept the monies if they are in the form of cash or a negotiable instrument payable to the broker through whom the individual is licensed, or such other form as the commission may prescribe by rule. The licensee shall, immediately upon receipt of the funds, account for and deliver the funds to the broker for deposit into the escrow or trust account maintained by the broker, or for such other disposition as is required by the escrow agreement under the terms of which the funds were provided to the licensee.

L. 1993, c. 51, § 45; amended 1999, c. 78, eff. April 30, 1999.

45:15-13. Form of license; change of broker's address

All licenses shall be issued by the commission in such form as it shall prescribe. Each license shall show the name and ad-

dress of the licensee and shall have imprinted thereon the seal of the commission. Notice in writing shall be given to the commission by each licensed broker of any change of business address, whereupon the commission shall issue new licenses to the broker and to all persons licensed through the broker for the unexpired period, upon the payment of a fee of $50 for the issuance of the new broker license and a fee of $10 for each additional new license certificate so issued. A change of business address without notification to the commission, and without the issuance of a new broker's license, shall automatically cancel the license theretofore issued.

Amended 1961, c. 88, § 1; 1966, c. 11, § 2; 1993, c. 51, § 15; 2003, c. 117, § 35, eff. July 1, 2003.

45:15-14. License kept by employing broker

All licenses issued to real estate brokers, broker-salespersons, and salespersons shall be kept by the broker by whom such real estate licensee is employed or contracted, and the pocket card accompanying the same shall be delivered by the broker to the licensee who shall have the card in his possession at all times when engaged in the business of a real estate broker, broker-salesperson, or salesperson. When any real estate licensee is terminated or resigns his employment with the real estate broker by whom he was employed or contracted at the time of the issuing of such license to him, notice of the termination shall be given in writing by the broker to the terminated licensee with the effective date of the termination reflected thereon, or notice of the resignation shall be given in writing by the resigning licensee to the broker with the effective date of the resignation reflected thereon. Upon the issuance of a written notice of termination by a broker or his authorized representative, or upon receipt of a written resignation by a broker or his authorized representative, such employer or contracting broker shall within five business days of the effective date of the termination or resignation, either: a. deliver, or send by registered mail, to the commission, such real estate licensee's license and, at the same time, send a written communication to such real estate licensee at his last known residence, advising him that his license has been delivered or mailed to the commission. A copy of such communication to the licensee shall accompany the license when mailed or delivered to the commission; or, b. deliver to the departing licensee and to the commission any other materials as the commission may prescribe by regulation to accomplish the transfer of the licensee to another employing or contracting broker. No real estate licensee shall perform any of the acts contemplated by R.S.45:15-1 et seq., either directly or indirectly, under the authority of such license, from and after the effective date of the licensee's termination or resignation until authorized to do so by the commission. A new license may be issued to such licensee, upon the payment of a fee of $25, and upon the submission of satisfactory proof that he has obtained employment or contracted with another licensed broker. A broker-salesperson or salesperson shall be licensed under a broker; he cannot be licensed with more than one broker at the same time.

Amended 1961, c. 88, § 2; 1966, c. 11, § 3; 1993, c. 51, § 16; 2009, c. 238, § 8, eff. July 1, 2011; 2018, c. 71, § 10, eff. Jan. 1, 2018.

45:15-15. License fees

The biennial fee for each real estate broker's license shall be $200, the biennial fee for each real estate broker-salesperson's license shall be $200 and the biennial fee for each real estate salesperson's license shall be $100. The biennial fee for a branch office license shall be $100. Each license granted under R.S.45:15-1 et seq. shall entitle the licensee to perform all of the acts contemplated herein during the period for which the license is issued, as prescribed by R.S.45:15-1 et seq. If a licensee fails to apply for a renewal of his license prior to the date of expiration of such license, the commission may refuse to issue a renewal license except upon the payment of a late renewal fee in the amount of $20 for a salesperson or broker-salesperson and $40 for a broker; provided, however, the commission may, in its discretion, refuse to renew any license upon sufficient cause being shown. The commission shall refuse to renew the license of any licensee convicted of any offense enumerated in section 6 of P.L.1953, c.229 (C.45:15-19.1) during the term of the last license issued by the commission unless the conviction was previously the subject of a revocation proceeding. Renewed licenses may be granted for each ensuing two years upon request of licensees and the payment of the full fee therefor as herein required. Upon application and payment of the fees provided herein, initial licenses and licenses reinstated pursuant to R.S.45:15-9 may be issued, but the commission may, in its discretion, refuse to grant or reinstate any license upon sufficient cause being shown. The license fees for initial or reinstated licenses shall be determined based upon the biennial fees established herein, with a full biennial fee payable for the license term in which application is received. The revocation or suspension of a broker's license shall automatically suspend every real estate broker-salesperson's and salesperson's license granted to employees or contractors of the broker whose license has been revoked or suspended, pending a change of employer or contracting broker and the issuance of a new license. The new license shall be issued without additional charge, if the same is granted during the license term in which the original license was granted. Any renewal fee in this section shall be billed by the commission at or before the time of the submission of a renewal application by a licensee.

A real estate broker who maintains a main office or branch office licensed by the commission which is located in another state shall maintain a valid real estate broker's license in good standing in the state where the office is located and shall maintain a real estate license in that other state for each office licensed by the commission. Upon request, the real estate broker shall provide a certification of his license status in the other state to the commission. Any license issued by the commission to a real estate broker for a main or branch office located outside this State shall be automatically suspended upon the revocation, suspension or refusal to renew the real estate broker's license issued by the state where the office is located. The licenses issued by the commission to every broker-salesperson and salesperson

employed or contracted by the broker shall be automatically suspended pending a change of employer or contracting broker and the issuance of a new license. The new license shall be issued without additional charge if granted during the license term in which the original license was granted.

Amended 1953, c. 77, § 3; 1966, c. 11, § 4; 1983, c. 532, § 5; 1993, c. 51, § 17; 1996, c. 38, § 3, eff. Dec. 18, 1996; 2003, c. 117, § 36, eff. July 1, 2003; 2009, c. 238, § 9, eff. July 1, 2011; 2018, c. 71, § 11, eff. Jan. 1, 2018.

45:15-16. Acceptance of commission, valuable consideration

No real estate salesperson or broker-salesperson shall accept a commission or valuable consideration for the performance of any of the acts herein specified, from any person except his employer or contracting broker, who must be a licensed real estate broker.

Amended 1993, c. 51, § 18; 2009, c. 238, § 10, eff. July 1, 2011; 2018, c. 71, § 12, eff. Jan. 1, 2018.

45:15-16a. Rebate paid by broker to purchaser

a. Any rebate paid by a broker to a purchaser of residential real property pursuant to paragraph (2) of subsection k. of R.S.45:15-17 shall be:

(1) Calculated after the purchaser negotiates the rebate commission rate;

(2) Memorialized in a written document, electronic document or a buyer agency agreement provided by the broker to the purchaser at the outset of the broker relationship, which document or agreement shall provide the terms of any rebate credited or paid by the broker to the purchaser; and

(3) Disclosed to all parties involved in the transaction, including, but not limited to, any mortgage lender.

b. A rebate shall not be:

(1) Paid to a person not licensed as a real estate broker for any act that requires licensure;

(2) Contingent upon the use of other services or products being offered by a broker or an affiliate of a broker; or

(3) Based on the use of a lottery, contest or game.

L. 2009, c. 273, § 2, eff. Jan. 17, 2010.

45:15-16b. Advertisement for rebate

a. Any advertisement for a rebate allowed pursuant to paragraph (2) of subsection k. of R.S.45:15-17 shall include:

(1) A disclosure concerning the purchaser's obligation to pay any applicable taxes for receipt of the rebate; and

(2) A notice that the purchaser should contact a tax professional concerning the tax implications of receiving the rebate.

b. The disclosure and notice required pursuant to subsection a. of this section shall be clearly and conspicuously displayed in the advertisement and the size of the text in the notice and disclosure shall be equal to or larger than the size of the text used for the advertisement.

L. 2009, c. 273, § 3, eff. Jan. 17, 2010.

45:15-16c. Regulations

The New Jersey Real Estate Commission may promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the provisions of this act [C.45:15-16a et al.].

L. 2009, c. 273, § 4, eff. Jan. 17, 2010.

45:15-16.1. Repealed by L. 1975, c. 235, § 25, eff. Dec. 23, 1975

45:15-16.2. Educational and information programs

The Division of the New Jersey Real Estate Commission in the State Department of Insurance, within the limits of appropriations available or to be made available to it for the purpose, may conduct educational and information programs relating to the real estate brokerage business and real estate brokers, broker-salespersons and salespersons for the information, education, guidance and protection of the general public, licensees, and applicants for licensure. The educational and information programs may include preparation, printing and distribution of publications and articles and the conduct of conferences, forums, lectures, and a public information service.

L. 1955, c. 238, § 1; amended 1993, c. 51, § 19.

45:15-16.2a. Continuing education required; exceptions

a. The New Jersey Real Estate Commission shall require each natural person licensed as a real estate broker, broker-salesperson or salesperson, as a condition of biennial license renewal pursuant to R.S.45:15-10, to complete not more than 16 hours of continuing education requirements imposed by the commission pursuant to this section and sections 24 through 28 of P.L.2009, c.238 (C.45:15-16.2a through 45:15-16.2f), except that a salesperson licensed with a real estate referral company shall not be required to complete the continuing education requirements as a condition of biennial license renewal. This subsection shall not apply to any real estate broker or broker-salesperson who has been a real estate broker or broker-salesperson for 40 years or more, which shall include any equivalent experience in any other jurisdiction as determined by the commission.

b. The commission shall:

(1) (a) Approve continuing education courses, course providers, and instructors recommended to the commission by the Volunteer Advisory Committee created pursuant to subparagraph (b) of this paragraph. Schools licensed by the commission as real estate schools pursuant to section 47 of P.L.1993, c.51

(C.45:15-10.4) shall be deemed approved providers of continuing education courses. Persons licensed by the commission as real estate instructors pursuant to section 48 of P.L.1993, c.51 (C.45:15-10.5) shall be deemed approved instructors of continuing education courses in core topics as set forth in section 27 of P.L.2009, c.238 (C.45:15-16.2e). Real estate trade associations that qualify under the standards to be established by commission rule as approved providers may offer approved continuing education courses.

(b) There is hereby created a Volunteer Advisory Committee which shall consist of 14 members to be comprised of real estate licensees and other subject matter experts, whose members shall be appointed by and serve at the pleasure of the Commissioner of Banking and Insurance. One real estate licensee shall be selected upon the recommendation of the President of the Senate and one real estate licensee shall be selected upon the recommendation of the Speaker of the General Assembly. Three members of the advisory committee shall be members of the commission or their designees, and not less than eight of the members, other than the commission members, shall be real estate licensees. Members shall be appointed to effect balanced geographic representation from the central, northern and southern areas of the State, with not less than three members serving from each of these areas at any time on the advisory committee.

Members shall be appointed by the Commissioner of Banking and Insurance no later than 60 days following the enactment date of this act. The first meeting of the advisory committee shall be held no later than 30 days from the date the commission adopts initial regulations for the effectuation of this act.

(2) Confer continuing education credits for courses completed in other states on topics approved by the commission as appropriate for elective courses, provided that such courses have been approved as continuing education courses by the agency exercising regulatory authority over the real estate licensees of another state and that satisfactory evidence of licensees' attendance at and completion of such courses is provided to the commission by the course provider.

(3) Confer continuing education credits for courses completed and offered in this State on topics deemed of a timely nature which have not been granted prior approval by the advisory committee, provided that such courses are advertised prior to the time of offering as not having been approved; that the course provider shall submit such course offering for approval and the course is subsequently approved as provided in subparagraph (a) of paragraph (1) of this subsection; and that satisfactory evidence of licensees' attendance at and completion of such courses is provided to the commission by the course provider.

(4) Set parameters for the auditing and monitoring of course providers.

(5) Establish, by regulation, the amounts of application fees payable by persons seeking approval as continuing education course providers, persons seeking approval of continuing education courses, and persons other than instructors of pre-licensure real estate education courses licensed by the commission pursuant to section 48 of P.L.1993, c.51 (C.45:15-10.5), seeking approval as instructors of continuing education courses. These fees shall be non-refundable and shall be in amounts which do not exceed the costs incurred by the commission to review these applications.

(6) Have the authority to waive continuing education requirements, in whole or in part, on the grounds of illness, emergency, hardship or active duty military service.

(7) Confer continuing education credits upon a person who is licensed by the commission as a real estate instructor or as a broker, broker-salesperson or salesperson for teaching an approved continuing education course offered by an approved provider. Regardless of the number of times during a biennial license term that the same approved course is taught by that person, the person shall receive credit toward the continuing education requirement for the renewal of the person's broker, broker-salesperson or salesperson license, as applicable, only in the number of credit hours conferred upon licensees who attend and complete that course one time during that biennial license term.

L. 2009, c. 238, § 23, eff. July 1, 2011; amended 2017, c. 200, § 1, eff. Aug. 7, 2017; 2018, c. 71, § 13, eff. Jan. 1, 2018.

45:15-16.2b. Delivery of continuing education courses

Continuing education courses may be delivered in a classroom setting or via the Internet or video modalities, subject to the approval by the New Jersey Real Estate Commission of the providers and the content of such courses and of the measures utilized to ensure the security and integrity of the course delivery process. The commission may approve continuing education courses which include periodic progress assessments and the achievement of a satisfactory level of performance by the licensee on such progress assessments as a condition to continuing to a succeeding segment of the course. The commission shall not require, as a condition of the receipt of credit for attendance at any continuing education course, that a licensee pass a comprehensive examination testing the licensee's knowledge of the entire course content.

L. 2009, c. 238, § 24, eff. July 1, 2011; amended 2018, c. 71, § 14, eff. Jan. 1, 2018.

45:15-16.2c. Completion of continuing education requirements

Continuing education requirements, as set forth by the New Jersey Real Estate Commission, shall be completed on or before April 30 of the year in which the biennial license expires. Any licensee required to complete continuing education requirements who fails to do so prior to May 1 of the second year of a biennial license term shall be subject to a reasonable processing fee, as determined by the commission, of not more than $200.

L. 2009, c. 238, § 25, eff. July 1, 2011.

45:15-16.2d. Fulfillment of continuing education requirement

A person who, during a biennial licensing term, successfully completes one or more broker pre-licensure education courses as prescribed by the New Jersey Real Estate Commission shall be deemed to have fulfilled the continuing education requirement applicable to the license that such a person may seek to renew upon the conclusion of that license term. A person who is initially licensed as a salesperson during the first year of a two-year license term shall complete all applicable continuing education requirements in order to renew that license upon the conclusion of that license term. A person who is initially licensed as a salesperson in the second year of the two-year license term shall not be required to fulfill any continuing education requirements in order to renew that license at the conclusion of that license term.

L. 2009, c. 238, § 26, eff. July 1, 2011.

45:15-16.2e. Core topics for continuing education courses

a. Not less than 50 percent of the continuing education courses of study that a broker, broker-salesperson or salesperson are required to complete as a condition for license renewal shall be comprised of one or more of the following core topics:

(1) Agency;

(2) Disclosure;

(3) Legal issues;

(4) Ethics, which shall not be less than two hours;

(5) Fair housing;

(6) Rules and regulations;

(7) Real estate licensee safety;

(8) Financial literacy and planning; and

(9) Any other core topics that the New Jersey Real Estate Commission may prescribe by rule.

In no event shall the commission require that courses in these core topics comprise more than 60 percent of the total continuing education hours required for the renewal of any license.

b. In the case of continuing education courses and programs, each hour of instruction shall be equivalent to one credit.

c. Notwithstanding the provisions of subsection a. of this section, the commission shall require that the continuing education courses of study that a broker, broker-salesperson or salesperson are required to complete as a condition for license renewal shall be comprised of at least one hour on the core topic of fair housing and housing discrimination during each biennial license term.

L. 2009, c. 238, § 27, eff. July 1, 2011; amended 2018, c. 71, § 15, eff. Jan. 1, 2018; 2019, c. 177, § 2, eff. Oct. 17, 2019.

45:15-16.2f. Maintenance of records by course providers

Course providers shall maintain records of the successful completion of continuing education courses by licensees and shall transmit this data to the New Jersey Real Estate Commission or its designee in a manner as directed by the commission.

L. 2009, c. 238, § 28, eff. July 1, 2011.

45:15-16.2g. Rules, regulations

The New Jersey Real Estate Commission shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the purposes of this act.

L. 2009, c. 238, § 29, eff. July 1, 2011.

45:15-16.3 to 45:15-16.26. Repealed by L. 1989, c. 239, § 24, eff. Jan. 2, 1990

45:15-16.27. Short title [Real Estate Sales Full Disclosure Act]

This act shall be known and may be cited as the "Real Estate Sales Full Disclosure Act."

L. 1989, c. 239, § 1.

45:15-16.28. Definitions

As used in this act [C.45:15-16.27 et seq.]:

"Advertising" means the publication, or causing to be published, of any information offering for sale, or for the purpose of causing or inducing any other person to purchase or acquire, an interest in the title to subdivided lands, including the land sales contract to be used and any photographs or drawings or artist's representation of physical conditions or facilities on the property existing or to exist by means of any:

(1) Newspaper or periodical;

(2) Radio or television broadcast;

(3) Written or printed or photographic matter produced by any duplicating process producing 10 copies or more;

(4) Billboards or signs;

(5) Display of model homes or units;

(6) Material used in connection with the disposition or offer of subdivided lands by radio, television, telephone or any other electronic means; or

(7) Material used by subdividers or their agents to induce prospective purchasers to visit the subdivision; particularly va-

cation certificates which require the holders of those certificates to attend or submit to a sales presentation by a subdivider or its agents.

"Advertising" does not mean: stockholder communications such as annual reports and interim financial reports, proxy materials, registration statements, securities prospectuses, applications for listing securities on stock exchanges, or similar documents; prospectuses, property reports, offering statements, or other documents required to be delivered to a prospective purchaser by an agency of any other state or the federal government; all communications addressed to and relating to the account of any person who has previously executed a contract for the purchase of the subdivider's lands except when directed to the sale of additional lands.

"Blanket encumbrance" means a trust deed, mortgage, judgment, or any other lien or encumbrance, including an option or contract to sell or a trust agreement, affecting a subdivision or affecting more than one lot offered within a subdivision, except that term shall not include any lien or other encumbrance arising as the result of the imposition of any tax assessment by any public authority.

"Broker" or "salesperson" means any person who performs within this State as an agent or employee of a subdivider any one or more of the services or acts as set forth in this act, and includes any real estate broker or salesperson licensed pursuant to R.S.45:15-1 et seq. or any person who purports to act in any such capacity.

"Commission" means the New Jersey Real Estate Commission.

"Common promotional plan" means any offer for the disposition of lots, parcels, units or interests of real property by a single person or group of persons acting in concert, where those lots, parcels, units or interests are contiguous, or are known, designated or advertised as a common entity or by a common name regardless of the number of lots, parcels, units or interests covered by each individual offering.

"Disposition" means the sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision if undertaken for gain or profit.

"Notice" means a communication by mail from the commission executed by its secretary or other duly authorized officer. Notice to subdividers shall be deemed complete when mailed to the subdivider's address currently on file with the commission.

"Offer" means every inducement, solicitation or attempt to encourage a person to acquire an interest in a subdivision if undertaken for gain or profit.

"Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

"Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in a subdivision.

"Subdivider" or "developer" means any owner of subdivided lands or the agent of that owner who offers the subdivided lands for disposition.

"Subdivision" and "subdivided lands" mean any land situated outside the State of New Jersey whether contiguous or not, if one or more lots, parcels, units or interests are offered as a part of a common promotional plan of advertising and sale and expressly means and includes such units or interests commonly referred to as a "condominium," defined in the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.). In addition to condominiums, this definition shall also specifically include, but shall not be limited to, any form of homeowners association, any housing cooperative and any community trust or other trust device.

L. 1989, c. 239, § 2, amended 2006, c. 63, § 37, eff. Oct. 31, 2006.

45:15-16.29. Bureau of Subdivided Land Sales Control continued

The Bureau of Subdivided Land Sales Control within the Division of the New Jersey Real Estate Commission in the Department of Insurance, established pursuant to section 3 of P.L.1975, c. 235 (C. 45:15-16.5), shall continue.

L. 1989, c. 239, § 3.

45:15-16.30. Conditions for disposition of subdivided lands

Unless the subdivided lands or the transaction is exempt pursuant to section 6 [C.45:15-16.32] of this act:

a. No person may offer, dispose or participate in this State in the disposition of subdivided lands or of any interest in subdivided lands unless in accordance with the provisions of this act.

b. No person may dispose or participate in the disposition of any interest in subdivided lands unless a current public offering statement, disclosing fully all information required in section 12 [C.45:15-16.38] of this act, is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement prior to the disposition.

L. 1989, c. 239, § 4.

45:15-16.30a. Registration as secondary registration subdivider

a. A subdivider or developer who owns subdivided land upon which there is a completed residential unit, or for which there is a contract to construct and deliver a completed residential unit by the subdivider or developer or an affiliated or related entity

within two years from the date of the offer or disposition, may register as a secondary registration subdivider under this section provided that:

(1) the registration is made prior to execution of a contract with, or acceptance of any deposit from, a purchaser of an interest in those lands who is a New Jersey resident;

(2) the subdivider is not already registered pursuant to P.L.1989, c.239 (C.45:15-16.27 et seq.); and

(3) the subdivision does not qualify for an exemption pursuant to subsection a. of section 6 of P.L.1989, c.239 (C.45:15-16.32).

b. The commission shall establish the format and forms for registration pursuant to this section. The application form shall require at a minimum:

(1) the name and address of the property;

(2) the name and address of the secondary registration subdivider;

(3) a description of the particulars of the offering, and a certification by the secondary registration subdivider that: (a) the offering is in compliance with all applicable requirements of governmental agencies having jurisdiction over the offering; (b) the deposit moneys of purchasers who are New Jersey residents will be held in an escrow account, or protected in some other manner acceptable to the commission, until closing of title and delivery of the residential unit; and (c) the secondary registration subdivider can convey, or cause to be conveyed, title to the interest in the offering;

(4) copies of all forms of conveyance to be used in selling the property to the purchaser, which forms shall include a seven day right of rescission as required by subsection g. of this section;

(5) unless included as part of the forms of conveyance provided pursuant to paragraph (4) of this subsection, a disclosure statement detailing the common property, if any, of the community, obligations of the owners and the assessments of a homeowners' association formed to manage common property, if any, mandatory club membership, and special taxing district affecting the property being offered. The commission may accept disclosure statements approved for use in the jurisdiction where the property is located;

(6) a certification that the secondary registration subdivider has not, or if a corporation, its officers, directors, and principals have not, been convicted of a crime or civil offense involving land dispositions or any aspect of the land sales business in this State, the United States, or any other state or foreign country; and that the secondary registration subdivider has not been subject to any permanent injunction or final administrative order restraining a false and misleading promotional plan involving real property dispositions, the seriousness of which in the opinion of the commission warrants the denial of secondary registration;

(7) a consent to service of process and jurisdiction of the Courts of the State of New Jersey as provided in section 19 of P.L.1989, c.239 (C.45:15-16.45); and

(8) a filing fee as prescribed in section 8 of P.L.1989, c.239 (C.45:15-16.34).

c. The commission shall, within 30 days of receipt of a substantially completed application, including all filing fees, provide the secondary registration subdivider with a notice of completion of the secondary registration or a notice of deficiency. If the commission does not provide a notice of completion or deficiency within 30 days, the secondary registration shall be deemed complete.

d. A secondary registration subdivider who files an application for secondary registration under this section shall immediately report any material changes in the application or the offering, but shall be exempt from the annual reporting requirements under section 14 of P.L.1989, c.239 (C.45:15-16.40).

e. Prior to filing an application for secondary registration under this section and up to the time of the issuance of a notice of completion or the secondary registration is deemed complete pursuant to subsection c. of this section, a secondary registration subdivider with an interest in subdivided lands described in subsection a. of this section, may respond to inquiries initiated by New Jersey residents in response to the secondary registration subdivider's website or multi-state advertising by providing general information about the subdivided lands being offered, including sales prices, and by forwarding advertising materials. However, until a notice of completion for the subdivided land is issued, or the secondary registration is deemed complete pursuant to subsection c. of this section, a secondary registration subdivider shall not engage in the following acts in this State concerning the subdivided lands: (1) offer a contract; (2) collect deposit moneys; or (3) subsidize travel to the subdivided property. Except as permitted by this section, a secondary registration subdivider shall not otherwise offer, dispose, or participate in this State in the disposition, of subdivided land or of any interest in subdivided land and shall not direct such an offer or disposition into the State.

f. Prior to the execution of a contract for sale of subdivided lands described in subsection a. of this section, a secondary registration subdivider shall, unless included as part of the forms of conveyance provided pursuant to paragraph (4) of subsection b. of this section, provide to a purchaser a copy of the disclosure statement described in paragraph (5) of subsection b. of this section, and obtain a signed receipt from the purchaser stating that the disclosure statement has been received.

g. A contract for the purchase of subdivided lands described in subsection a. of this section may be rescinded by the purchaser without cause of any kind by sending or delivering written notice of cancellation by midnight of the seventh calendar day following the day on which the purchaser has executed the contract, or the day the purchaser receives notification from the

secondary registration subdivider that the secondary registration subdivider has completed secondary registration in accordance with this section, whichever is later.

h. Any person who violates any provision of this section or who, in the application for secondary registration, makes any untrue statement of a material fact or omits to state a material fact, shall be fined as provided in section 20 of P.L.1989, c.239 (C.45:15-16.46).

i. The provisions of this section shall not apply to the offering of subdivided lands in situations in which registration is required by the "Interstate Land Sales Full Disclosure Act," Pub.L.90-448 (15 U.S.C. § 1701 et seq.) with the Office of Interstate Land Sales Registration, in the Department of Housing and Urban Development.

L. 2007, c. 292, § 2, eff. Jan. 13, 2008.

45:15-16.31. Subdivisions, subdivided lands subject to this act

Disposition of subdivision or subdivided lands are subject to this act if:

a. Any offer or disposition of subdivided lands is made in this State; or

b. Any offer of subdivided land originating outside this State is directed by the subdivider or his agent to a person or resident within this State.

L. 1989, c. 239, § 5.

45:15-16.32. Inapplicability to offers, dispositions of an interest in a subdivision

a. Unless the method of disposition is adopted for the purpose of evasion of this act [C.45:15-16.27 et seq.], the provisions of this act are not applicable to offers or dispositions of an interest in a subdivision:

(1) By an owner for his own account in a single or isolated transaction;

(2) Wholly for industrial or commercial purposes;

(3) Pursuant to court order;

(4) By any governmental agency;

(5) As cemetery lots or interests;

(6) Of less than 100 lots, parcels, units or interests;

(7) Where the common elements or interests, which would otherwise subject the offering to this act, are limited to the provision of unimproved, unencumbered open space, except where registration is required by the "Interstate Land Sales Full Disclosure Act," Pub.L.90-448 (15 U.S.C. § 1701 et seq.) with the Office of Interstate Land Sales Registration, in the Department of Housing and Urban Development; or

(8) In a development comprised wholly of rental units, where the relationship created is one of landlord and tenant.

b. Unless the method of disposition is adopted for the purpose of evasion of this act, the provisions of this act are not applicable to:

(1) Offers or dispositions of evidences of indebtedness secured by a mortgage or deed of trust of real estate;

(2) Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any State or federal statute;

(3) Offers or dispositions of securities currently registered with the Bureau of Securities in the Department of Law and Public Safety; or

(4) Offers or dispositions of any interest in oil, gas or other minerals or any royalty interest therein if the offers or dispositions of such interests are regulated as securities by federal law or by the State Bureau of Securities.

c. The commission may, from time to time, pursuant to any rules and regulations promulgated pursuant to this act, exempt from any of the provisions of this act any subdivision or any lots in a subdivision, if it finds that the enforcement of this act with respect to that subdivision or the lots therein, is not necessary in the public interest, or required for the protection of purchasers, by reason of the small amount involved or the limited character of the offering.

d. A subdivider or developer who qualifies for and completes secondary registration pursuant to section 2 of P.L.2007, c.292 (C.45:15-16.30a) shall be exempt from the registration requirements of section 4 of P.L.1989, c.239 (C.45:15-16.30).

L. 1989, c. 239, § 6; amended 2006, c. 63, § 38, eff. Oct. 31, 2006; 2007, c. 292, § 1, eff. Jan. 13, 2008.

45:15-16.33. Notice of filing; registration; rejection

a. Upon the filing of an application for registration at the offices of the commission, naming the brokers licensed as real estate brokers pursuant to R.S. 45:15-1 et seq. who are the authorized representatives of the subdivider, and accompanied by the proper registration fee in the proper form, and a statement of record as provided for in section 10 [C.45:15-16.36] of this act, and the proposed public offering statement, the commission shall issue a notice of filing to the applicant. Within 90 days from the date of the notice of filing, the commission shall enter an order registering the subdivision or subdivided lands or rejecting the registration. If no order of rejection is entered within 90 days from the date of notice of filing, the subdivisions or subdivided lands shall be deemed registered unless the applicant has consented in writing to a delay.

b. If the commission affirmatively determines upon inquiry and examination that the requirements of section 9 [C.45:15-16.35] of this act have been met, it shall enter an order registering the subdivision or subdivided lands and shall designate the form of the public offering statement.

c. If the commission determines upon inquiry and examination that any of the requirements of section 9 of this act have not been met, the commission shall notify the applicant that the application for registration must be corrected in the particulars specified within 30 days from the date the notice is received by the applicant. These findings shall be the result of the commission's preliminary inquiry and examination and no hearing shall be required as the basis for those findings. The receipt of a written request for a hearing shall stay the order of rejection until a hearing has been held and a determination has been made.

L. 1989, c. 239, § 7.

45:15-16.34. Initial registration fee; inspection fee; consolidated filing fee

a. (1) The fee for an initial registration shall be $500.00 plus $35.00 for each lot, parcel, unit or interest which fee shall not exceed $3,000.00. The initial registration shall be valid for a period of one year from the date of approval of the registration. If the fees are insufficient to defray the cost of rendering services required by the provisions of this act, the commission may, by regulation, establish a revised fee schedule. Any revised fee schedule shall assure that the fees collected reasonably cover, but do not exceed, the expenses of administering the provisions of this act.

(2) Annual renewal of registration shall be made in accordance with the provisions of section 14 [C.45:15-16.40] of this act.

(3) Any current registration filed with and approved by the commission pursuant to the provisions of P.L.1975, c. 235 (C. 45:15-16.3 et seq.) prior to the date of enactment of this act shall be exempt from initial registration under this act.

b. The application for registration shall be made on forms prescribed by the commission and shall be accompanied by the appropriate filing fee. As provided in subsection f. of section 15 [C.45:15-16.41] of this act, the commission may determine, at its discretion, that an onsite investigation or inspection is required. The commission shall advise the registrant of the amount of the cost of travel from New Jersey to the location of the subdivided lands and return and any additional expenses of an inspection, which shall be the amount of the inspection fee. All inspection fees shall be accounted for to the applicant.

c. The fee for a consolidated filing, filed pursuant to section 13 [C.45:15-16.39] of this act, shall be the same as set forth in subsection a. of this section.

L. 1989, c. 239, § 8.

45:15-16.35. Examination by commission

Upon receipt of an application for registration in proper form, accompanied by a statement of record, the commission shall initiate an examination to determine that:

a. The subdivider can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer, and when appropriate, that release clauses, conveyances in trust or other safeguards have been provided;

b. There is reasonable assurance that all proposed improvements will be completed as represented;

c. The advertising material and the general promotional plan are not false, misleading, or discriminatory and comply with the standards prescribed by the commission in its rules and regulations and afford full and fair disclosure;

d. The subdivider has not, or if a corporation, its officers, directors, and principals have not, been convicted of a crime or civil offense involving land dispositions or any aspect of the land sales business in this State, the United States, or any other state or foreign country; and that the developer has not been subject to any permanent injunction or final administrative order restraining a false or misleading promotional plan involving real property dispositions, the seriousness of which in the opinion of the commission warrants the denial of registration; and

e. The public offering statement requirements of section 12 [C.45:15-16.38] of this act have been satisfied.

L. 1989, c. 239, § 9.

45:15-16.36. Contents of statement of record

The statement of record shall contain the information and be accompanied by the documents specified as follows:

a. The name and address of each person having an interest in the lots in the subdivision to be covered by the statement of record and the extent of that interest;

b. A legal description of, and a statement of the total area included in, the subdivision and a statement of the topography, together with a map showing the subdivision proposed and the dimensions of the lots, parcels, units, or interests to be covered by the statement of record and their relation to existing streets, roads and other improvements. The map shall be drawn to scale, signed and sealed, by a licensed professional engineer or land surveyor;

c. A statement of the condition of the title to the land comprising the subdivision, including all encumbrances and deed restrictions and covenants applicable thereto;

d. A statement of the general terms and conditions proposed to dispose of the lots in the subdivision;

e. A statement of the present condition of access to the subdivision, the existence of any unusual conditions relating to noise or safety, which affect the subdivision and are known or should reasonably be known to the developer, the availability of sewage disposal facilities and other public utilities, including water, electricity, gas, and telephone facilities, in the subdivision to nearby municipalities, and the nature of any improvements to be installed by the developer and his estimated schedule for completion;

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

g. In the case of any subdivision or portion thereof against which there exists a blanket encumbrance, a statement of the consequences for an individual purchaser of a failure, by the persons bound, to fulfill obligations under the instruments creating such encumbrances and the steps, if any, taken to protect the purchaser in such eventuality;

h. (1) Copy of its articles of incorporation, with all amendments thereto, if the developer is a corporation; (2) copies of all instruments by which the trust is created or declared, if the developer is a trust; (3) copies of its articles of partnership or association and all other papers pertaining to its organization, if the developer is a partnership, unincorporated association, joint stock company, or any other form of organization; and (4) if the purported holder of legal title is a person other than the developer, copies of the appropriate documents required pursuant to this subsection for that person;

i. Copies of the deed or other instrument establishing title to the subdivision in the developer or other person and copies of any instrument creating a lien or encumbrance upon the title of developer or other person or copies of the opinion of counsel in respect to the title to the subdivision in the developer or other person or companies of the title insurance policy guaranteeing that title;

j. Copies of all forms of conveyance to be used in selling or leasing lots to purchasers;

k. Copies of instruments creating easements or other restrictions;

l. Certified and uncertified financial statements of the developer as required by the commission;

m. Copies of any management contract, lease of recreational areas, or similar contract or agreement affecting the use, maintenance, or access of all or any part of the subdivision;

n. A statement of the status of compliance with the requirements of all laws, ordinances, regulations, and other requirements of governmental agencies, including the federal government, having jurisdiction over the premises;

o. The developer shall immediately report any material changes in the information contained in an application for registration. The term "material changes" shall be further defined by the commission in its regulations; and

p. Any other information and any other documents and certification as the commission may require as being reasonably necessary for the protection of purchasers.

L. 1989, c. 239, § 10.

45:15-16.37. Information available to public

The information contained in any statement of record and any additions or corrections required by section 10 [C.45:15-16.36] of this act shall be made available to the public under regulations promulgated by the commission pursuant to this act and copies shall be furnished to every applicant at a reasonable charge prescribed by the commission.

L. 1989, c. 239, § 11.

45:15-16.38. Public offering statement; not to be used for promotional purposes; amendments to; right to cancel

a. A public offering statement shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting those lands. The proposed public offering statement submitted to the commission shall be in a form prescribed by the rules and regulations promulgated pursuant to this act and shall include the following:

(1) The name and principal address of the developer and his authorized New Jersey representative who shall be a licensed real estate broker licensed to maintain offices within this State;

(2) A general description of the subdivision or subdivided lands stating the total number of lots, parcels, units or interests in the offering;

(3) A summary of the terms and conditions of any management contract, lease of recreational areas, or similar contract or agreement affecting the use, maintenance, or access of all or any part of the subdivision or subdivided lands, the effect of each agreement upon a purchaser, and a statement of the relationship, if any, between the developer or subdivider and the managing agent or firm;

(4) The significant terms of any encumbrances, easements, liens and restrictions, including zoning and other regulations affecting the lands and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect the lands;

(5) A statement of the use for which the property is offered, including, but not limited to:

(a) Information concerning improvements, including hospitals, health and recreational facilities of any kind, streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities and customary utilities; and

(b) The estimated cost, date of completion and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in the subdivision or subdivided lands;

(6) The notice, as required in subsection d. of this section, shall, in addition to being contained in all contracts or agreements, be conspicuously located and simply stated in the public offering statement; and

(7) Additional information required by the commission to assure full and fair disclosure to prospective purchasers.

b. The public offering statement shall not be used for any promotional purposes before registration of the subdivided lands and afterwards only if it is used in its entirety. No person may advertise or represent that the commission approves or recommends the subdivided lands or the disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the commission requires or permits it.

c. The commission may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the subdivision may be made after registration without notifying the commission and without making an appropriate amendment to the public offering statement. A public offering statement is not current unless all amendments or consolidations are incorporated.

d. Any contract or agreement for the purchase or the leasing of a lot may be rescinded by the purchaser or lessee without cause of any kind by sending or delivering written notice of cancellation by midnight of the seventh calendar day following the day on which the purchaser has executed the contract or agreement. Every contract or agreement shall be in writing and shall contain the following notice in 10-point bold type or larger, directly above the space provided for the signature of the purchaser or lessee:

NOTICE to PURCHASER or LESSEE: You are entitled to the right to cancel this contract by midnight of the seventh calendar day following the day on which you have executed this contract or agreement.

e. The subdivider shall make copies of the public offering statement available to prospective purchasers prior to their signing any contract or agreement.

L. 1989, c. 239, § 12.

45:15-16.39. Consolidated filing

A subdivider may register additional subdivided lands pursuant to the same common promotional plan as those previously registered by submitting an additional filing providing the additional information necessary to register the additional lots, parcels, units or interests which shall be designated as "a consolidated filing."

L. 1989, c. 239, § 13.

45:15-16.40. Report by subdivider

a. Within 30 days after each annual anniversary date of an order registering the subdivided lands, or on or before a date set by the commission, and while the subdivider retains any interest therein, the subdivider of these lands shall file a report in the form prescribed by the rules and regulations promulgated by the commission. The report shall reflect any material changes in the information contained in the original application for registration, except that, with respect to any registration filed with and approved by the commission prior to the date of enactment of this act, no additional information shall be required on the subdivided land covered by such registration other than that necessary to indicate any material changes in information contained in the original application for registration.

b. The commission shall process and review requests for amendments to a registration in accordance with the standards and procedures established in this act for review of applications for registration. Requests for amendment, other than price changes and advertising, shall be accompanied by a fee as the commission may prescribe by rule.

c. Upon a determination by the commission that an annual report is no longer necessary for the protection of the public interest or that the developer no longer retains any interest and no longer has any contractual, bond or other obligations in the subdivision, the commission shall issue an order terminating the responsibilities of the developer under this act.

L. 1989, c. 239, § 14.

45:15-16.41. Powers of commission

The commission may:

a. Accept registrations filed in this State, in other states or with the federal government;

b. Contract with similar agencies in this State or other jurisdictions to perform investigative functions;

c. Accept grants in aid from any governmental or other source;

d. Cooperate with similar agencies or commissions in this State or other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules and common administrative practices;

e. Grant exemptions pursuant to the rules and regulations adopted pursuant to section 23 [C.45:15-16.49] of this act;

f. Make any necessary public or private investigations within or outside of this State to determine whether any person has violated or is about to violate any provision of this act, or to aid in the enforcement of this act or in the prescribing of rules and regulations and forms hereunder;

g. Require or permit any person to file a statement in writing, under oath or otherwise, as the commission determines, as to all the facts and circumstances concerning the matter to be investigated;

h. For the purpose of any investigation or proceeding under this act, the commission or any officer designated by rule, may administer oaths, or affirmations, and upon its own motion or upon request of any party may subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence; and

i. Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the commission may apply to the Superior Court for an order compelling compliance.

L. 1989, c. 239, § 15.

45:15-16.42. Commission empowered to issue cease and desist orders

a. If the commission determines after notice and hearing that a person has:

(1) Violated any provision of this act;

(2) Directly or through an agent or employee engaged in any false, deceptive, or misleading advertising, promotional or sales methods in the State of New Jersey to offer or dispose of an interest in the subdivision or subdivided lands;

(3) Made any material change in the plan of disposition and development of the subdivision or subdivided lands subsequent to the order of registration without first complying with the provisions of subsection o. of section 10 [C.45:15-16.36] of this act;

(4) Disposed of any subdivision or subdivided lands which have not been registered with the commission; or

(5) Violated any lawful order or rule or regulation of the commission;

the commission may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the commission will carry out the purposes of this act.

b. If the commission makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held within 15 days of the receipt of the request.

L. 1989, c. 239, § 16.

45:15-16.43. Conditions for revocation of registration

a. A registration may be revoked after notice and hearing upon a written finding of fact that the subdivider has:

(1) Failed to comply with the terms of a cease and desist order issued pursuant to subsection a. of section 16 [C.45:15-16.42] of this act;

(2) Been convicted in any court for a crime or civil offense involving fraud, deception, false pretenses, misrepresentation, false advertising, dishonest dealing, or other like offense subsequent to the filing of the application for registration;

(3) Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers;

(4) Failed faithfully to perform any stipulation or agreement made with the commission as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement;

(5) Advertised his subdivision or responded to applications for his subdivision in a manner which was discriminatory on the basis of marital status, sex, race, creed, color, religion or national origin;

(6) Willfully violated any provision of this act or of a rule or regulation promulgated pursuant to section 23 [C.45:15-16.49] of this act; or

(7) Made intentional misrepresentation or concealed material facts in the documents and information submitted in the application filed for registration. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

b. If the commission finds, after notice and hearing, that the subdivider has been guilty of a violation for which revocation could be ordered, it may, in lieu thereof, issue a cease and desist

order pursuant to subsection a. of section 16 [C.45:15-16.42] of this act.

L. 1989, c. 239, § 17.

45:15-16.44. Commission empowered to bring action in Superior Court; intervene in suits

a. If it appears that a person has engaged, or is about to engage, in an act or practice constituting a violation of a provision of this act, the commission, with or without prior administrative proceedings, may bring an action in the Superior Court to enjoin the acts or practices and to enforce compliance with this act or any rule, regulation or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver may be appointed. The commission shall not be required to post a bond in any court proceeding.

b. The commission may intervene in a suit involving any subdivision. In any such suit, by or against the developer or subdivider, the developer or subdivider shall promptly furnish the commission with notice of the suit and copies of all pleadings.

L. 1989, c. 239, § 18.

45:15-16.45. Submission of applicant to the courts; methods of service

a. For purposes of this act, an applicant for registration submitted to the commission shall be deemed as submission, by the applicant, to the jurisdiction of the Courts of the State of New Jersey.

b. In addition to the methods of service provided for in the Rules Governing the Courts of the State of New Jersey, service may be made by delivering a copy of the process to the person in charge of the office of the commission at its office, but that service shall not be effective unless the plaintiff, which may be the commission in a proceeding instituted by it:

(1) Sends a copy of the process and the pleading by certified mail to the defendant or respondent at his last known address, and

(2) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within the time as the court allows.

c. If any person, including any nonresident of this State, engaged in conduct prohibited by this act and has not filed a consent of service of process and personal jurisdiction over him cannot otherwise be obtained in this State, that conduct authorizes the commission to receive service of process in any noncriminal proceedings against him or his successor which grows out of that conduct and which is brought under this act with the same force and validity as if served on him personally. Notice shall be given as provided in subsection a. of this section.

L. 1989, c. 239, § 19.

45:15-16.46. Violations by brokers, salespeople; fines, penalties

a. Any broker or salesperson who violates any of the provisions of this act shall, in addition to the penalties set forth herein, be subject to the penalties as set forth in R.S. 45:15-17.

b. Any person who violates any provision of this act or any person who, in an application for registration filed with the commission, makes any untrue statement of a material fact or omits to state a material fact shall be fined not less than $250, nor more than $50,000, per violation.

c. The commission may levy and collect the penalties set forth in subsection b. of this section after affording the person alleged to be in violation of this act an opportunity to appear before the commission and to be heard personally or through counsel on the alleged violations and a finding by the commission that said person is guilty of the violation. When a penalty levied by the commission has not been satisfied within 30 days of the levy, the penalty may be sued for and recovered by, and in the name of, the commission in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.).

d. The commission may, in the interest of justice, compromise any civil penalty, if in its determination the gravity of the offense or offenses does not warrant the assessment of the full fine.

L. 1989, c. 239, § 20.

45:15-16.47. Actions, counterclaims permitted against non-compliers

a. Any person who suffers any ascertainable loss of moneys as a result of the failure of another to comply fully with the provisions of this act may bring an action or assert a counterclaim in any court of competent jurisdiction. In any action filed under this section in which a defendant is found to have knowingly engaged in any false, deceptive, misleading promotional or sales methods or discriminatory advertising on the basis of race, sex, creed, color, marital status, national origin or religion, concealed or fraudulently diverted any funds or assets so as to defeat the rights of subdivision purchasers, made an intentional misrepresentation or concealed a material fact in an application for registration, or disposed of any subdivision or subdivided lands required to be registered under section 7 [C.45:15-16.33] of this act which are not so registered, the court shall, in addition to any other appropriate legal or equitable remedy, award double the damages suffered, and court costs expended, including reasonable attorney's fees. In the case of an untruth, omission, or misleading statement the developer sustains the burden of proving that the purchaser knew of the untruth, omission or misleading statement, or that he did not rely on such information, or that the developer did not know, and in the exercise of reasonable care could not have known, of the untruth, omission, or misleading statement.

b. The court may, in addition to the remedies provided in this act, frame any other relief that may be appropriate under the circumstances including, in the court's discretion, restitution of all monies paid and, where a subdivider has failed to provide to a purchaser a copy of the current public offering statement approved by the commission prior to execution of the contract or agreement, rescission of the contract. If the purchaser fails to establish a cause of action, and the court further determines that the action was wholly without merit, the court may award attorney's fees to the developer or subdivider.

c. Every person who directly or indirectly controls a subdivision or developer and violates the provisions of subsection a. of this section, every general partner, officer, or director of a developer, and every person occupying a similar status or performing a similar function, shall be jointly and severally liable with and to the same extent as the developer. The person otherwise liable pursuant to this subsection sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is a right to contribution among persons found liable.

d. Any stipulation or provision purporting to bind any purchaser acquiring a parcel, lot, unit, or interest in any development subject to the provisions of this act to a waiver of compliance with the provisions of this act, shall be void.

e. Any party to an action asserting a claim, counterclaim or defense based upon any violation of this act shall mail a copy of the initial or responsive pleading containing the claim, counterclaim or defense to the commission within 10 days of the filing of the pleading with court. Upon application to the court where the matter is pending, the commission shall be permitted to intervene or to appear in any status appropriate to the matter.

L. 1989, c. 239, § 21.

45:15-16.48. Existing registrations deemed in force and effect

Any registration of a subdivision or amendment thereto, or consolidation, or renewal thereof approved by the commission prior to August 2, 1989, under the "Land Sales Full Disclosure Act," P.L.1975, c. 235 (C. 45:15-16.3 et seq.) shall, upon the enactment of this act, be deemed in force and effect for the remainder of the 12-month period for which it was issued.

L. 1989, c. 239, § 22.

45:15-16.49. Rules and regulations

The commission shall, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), promulgate rules and regulations necessary to effectuate the provisions of this act. The rules may include, but shall not be limited to: a. provisions for advertising standards to insure full and fair disclosure; b. provisions for adequate bondings or access to some escrow or trust fund not otherwise required by the municipal governing body to be located within this State, or the state or country where the property is located, so as to insure compliance with the provisions of this act, and to compensate purchasers for failure of the registrant to perform in accordance with the terms of any contract or public statement; c. provisions that require a registrant to deposit purchaser down payments, security deposits or other funds in an escrow account, or with an attorney licensed to practice law in this State, or the state or country where the property is located, until such time as the commission by its rules and regulations deems it appropriate to permit such funds to be released; d. provisions to insure that all contracts between developer and purchaser are fair and reasonable; e. provisions that the developer must give a fair and reasonable warranty on construction of any improvements; f. provisions that the budget for the operation and maintenance of the common or shared elements or interest shall provide for adequate reserves for depreciation and replacement of the improvements; g. provisions for operating procedures; and h. other rules and regulations necessary to effectuate the purposes of this act, and taking into account and providing for, the broad range of development plans and devises, management mechanisms, and methods of ownership, permitted under the provisions of this act.

L. 1989, c. 239, § 23.

45:15-16.50. Short title [New Jersey Real Estate Timeshare Act]

Sections 1 through 36 [C.45:15-16.50 through C.45:15-16.85] of this act shall be known and may be cited as the "New Jersey Real Estate Timeshare Act."

L. 2006, c. 63, § 1, eff. Oct. 31, 2006.

45:15-16.51. Definitions relative to timeshares

As used in sections 1 through 36 [C.45:15-16.50 through C.45:15-16.85] of this act:

"Accommodation" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, or other private or commercial structure containing toilet facilities therein that is designed and available, pursuant to applicable law, for use and occupancy as a residence by one or more individuals which is a part of the timeshare property.

"Advertisement" means any written, oral or electronic communication that is directed to or targeted to persons within the State and contains a promotion, inducement or offer to sell a timeshare plan, including but not limited to brochures, pamphlets, radio and television scripts, electronic media, telephone and direct mail solicitations and other means of promotion.

"Advertisement" does not mean:

(1) Any stockholder communication such as an annual report or interim financial report, proxy material, a registration statement, a securities prospectus, a registration, a property report

or other material required to be delivered to a prospective purchaser by an agency of any state or federal government;

(2) Any oral or written statement disseminated by a developer to broadcast or print media, other than paid advertising or promotional material, regarding plans for the acquisition or development of timeshare property. However, any rebroadcast or any other dissemination of such oral statements to prospective purchasers by a seller in any manner, or any distribution of copies of newspaper magazine articles or press releases, or any other dissemination of such written statement to a prospective purchaser by a seller in any manner, shall constitute an advertisement; or

(3) Any communication addressed to and relating to the account of any person who has previously executed a contract for the sale or purchase of a timeshare period in a timeshare plan to which the communication relates shall not be considered advertising under this act, provided they are delivered to any person who has previously executed a contract for the purchase of a timeshare interest or is an existing owner of a timeshare interest in a timeshare plan.

"Assessment" means the share of funds required for the payment of common expenses which is assessed from time to time against each timeshare interest by the association.

"Association" means the organized body consisting of the purchasers of interests in a timeshare property.

"Commission" means the New Jersey Real Estate Commission.

"Common expense" means casualty and liability insurance, and those expenses properly incurred for the maintenance, operation, and repair of all accommodations constituting the timeshare plan and any other expenses designated as common expenses by the timeshare instrument.

"Component site" means a specific geographic location where accommodations which are part of a multi-site timeshare plan are located. Separate phases of a single timeshare property in a specific geographic location and under common management shall be deemed a single component site.

"Department" means the Department of Banking and Insurance.

"Developer" means and includes any person or entity, who creates a timeshare plan or is in the business of selling timeshare interests, or employs agents or brokers to do the same, or any person or entity who succeeds to the interest of a developer by sale, lease, assignment, mortgage or other transfer, except that the term shall include only those persons who offer timeshare interests for disposition in the ordinary course of business.

"Dispose" or "disposition" means a voluntary transfer or assignment of any legal or equitable interest in a timeshare plan, other than the transfer, assignment or release of a security interest.

"Escrow agent" means an independent person, including an independent bonded escrow company, an independent financial institution whose accounts are insured by a governmental agency or instrumentality, or an independent licensed title insurance agent who is responsible for the receipt and disbursement of funds in accordance with this act. If the escrow agent is not located in the State of New Jersey, then this person shall subject themselves to the jurisdiction of the commission with respect to disputes that arise out of the provisions of this act.

"Incidental benefit" means an accommodation, product, service, discount, or other benefit which is offered to a prospective purchaser of a timeshare plan or to a purchaser of a timeshare plan prior to the expiration of his or her rescission period pursuant to section 18 [C.45:15-16.67] of this act and which is not an exchange program, provided that:

(1) use or participation in the incidental benefit is completely voluntary;

(2) no costs of the incidental benefit are included as common expenses of the timeshare plan;

(3) the good faith represented aggregate value of all incidental benefits offered by a developer to a purchaser may not exceed 20 percent of the actual price paid by the purchaser for his or her timeshare interest; and

(4) the purchaser is provided a disclosure that fairly describes the material terms of the incidental benefit. The term shall not include an offer of the use of the accommodations of the timeshare plan on a free or discounted one-time basis.

"Managing entity" means the person who undertakes the duties, responsibilities and obligations of the management of the timeshare property.

"Offer" means any inducement, solicitation, or other attempt, whether by marketing, advertisement, oral or written presentation or any other means, to encourage a person to acquire a timeshare interest in a timeshare plan, for gain or profit.

"Person" means a natural person, corporation, limited liability company, partnership, joint venture, association, estate, trust, government, governmental subdivision or agency, or other legal entity or any combination thereof.

"Promotion" means a plan or device, including one involving the possibility of a prospective purchaser receiving a vacation, discount vacation, gift, or prize, used by a developer, or an agent, independent contractor, or employee of a developer, agent or independent contractor on behalf of the developer, in connection with the offering and sale of timeshare interests in a timeshare plan.

"Purchaser" means any person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare plan other than as security for an obligation.

"Purchase contract" means a document pursuant to which a person becomes legally obligated to sell, and a purchaser becomes legally obligated to buy, a timeshare interest.

"Reservation system" means the method, arrangement or procedure by which a purchaser, in order to reserve the use or occupancy of any accommodation of a multi-site timeshare plan for one or more timeshare periods, is required to compete with other purchasers in the same multi-site timeshare plan, regardless of whether the reservation system is operated and maintained by the multi-site timeshare plan managing entity or any other person.

"Sales agent" means any person who performs within this State as an agent or employee of a developer any one or more of the services or acts as set forth in this act, and includes any real estate broker, broker salesperson or salesperson licensed pursuant to R.S. 45:15-1 et seq., or any person who purports to act in any such capacity.

"Timeshare instrument" means one or more documents, by whatever name denominated, creating or governing the operation of a timeshare plan.

"Timeshare interest" means and includes either:

(1) A "timeshare estate," which is the right to occupy a timeshare property, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof; or

(2) A "timeshare use," which is the right to occupy a timeshare property, which right is neither coupled with a freehold interest, nor coupled with an estate for years with a future interest, in a timeshare property.

"Timeshare period" means the period or periods of time when the purchaser of a timeshare plan is afforded the opportunity to use the accommodations of a timeshare plan.

"Timeshare plan" means any arrangement, plan, scheme, or similar device, whether by membership agreement, sale, lease, deed, license, or right to use agreement or by any other means, whereby a purchaser, in exchange for consideration, receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year on a recurring basis, but not necessarily for consecutive years. A timeshare plan may be:

(1) A "single-site timeshare plan," which is the right to use accommodations at a single timeshare property; or

(2) A "multi-site timeshare plan," which includes:

(a) A "specific timeshare interest," which means an interest wherein a purchaser has, only through a reservation system:

(i) a priority right to reserve accommodations at a specific timeshare property without competing with owners of timeshare interests at other component sites that are part of the multi-site timeshare plan, which priority right extends for at least 60 days; and

(ii) the right to reserve accommodations on a non-priority basis at other component sites that are part of the multi-site timeshare plan; or

(b) A "non-specific timeshare interest", which means an interest wherein a purchaser has, only through a reservation system, the right to reserve accommodations at any component site of the multi-site timeshare plan, with no priority right to reserve accommodations at any specific component site.

"Timeshare property" means one or more accommodations subject to the same timeshare instrument, together with any other property or rights to property appurtenant to those accommodations.

L. 2006, c. 63, § 2, eff. Oct. 31, 2006.

45:15-16.52. Applicability of act

This act shall apply to the following:

a. Timeshare plans with an accommodation or component site in the State; and

b. Timeshare plans without an accommodation or component site in this State if those timeshare plans are offered to be sold within this State, regardless of whether the offer originates from within or outside of this State.

L. 2006, c. 63, § 3, eff. Oct. 31, 2006.

45:15-16.53. Inapplicability of act

a. This act shall not apply to any of the following:

(1) Timeshare plans, whether or not an accommodation or component site is located in the State, consisting of 10 or fewer timeshare interests;

(2) Timeshare plans, whether or not an accommodation or component site is located in this State, the use of which extends over any period of three years or less. For purposes of determining the term of a timeshare plan, the period of any automatic renewal shall be included, unless a purchaser has the right to terminate the purchaser's participation in the timeshare plan at any time and receive a pro rata refund, or the purchaser receives a notice, not less than 30 days, but not more than 60 days, prior to the date of renewal, informing the purchaser of the right to terminate at any time prior to the date of automatic renewal;

(3) Timeshare plans, whether or not an accommodation or component site is located in the State, under which the prospective purchaser's total financial obligation will be equal to or less than $3,000 during the entire term of the timeshare plan;

(4) Component sites of specific timeshare interest multi-site timeshare plans that are neither located in nor offered for sale in this State, except that these component sites are still subject to the disclosure requirements of section 10 [C.45:15-16.59] of this act;

(5) Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any State or federal statute;

(6) Offers or dispositions of securities currently registered with the Bureau of Securities within the Division of Consumer Affairs in the Department of Law and Public Safety.

b. A person shall not be required to register as a developer under this act if:

(1) The person is an owner of a timeshare interest who has acquired the timeshare interest for the person's own use and occupancy and who later offers it for resale in a single or isolated transaction; or

(2) The person is a managing entity or an association that is not otherwise a developer of a timeshare plan in its own right, solely while acting as an association or under a contract with an association to offer or sell a timeshare interest transferred to the association through foreclosure, deed in lieu of foreclosure, or gratuitous transfer, if such acts are performed in the regular course of, or as an incident to, the management of the association for its own account in the timeshare plan.

c. If a developer has already registered a timeshare plan under this act, the developer may offer or dispose of an interest in a timeshare plan that is not registered under this act if the developer is offering a timeshare interest in the additional timeshare plan to a current timeshare interest owner of a timeshare interest in a timeshare plan created or operated by that same developer subject to the rules and regulations adopted by the commission.

d. The commission may, from time to time, pursuant to any rules and regulations adopted pursuant to this act, exempt from any of the provisions of this act any timeshare plan, if it finds that the enforcement of this act with respect to that plan is not necessary in the public interest, or required for the protection of purchasers, by reason of the small amount of the purchase price or the limited character of the offering.

L. 2006, c. 63, § 4, eff. Oct. 31, 2006.

45:15-16.54. Administration by Real Estate Commission

This act shall be administered by the New Jersey Real Estate Commission in the Department of Banking and Insurance.

L. 2006, c. 63, § 5, eff. Oct. 31, 2006.

45:15-16.55. Nonpreemption of local codes; supersedure of other regulation of timeshares

Except as provided in this section, no provision of this act shall invalidate or modify any provision of any zoning, subdivision, or building code, law, ordinance or regulation. In case of conflict between the provisions of this act and the provisions of any other law, ordinance or regulation governing or purporting to govern the creation, registration, disclosure requirements or sale of timeshare interests in a component site, the provisions of this act shall control.

L. 2006, c. 63, § 6, eff. Oct. 31, 2006.

45:15-16.56. Creation of timeshare plan

A timeshare plan may be created in any accommodation unless otherwise prohibited. A timeshare plan shall maintain a one-to-one purchaser-to-accommodation ratio, which means the ratio of the number of purchasers eligible to use the accommodations of a timeshare plan on a given day to the number of accommodations available for use within the plan on that day, such that the total number of purchasers eligible to use the accommodations of the timeshare plan during a given consecutive 12-month period never exceeds the total number of accommodations available for use in the timeshare plan during that consecutive 12-month period. For purposes of the calculation under this section, each purchaser shall be counted at least once, and an individual accommodation shall not be counted more than one time per day per year. An owner of a timeshare interest who is delinquent in the payment of a timeshare plan assessment shall continue to be considered eligible to use the accommodations of the timeshare plan for purposes of calculating the one-to-one purchaser-to-accommodation ratio.

L. 2006, c. 63, § 7, eff. Oct. 31, 2006.

45:15-16.57. Requirements for developers of timeshares; application, registration

a. A developer who sells, offers to sell, or attempts to solicit prospective purchasers in this State to purchase a timeshare interest, or any person who creates a timeshare plan with an accommodation in the State, shall register with the commission, on forms provided by the commission or in electronic formats authorized by the commission, all timeshare plans which have accommodations located in the State or which are sold or offered for sale to any individual located in the State.

b. Upon the submission of an application approved by the commission, the commission may grant a 90-day preliminary registration to allow the developer to begin offering and selling timeshare interests in a timeshare plan regardless of whether the accommodations of the timeshare plan are located within or outside of the State. Upon submission of a substantially complete application for an abbreviated or comprehensive registration under this act, including all appropriate fees, to the commission

prior to the expiration date of the preliminary registration, the preliminary registration will be automatically extended during the registration review period provided that the developer is actively and diligently pursuing registration under this act. The preliminary registration shall automatically terminate with respect to those timeshare interests covered by a final public offering statement that is issued before the scheduled termination date of the preliminary registration. The preliminary registration shall also terminate upon the issuance of any notice of rejection due to the developer's failure to comply with the provisions of this act.

To obtain a preliminary registration, the developer shall provide all of the following:

(1) Submit the reservation instrument to be used in a form previously approved by the department with at least the following provisions:

(a) The right of both the developer and the potential purchaser to unilaterally cancel the reservation at any time;

(b) The payment to the potential purchaser of his or her total deposit following cancellation of the reservation by either party;

(c) The placing of the deposit into an escrow account; and

(d) A statement to the effect that the offering has not yet received final approval from the commission, and that no offering can be made until an offering plan has been filed with, and accepted by, the commission;

(2) Agree to provide each potential purchaser with a copy of the preliminary public offering statement and an executed receipt for a copy before any money or other thing of value has been accepted by or on behalf of the developer in connection with the reservation;

(3) Agree to provide a copy of the reservation instrument signed by the potential purchaser and by or on behalf of the developer to the potential purchaser;

(4) Provide evidence acceptable to the commission that all funds received by the developer will be placed into an independent escrow account with instructions that no funds will be released until a final order of registration has been granted;

(5) Submit the filing fee for a preliminary registration as provided for by regulation. The filing fee shall be in addition to the filing fees for an abbreviated or comprehensive registration as established by this act;

(6) File all advertisements to be utilized by the developer under the preliminary registration with the commission before use.

All advertisements and advertising literature shall contain the following, or substantially similar, disclaimer:

"This advertising material is being used for the purpose of soliciting sales of timeshare interests.";

(7) Such other information as the commission may require in order to further the provisions of this act, to assure full and fair disclosure and for the protection of purchaser interests.

c. Prior to the issuance of an order of registration for an abbreviated or comprehensive registration, the commission may issue a conditional registration approval for a timeshare plan if the filing is deemed to be substantially complete by the commission and the commission determines that the deficiencies are likely to be corrected by the applicant in a reasonable time and manner. Once the commission issues a conditional registration approval, the applicant may begin entering into purchase contracts with the purchaser and provide the purchaser with the most current version of the public offering statement; however, no rescission period may begin to run until the final approved public offering statement is delivered to the purchaser. If there is no material difference between the documents provided to the purchaser pursuant to the conditional registration and the documents approved as part of the final order of approval, then those documents need not be delivered again to the purchaser. All purchase contracts that are executed under the authority of a conditional registration approval shall contain the following provisions:

(1) No escrow will close, funds will not be released from escrow, and the interest contracted for will not be conveyed until a final approved public offering statement for the timeshare plan is furnished to the purchaser.

(2) The contract may be rescinded, in which event the entire sum of money paid or advanced by the purchaser shall be returned if the purchaser or lessee is dissatisfied with the final public offering statement.

(3) The term for a conditional registration approval shall be six months from the date of approval by the commission, and may be extended upon application to the commission for an additional six month period.

d. A developer shall include in its application for registration with the commission, the following information:

(1) The developer's legal name, any assumed names used by the developer, and the developer's principal office location, mailing address, primary contact person and telephone number;

(2) The name, location, mailing address, primary contact person and telephone number of the timeshare plan;

(3) The name and principal address of the developer's authorized New Jersey representative who shall be a licensed real estate broker licensed to maintain offices within this State;

(4) A declaration as to whether the timeshare plan is a single-site timeshare plan or a multi-site timeshare plan and, if a multi-

site timeshare plan, whether it consists of specific timeshare interests or non-specific timeshare interests;

(5) The name and principal address of all brokers within New Jersey who sell or offer to sell any timeshare interests in any timeshare plan offered by the developer to any person in this State, who shall be licensed as a real estate broker pursuant to R.S.45:15-1 et seq., and who are the authorized representatives of the developer;

(6) The name and principal address of all non-affiliated marketing entities who, by means of inducement, promotion or advertisement, attempt to encourage or procure prospective purchasers located in the State to attend a sales presentation for any timeshare plan offered by the developer or authorized broker;

(7) The name and principal address of all managing entities who manage the timeshare plan;

(8) A public offering statement which complies with the requirements of this act; and

(9) Any other information regarding the developer, timeshare plan, brokers, marketing entities or managing entities as required by the commission and established by the commission by regulation.

e. The developer shall comply with the following escrow requirements:

(1) A developer of a timeshare plan shall deposit with an escrow agent all funds which are received during the purchaser's cancellation period set forth in section 18 [C.45:15-16.67] of this act, into an escrow account in a federally insured depository or a depository acceptable to the commission. The deposit of such funds shall be evidenced by an executed escrow agreement between the escrow agent and the developer. The escrow agreement shall include provisions that funds may be disbursed to the developer by the escrow agent from the escrow account only after expiration of the purchaser's cancellation period and in accordance with the purchase contract, subject to paragraph (2) of this subsection.

(2) If a developer contracts to sell a timeshare interest and the construction of any property in which the timeshare interest is located has not been completed, the developer, upon expiration of the cancellation period set forth in section 18 [C.45:15-16.67] of this act, shall continue to maintain in an escrow account all funds received by or on behalf of the developer from the purchaser under the purchase contract. The commission shall establish by rule the type of documentation which shall be required for evidence of completion, including but not limited to a certificate of occupancy, a certificate of substantial completion, or equivalent certificate from a public safety inspection agency in the applicable jurisdiction. Funds shall be released from escrow as follows:

(a) If a purchaser properly cancels the purchase contract pursuant to its terms, the funds shall be paid to the purchaser or paid to the developer if the purchaser's funds have been previously refunded by the developer.

(b) If a purchaser defaults in the performance of the purchaser's obligations under the purchase contract, the funds shall be paid to the developer.

(c) If the funds of a purchaser have not been previously disbursed in accordance with the provisions of this paragraph, they may be disbursed to the developer by the escrow agent upon the issuance of acceptable evidence of completion of construction as provided herein.

(3) In lieu of the provisions in paragraphs (1) and (2) of this subsection, the commission may accept from the developer a surety bond, bond in lieu of escrow, irrevocable letter of credit or other financial assurance acceptable to the commission. Any acceptable financial assurance shall be in an amount equal to or in excess of the lesser of the funds which would otherwise be placed in escrow in accordance with the provisions of paragraph (1) of this subsection, or in an amount equal to the cost to complete the incomplete property in which the timeshare interest is located. However, in no event shall the amount be less than the amount of funds that would otherwise be placed in escrow pursuant to paragraph (1) of this subsection.

(4) The developer shall provide escrow account information to the commission and shall execute in writing an authorization consenting to an audit or examination of the account by the commission on forms provided by the commission. The developer shall comply with the reconciliation and records requirements established by rule by the commission. The developer shall make documents related to the escrow account or escrow obligation available to the commission upon the commission's request. The escrow agent shall maintain any disputed funds in the escrow account until either:

(a) Receipt of written direction agreed to by signature of all parties; or

(b) Deposit of the funds with a court of competent jurisdiction in which a civil action regarding the funds has been filed.

f. The commission may accept, as provided by regulation, an abbreviated registration application of a developer of a timeshare plan in which all accommodations are located outside of the State. The developer shall provide evidence that the timeshare plan is registered with the applicable regulatory agency in a state or jurisdiction where the timeshare plan is offered or sold, or that the timeshare plan is in compliance with the laws and regulations of the applicable state jurisdiction in which some or all of the accommodations are located, which state or jurisdiction shall have disclosure requirements that are substantially equivalent to or greater than the information required to be disclosed pursuant to subsections b. and c. of this section to

purchasers in this State. A developer filing an abbreviated registration application shall provide the following:

(1) The developer's legal name, any assumed names used by the developer, and the developer's principal office location, mailing address, primary contact person and telephone number;

(2) The name, location, mailing address, primary contact person and telephone number of the timeshare plan;

(3) The name and principal address of the developer's authorized New Jersey representative who shall be a licensed real estate broker licensed to maintain offices within this State;

(4) The name and principal address of all brokers within New Jersey who sell or offer to sell any timeshare interests in any timeshare plan offered by the developer to any person in this State, who shall be licensed as a real estate broker pursuant to R.S. 45:15-1 et seq., and who are the authorized representatives of the developer;

(5) The name and principal address of all non-affiliated marketing entities who, by means of inducement, promotion or advertisement, attempt to encourage or procure prospective purchasers located in the State to attend a sales presentation for any timeshare plan offered by the developer or authorized broker;

(6) The name and principal address of all managing entities who manage the timeshare plan;

(7) Evidence of registration or compliance with the laws and regulations of the jurisdiction in which the timeshare plan is located, approved or accepted;

(8) A declaration as to whether the timeshare plan is a single-site timeshare plan or a multi-site timeshare plan and, if a multi-site timeshare plan, whether it consists of specific timeshare interests or non-specific timeshare interests;

(9) Disclosure of each jurisdiction in which the developer has applied for registration of the timeshare plan, and whether the timeshare plan or its developer were denied registration or were the subject of any disciplinary proceeding;

(10) Copies of any disclosure documents required to be given to purchasers or required to be filed with the jurisdiction in which the timeshare plan is located, approved or accepted as may be requested by the commission;

(11) The appropriate fee; and

(12) Any other information regarding the developer, timeshare plan, brokers, marketing entities or managing entities as required by the commission and established by the commission by regulation.

A developer of a timeshare plan with any accommodation located in this State may not file an abbreviated filing with regard to such timeshare plan, with the exception of a succeeding developer after a merger or acquisition when the developer's timeshare plan was registered in this State prior to the merger or acquisition.

L. 2006, c. 63, § 8, eff. Oct. 31, 2006.

45:15-16.58. Responsibilities of timeshare developer for offering, marketing violations

The developer shall have responsibility for each timeshare plan registered with the commission and for the actions of any sales agent, managing entity or marketing entity utilized by the developer in the offering or promotional selling of any registered timeshare plan. Any violation of this act which occurs during the offering activities shall be a violation by the developer as well as by the sales agent, marketing entity or managing entity who actually committed the violation. Notwithstanding anything to the contrary in this act, the developer shall be responsible for the actions of the association and managing entity only while they are subject to the developer's control.

L. 2006, c. 63, § 9, eff. Oct. 31, 2006.

45:15-16.59. Public offering, disclosure statements; requirements

a. A developer shall: (1) prepare a public offering statement; (2) provide the statement to each purchaser of a timeshare interest in any timeshare plan at the time of purchase; and (3) fully and accurately disclose those facts concerning the timeshare developer and timeshare plan that are required by this act or by regulations promulgated by the commission.

The public offering statement shall be in writing and dated and shall require the purchaser to certify in writing that the purchaser received the statement. Upon approval of the commission, the developer may offer to deliver the public offering statement and other documents on CD-ROM format, Internet website or other electronic media if the purchaser consents.

b. The public offering disclosure statement for a single-site timeshare plan shall include:

(1) The name and address of the developer;

(2) A description of the duration and operation of the timeshare plan;

(3) A description of the existing or proposed accommodations, including the type and number of timeshare interests in the accommodations expressed in periods of seven-day use availability or other time increments applicable to the timeshare plan. The description of each type of accommodation included in the timeshare plan shall be categorized by the number of bedrooms, the number of bathrooms, and sleeping capacity, and shall include a statement indicating whether the accommodation contains a full kitchen, which means a kitchen that has a minimum of a dishwasher, range, sink, oven, and refrigerator. If the accommodations are proposed or incomplete, a schedule

for commencement, completion, and availability of the accommodations shall be provided;

(4) A description of any existing or proposed amenities of the timeshare plan and, if the amenities are proposed or incomplete, a schedule for commencement, completion, and availability of the amenities;

(5) The extent to which financial arrangements have been provided for the completion of all promised accommodations and amenities that are committed to be built;

(6) A description of the method and timing for performing maintenance of the accommodations;

(7) A statement indicating that, on an annual basis, the sum of the nights that purchasers are entitled to use the accommodations does not exceed the number of nights the accommodations are available for use by the purchasers;

(8) A description of the method by which purchasers' use of the accommodations is scheduled;

(9) A statement that an association exists or is expected to be created or that such an association does not exist and is not expected to be created and, if such an association exists or is reasonably contemplated, a description of its powers and responsibilities;

(10) A statement that within seven days after receipt of the public offering statement or after execution of the purchase contract, whichever is later, a purchaser may cancel any purchase contract for a timeshare interest from a developer together with a statement providing the name and street address to which the purchaser should mail any notice of cancellation. However, if by agreement of the parties by and through the purchase contract, the purchase contract allows for cancellation of the purchase contract for a period of time exceeding seven days, then the public offering statement shall include a statement that the cancellation of the purchase contract is allowed for that period of time exceeding seven days;

(11) Copies of the following documents, if applicable, including any amendments to the documents, unless separately provided to the purchaser simultaneously with the public offering statement:

(a) the timeshare instrument;

(b) the association articles of incorporation;

(c) the association bylaws;

(d) the association rules; and

(e) any lease or contract, excluding the purchase contract and other loan documents required to be signed by the purchaser at closing;

(12) The name and principal address of the managing entity and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it;

(13) The current annual budget, if available, or the projected annual budget for the timeshare plan. The budget shall include:

(a) a statement of the amount reserved or budgeted for repairs or replacements, if any;

(b) the projected common expense liability, if any, by category of expenditure for the timeshare plan; and

(c) a statement of any services or expenses not reflected in the budget that the developer provides or pays;

(14) The projected assessments and a description of the method for calculating and apportioning those assessments among purchasers;

(15) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;

(16) A description of any lien, defect, or encumbrance on or affecting title to the timeshare interest and, if applicable, a copy of each written warranty provided by the developer;

(17) A description of any bankruptcy that is pending or which has occurred within the past five years, pending civil or criminal proceeding, adjudication, or disciplinary action material to the timeshare plan of which the developer has knowledge;

(18) A description of any financing offered by or available through the developer;

(19) Any current or anticipated fees or charges to be paid by timeshare purchasers for the use of any accommodations or amenities related to the timeshare plan, and a statement that the fees or charges are subject to change;

(20) A description and amount of insurance coverage provided for the protection of the purchaser;

(21) The extent to which a timeshare interest may become subject to a tax lien or other lien arising out of claims against purchasers of different timeshare interests;

(22) A description of those matters required by section 18 [C.45:15-16.67] of this act;

(23) A statement disclosing any right of first refusal or other restraint on the transfer of all or any portion of a timeshare interest;

(24) A statement disclosing that any deposit made in connection with the purchase of a timeshare interest shall be held by an escrow agent until expiration of any right to cancel the contract and that any deposit shall be returned to the purchaser if the pur-

chaser elects to exercise the right of cancellation; or, if the commission accepts from the developer a surety bond, irrevocable letter of credit, or other form of financial assurance instead of an escrow deposit, a statement disclosing that the developer has provided a surety bond, irrevocable letter of credit, or other form of financial assurance in an amount equal to or in excess of the funds that would otherwise be held by an escrow agent and that the deposit shall be returned if the purchaser elects to exercise the right of cancellation;

(25) A description of the name and address of the exchange company and the method by which a purchaser accesses the exchange program, if the timeshare plan provides purchasers with the opportunity to participate in an exchange program; and

(26) Any other information the commission determines is necessary to protect prospective purchasers or to implement the purpose of this act.

The developer may also include any other information in the timeshare disclosure statement following approval by the commission.

c. The disclosure statement for a specific timeshare interest multi-site timeshare plan shall include:

(1) With regard to the timeshare property in which the purchaser will receive a specific timeshare interest that includes a reservation priority right, all of the applicable information related to that timeshare property as required under subsection b. of this section;

(2) With regard to the component site in which the purchaser does not receive a specific timeshare interest, the following information:

(a) a description of each component site, including the name and address of each component site;

(b) a description of each type of accommodation in each component site, categorized by the number of bedrooms, the number of bathrooms, and sleeping capacity, and a statement indicating whether the accommodation contains a full kitchen, which means a kitchen that has a minimum of a dishwater, range, sink, oven, and refrigerator;

(c) a description of the amenities at each component site available for use by the purchaser;

(d) a description of the reservation system, which shall include:

(i) the entity responsible for operating the reservation system, its relationship to the developer, and the duration of any agreement for operation of the reservation system;

(ii) a summary or the rules governing access to and use of the reservation system; and

(iii) the existence of and explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation on a first-come, first-served basis;

(e) The name and principal address of the managing entity for the multi-site timeshare plan and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it;

(f) A description of any right to make additions to, substitutions in, or deletions from accommodations, amenities, or component sites, and a description of the basis on which accommodations, amenities, or component sites may be added to, substituted in, or deleted from the multi-site timeshare plan;

(g) A description of the purchaser's liability for any fees associated with the multi-site timeshare plan;

(h) The location of each component site of the multi-site timeshare plan, as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at the time within the multi-site timeshare plan; and

(i) Any other information the commission determines is necessary to protect prospective purchasers or to implement the purpose of this act.

d. The public offering statement for a non-specific timeshare interest multi-site timeshare plan shall include:

(1) The name and address of the developer;

(2) A description of the type of interest and usage rights the purchaser will receive;

(3) A description of the duration and operation of the timeshare plan;

(4) A description of the type of insurance coverage provided for each component site;

(5) An explanation of who holds title to the accommodations of each component site;

(6) A description of each component site, including the name and address of each component site;

(7) A description of the existing or proposed accommodations expressed in periods of seven-day use availability or other time increments applicable to the timeshare plan. The description of each type of accommodation included in the timeshare plan shall be categorized by the number of bedrooms, the number of bathrooms, and sleeping capacity, and shall include a statement indicating whether the accommodation contains a full kitchen, which means a kitchen that has a minimum of a dishwasher, range, sink, oven, and refrigerator. If the accommodations are

proposed or incomplete, a schedule for commencement, completion and availability of the accommodations shall be provided;

(8) A statement that an association for the multi-site timeshare plan exists or is expected to be created or that such an association does not exist and is not expected to be created and, if such an association exists or is reasonably contemplated, a description of its powers and responsibilities;

(9) If applicable, copies of the following documents applicable to the multi-site timeshare plan, including any amendments to such documents, unless separately provided to the purchaser simultaneously with the timeshare disclosure statement:

(a) the timeshare instrument;

(b) the association articles of incorporation;

(c) the association bylaws; and

(d) the association rules;

(10) A description of the method and timing for performing maintenance of the accommodations;

(11) A statement indicating that, on an annual basis, the total number of purchasers eligible to use the accommodations of the timeshare plan during a given consecutive 12-month period never exceeds the total number of accommodations available for use in the timeshare plan during that consecutive 12-month period;

(12) A description of amenities available for use by the purchaser at each component site;

(13) The location of each component site of the multi-site timeshare plan, as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at the time within the multi-site timeshare plan;

(14) A description of any right to make any additions, substitutions, or deletions of accommodations, amenities, or component sites, and a description of the basis upon which accommodations, amenities, or component sites may be added to, substituted in, or deleted from the multi-site timeshare plan;

(15) A description of the reservation system that shall include all of the following:

(a) the entity responsible for operating the reservation system, its relationship to the developer, and the duration of any agreement for operation of the reservation system;

(b) a summary of the rules governing access to and use of the reservation system; and

(c) the existence of and an explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation on a first-come, first-served basis;

(16) The name and principal address of the managing entity for the multi-site timeshare plan and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it, and a description of the relationship between the multi-site timeshare plan managing entity and the managing entity of the component sites of the multi-site timeshare plan, if different from the multi-site timeshare plan managing entity;

(17) A statement that within seven days after receipt of the public offering statement or after execution of the purchase contract, whichever is later, a purchaser may cancel any purchase contract for a timeshare interest from a developer together with a statement providing the name and street address to which the purchaser should mail any notice of cancellation. However, if by agreement of the parties by and through the purchase contract, the purchase contract allows for cancellation of the purchase contract for a period of time exceeding seven days, then the public offering statement shall include a statement that the cancellation of the purchase contract is allowed for that period of time exceeding seven days;

(18) The current annual budget of the multi-site timeshare plan, if available, or the projected annual budget for the multi-site timeshare plan, which shall include:

(a) a statement of the amount reserved or budgeted, if any, for repairs, replacements, and refurbishment;

(b) the projected common expense liability, if any, by category of expenditure for the multi-site timeshare plan; and

(c) a statement of any services or expenses not reflected in the budget that the developer provides or pays;

(19) The projected assessments and a description of the method for calculating and apportioning those assessments among purchasers of the multi-site timeshare plan;

(20) Any current fees or charges to be paid by purchasers for the use of any amenities related to the timeshare plan and a statement that the fees or charges are subject to change;

(21) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;

(22) A description of the purchaser's liability for any fees associated with the multi-site timeshare plan;

(23) A description of any lien, defect, or encumbrance on or affecting title to the timeshare interest and, if applicable, a copy of each written warranty provided by the developer;

(24) The extent to which a timeshare interest may become subject to a tax lien or other lien arising out of claims against purchasers of different timeshare interests;

(25) A description of those matters required by section 18 [C.45:15-16.67] of this act;

(26) A description of any financing offered by or available through the developer;

(27) A description of any bankruptcy that is pending or which has occurred within the past five years, pending civil or criminal proceeding, adjudication, or disciplinary action material to the timeshare plan of which the developer has knowledge;

(28) A statement disclosing any right of first refusal or other restraint on the transfer of all or a portion of a timeshare interest;

(29) A statement disclosing that any deposit made in connection with the purchase of a timeshare interest shall be held by an escrow agent until expiration of any right to cancel the contract and that any deposit shall be returned to the purchaser if the purchaser elects to exercise the right of cancellation; or, if the commission accepts from the developer a surety bond, irrevocable letter of credit, or other form of financial assurance instead of an escrow deposit, a statement disclosing that the developer has provided a surety bond, irrevocable letter of credit, or other form of financial assurance in an amount equal to or in excess of the funds that would otherwise be held by an escrow agent and that the deposit shall be returned if the purchaser elects to exercise the right of cancellation;

(30) A description of the name and address of the exchange company and the method by which a purchaser accesses the exchange program, if the timeshare plan provides purchasers with the opportunity to participate in an exchange program;

(31) Any other information the commission determines is necessary to protect prospective purchasers or to implement the purpose of this act. The developer may also include any other information in the timeshare disclosure statement following approval by the commission.

e. The developer shall also distribute to the purchaser any additional documents as the commission may require for accommodations in this State as provided by regulation, including such additional documentation as may be required under the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.).

L. 2006, c. 63, § 10, eff. Oct. 31, 2006.

45:15-16.60. Filing of annual reports by developer of timeshare

a. Within 30 days after each annual anniversary date of an order registering the timeshare, or on or before a date set by the commission, and while the developer continues to offer any timeshare interests in the timeshare plan in this State, the developer shall file a report in the form prescribed by the rules and regulations promulgated by the commission. The report shall reflect any material changes in the information contained in the original or subsequently submitted applications or documents.

b. (1) The developer shall file amendments to its registration to reflect any material change in any information set forth in the project and disclosure documents. The developer shall notify the commission of the material change prior to implementation of the change, unless the change is beyond the control of the developer; in which event, the developer shall provide written notice to the commission as soon as reasonably practicable after the occurrence of the event. All amendments, supplements, and facts relevant to the material change shall be filed with the commission within 20 calendar days of the material change.

(2) The developer may continue to sell timeshare interests in the timeshare plan so long as, prior to closing, the developer provides a notice to each purchaser that describes the material change and provides to each purchaser the previously approved public offering statement. If the change is material and adverse to the purchasers of the timeshare plan as a whole, as determined by the commission, no closing shall occur until the amendment relating to the material and adverse change has been approved by the commission. After the amendment relating to the material and adverse change has been approved and the amended public offering statement has been issued, the amended public offering statement shall be provided to the purchaser, and an additional seven-day rescission period shall commence. The developer shall be required to maintain evidence of the receipt by each purchaser of the amended public offering statement. If the commission refuses to approve the amendment relating to the material and adverse change, all sales made using the notice shall be subject to rescission and all funds returned.

(3) The developer shall update the public offering statement to reflect any changes to the timeshare plan that are not material and adverse, including the addition of any component sites, within a reasonable time as determined by the commission pursuant to regulation.

c. Upon a determination by the commission that an annual report is no longer necessary for the protection of the public interest or that the developer no longer retains any interest and no longer has any contractual, bond or other obligations in the subdivision, the commission shall issue an order terminating the responsibilities of the developer under this act.

L. 2006, c. 63, § 11, eff. Oct. 31, 2006.

45:15-16.61. Issuance of notice of filing of registration

Upon receipt of a substantially complete application for registration, in proper form and accompanied by the appropriate filing fees, the commission shall, within 10 business days of receipt of the registration, issue a notice of filing. The notice shall not be construed as an approval of the registration, or any portion thereof.

L. 2006, c. 63, § 12, eff. Oct. 31, 2006.

45:15-16.62. Review of registration; orders, schedule

Every registration required to be filed with the commission under this act shall be reviewed by the commission and the commission shall issue an order of registration in accordance with the following schedule:

a. As to comprehensive registrations, registrations shall be effective upon the issuance of an order of registration by the commission within 60 days after receipt and issuance of a notice of filing. The commission shall provide a list of deficiencies in the application, if any, within 60 days of the issuance of the notice of filing. If a list of deficiencies is not provided to the applicant within 60 days of issuance of the notice of filing, the timeshare plan shall be deemed registered unless the applicant has consented in writing to a delay.

b. As to abbreviated registrations, registration shall be effective upon the issuance of an order of registration by the commission 30 days after receipt and issuance of a notice of filing. The commission shall provide a list of deficiencies in the application, if any, within 30 days of the issuance of the notice of filing. If a list of deficiencies is not provided to the applicant within 30 days of the issuance of the notice of filing, the timeshare plan shall be deemed registered unless the applicant has consented in writing to a delay.

c. A preliminary registration shall be effective within 20 days of receipt, unless the commission provides to the applicant a written list of deficiencies in the application, if any, within 20 days of receipt of a completed application and fee. If a list of deficiencies is not provided to the applicant within 20 days of receipt of the application for a preliminary registration, the preliminary registration shall be deemed approved unless the applicant has consented in writing to a delay.

L. 2006, c. 63, § 13, eff. Oct. 31, 2006.

45:15-16.63. Deficiency notice, appeal

a. If the commission determines upon inquiry and examination that any of the requirements of this act have not been met, the commission shall notify the applicant that the application for registration shall be corrected as specified in writing within 30 days from the date the notice is received by the applicant. These findings shall be the result of the commission's preliminary inquiry and examination and no hearing shall be required as the basis for those findings.

b. In the event that the requirements of the deficiency notice are not met within the time frame provided in subsection a. of this section, and the applicant has not demonstrated a good faith effort to correct the deficiencies, the commission may enter an order rejecting the filing. The order shall include the factual and legal basis for the rejection and shall provide that, unless appealed as provided for in subsection c. of this section, the terms of the order shall become final after 45 days of delivery to the applicant.

c. Upon the applicant's receipt of an order of rejection, the applicant shall have the right to file an appeal with the commission and shall be entitled to a hearing thereon provided that the appeal is filed within 45 days of the applicant's receipt of the order of rejection. In the event that an appeal is filed by the applicant, the order of rejection shall not take effect until such time as a determination has been rendered on the appeal. While an appeal of an order of rejection remains pending, a timeshare plan which is the subject of the notice of filing referenced in the order of rejection shall not be considered registered.

L. 2006, c. 63, § 14, eff. Oct. 31, 2006.

45:15-16.64. Fee for initial registration

a. The fee for an initial registration shall be $1,000 plus $50 per timeshare interest, which fee shall not exceed $7,500, unless otherwise provided by the commission pursuant to regulation to defray the cost of rendering the services required by the provisions of this act.

b. The commission may also provide, by regulation, for fees to cover the reasonable expenses of carrying out other responsibilities established under this act, including, but not limited to, fees for the processing of amendments, exemption applications and preliminary registrations.

L. 2006, c. 63, § 15, eff. Oct. 31, 2006.

45:15-16.65. Registrations required for sale

Unless otherwise provided by regulation, a developer, or any of its agents, shall not sell, offer, or dispose of a timeshare interest in this State unless all necessary registrations are filed and approved by the commission, or while an order revoking or suspending a registration is in effect.

L. 2006, c. 63, § 16, eff. Oct. 31, 2006.

45:15-16.66. Creation of provision for managing entity, duties

a. Before the first sale of a timeshare interest, the developer shall create or provide for a managing entity, which shall be either the developer, a separate manager or management firm, the board of directors of an owners' association, or some combination thereof.

b. The duties of the managing entity shall include, but not be limited to:

(1) Management and maintenance of all accommodations constituting the timeshare plan;

(2) Collection of all assessments as provided in the timeshare instrument;

(3) Providing to all purchasers each year an itemized annual budget, which shall include all estimated revenues and expenses;

(4) Maintenance of all books and records concerning the timeshare plan;

(5) Scheduling occupancy of accommodations, when purchasers are not entitled to use specific timeshare periods, so that all purchasers will be provided the opportunity to possess and use the accommodations of the timeshare plan which they have purchased; and

(6) Performing any other functions and duties that are necessary and proper to maintain the accommodations or that are required by the timeshare instrument.

c. In the event a developer, managing entity or association files a complaint in a foreclosure proceeding involving timeshare interests, the developer, managing entity or association may join in the same action multiple defendant obligers and junior interest holders of separate timeshare interests, provided:

(1) The foreclosure proceeding involves a single timeshare plan;

(2) The foreclosure proceeding is filed by a single plaintiff;

(3) The default and remedy provisions in the written instruments on which the foreclosure proceeding is based are substantially the same for each defendant; and

(4) The nature of the defaults alleged is the same for each defendant.

d. In any foreclosure proceeding involving multiple defendants filed under subsection c. of this section, the court shall, if appropriate, sever for separate trial any count of the complaint in which a defense or counterclaim is timely raised by a defendant.

L. 2006, c. 63, § 17, eff. Oct. 31, 2006.

45:15-16.67. Voidability of purchase contract

Any purchase contract entered into by a purchaser of a timeshare interest under this act shall be voidable by the purchaser, without penalty, within seven calendar days after the receipt of the public offering statement or the execution of the purchase contract, whichever date is later. The purchase contract shall provide notice of the seven-day cancellation period, together with the name and mailing address to which any notice of cancellation shall be delivered. Notice of cancellation shall be timely if the notice is deposited with the United States Postal Service not later than midnight of the seventh day. Upon such cancellation, the developer shall refund to the purchaser all payments made by the purchaser, less the amount of any benefits actually received pursuant to the purchase contract. The refund shall be made within 30 days after the receipt of the notice of cancellation, or receipt of funds from the purchaser's cleared check, whichever occurs later. If a purchaser elects to cancel a purchase contract pursuant to this section, the purchaser may do so by hand delivering a written notice of cancellation or by mailing a notice of cancellation by certified mail, return receipt requested, to the developer, as applicable, at an address set forth in the purchase contract.

L. 2006, c. 63, § 18, eff. Oct. 31, 2006.

45:15-16.68. Conditions for release of escrow funds to the developer

Excluding any encumbrance placed against the purchaser's timeshare interest securing the purchaser's payment of purchase money financing for the purchase, the developer shall not be entitled to the release of any funds escrowed with respect to each timeshare interest and any other property or rights to property appurtenant to the timeshare interest, including any amenities represented to the purchaser as being part of the timeshare plan, until the developer has provided satisfactory evidence to the commission of one of the following:

a. The timeshare interest together with any other property or rights to property appurtenant to the timeshare interest, including any amenities represented to the purchaser as being part of the timeshare plan, are free and clear of any of the claims of the developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor or any other person having an interest in or lien or encumbrance against the timeshare interest or appurtenant property or property rights;

b. The developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the timeshare interest or appurtenant property or property rights, including any amenities represented to the purchaser as being part of the timeshare plan, has recorded a subordination and notice to creditors document in the jurisdiction in which the timeshare interest is located. The subordination document shall expressly and effectively provide that the interest holder's right, lien or encumbrance shall not adversely affect, and shall be subordinate to, the rights of the owners of the timeshare interests in the timeshare plan regardless of the date of purchase, from and after the effective date of the subordination document;

c. The developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the timeshare interest or appurtenant property or property rights, including any amenities represented to the purchaser as being part of the timeshare plan, has transferred the subject accommodations or amenities or all use rights therein to a nonprofit organization or owners' association to be held for the use and benefit of the purchasers of the timeshare plan, which entity shall act as a fiduciary to the purchasers, provided that the developer has transferred control of that entity to the purchasers or does not exercise its voting rights in that entity with respect to the subject accommodations or amenities. Prior to the transfer, any lien or other encumbrance against the accommodation or facility shall be made subject to a subordination and notice to creditors instrument pursuant to subsection b. of this section; or

d. Alternative arrangements have been made which are adequate to protect the rights of the purchasers of the timeshare interests and are approved by the commission.

L. 2006, c. 63, § 19, eff. Oct. 31, 2006.

45:15-16.69. Compliance by sales agents; non-monetary compensation

a. A sales agent in New Jersey shall comply with the provisions of R.S.45:15-1 et seq., and the regulations adopted pursuant thereto, including licensure requirements, unless otherwise exempt by law.

b. A timeshare interest owner, who, for non-monetary compensation, as provided for in this act and by regulation, refers in a calendar year no more than 12 prospective purchasers of timeshare interests in the timeshare plan shall not be required to be licensed pursuant to R.S.45:15-1 et seq., provided the referring timeshare interest owner does not show, discuss terms or conditions of purchase or otherwise participate in negotiations with regard to the timeshare purchase. Examples of non-monetary compensation shall include, but shall not be limited to, the following:

(1) Waiver of association maintenance fees;

(2) Free meals at a restaurant or rounds of golf at a golf course;

(3) Points or other non-monetary currency associated with hotel, timeshare or other loyalty programs; or

(4) Other benefits specifically associated with the timeshare plan.

c. A person licensed under R.S.45:15-1 et seq., who also is a bona fide owner of a timeshare property, shall be entitled to receive non-monetary compensation as defined in subsection b. of this section on the same basis as any other owner of a timeshare property. The non-monetary compensation or referral pursuant to subsection b. of this section shall not fall within the scope of R.S.45:15-1 et seq. or the rules and regulations implementing R.S.45:15-1 et seq.

L. 2006, c. 63, § 20, eff. Oct. 31, 2006.

45:15-16.70. Prohibitions relative to developers of timeshares

a. A developer or other person offering a timeshare plan shall not:

(1) Misrepresent a fact material to a purchaser's decision to buy a timeshare interest;

(2) Predict any increase in the value of a timeshare interest represented over a period of time, excluding bona fide pending price increases by the developer;

(3) Materially misrepresent the qualities or characteristics of accommodations or the amenities available to the occupant of those accommodations;

(4) Misrepresent the length of time accommodations or amenities will be available to the purchaser of a timeshare interest; or

(5) Misrepresent the conditions under which a purchaser of a timeshare interest may exchange the right of the purchaser's occupancy for the right to occupy other accommodations.

b. A developer or other person using a promotion in connection with the offering of a timeshare interest shall clearly disclose all of the following:

(1) That the purpose of the promotion is to sell timeshare interests, which shall appear in bold face or other conspicuous type on all promotional materials;

(2) That any person whose name or address is obtained during the promotion may be solicited to purchase a timeshare interest;

(3) The name of each developer or other person trying to sell a timeshare interest through the promotion, and the name of each person paying for the promotion if different from the developer;

(4) The complete details of participation in the promotion;

(5) The method of awarding premiums or other benefits under the promotion;

(6) A complete and fully detailed description, including approximate retail value of each premium or benefit under the promotion if the retail value of the premium or benefit is over $50;

(7) The quantity of each premium to be awarded or conferred;

(8) The date by which each premium or benefit will be awarded or conferred; and

(9) Any other disclosures required by the commission pursuant to regulation.

c. The required disclosures for an advertisement that contains a promotion in connection with the offering of a timeshare interest shall be provided or otherwise made available to prospective purchasers in writing or electronically at least once prior to any scheduled sales presentation and received by the prospective purchasers prior to their leaving to attend the sales presentation. The required disclosures need not be included in every written, oral or electronic communication to the prospective purchaser prior to the sales presentation.

d. If a person represents that a premium or benefit will be awarded in connection with a promotion, the premium or benefit shall be awarded or conferred in the manner represented, and on or before the date represented for awarding or conferring the premium or benefit.

L. 2006, c. 63, § 21, eff. Oct. 31, 2006.

45:15-16.71. Detailed financial records

The managing entity shall keep detailed financial records directly related to the operation of the timeshare plan. All financial and other records shall be made reasonably available for examination by any purchaser, or the authorized agent of the purchaser, and the commission. The managing entity may charge the purchaser a reasonable fee for copying any requested information.

L. 2006, c. 63, § 22, eff. Oct. 31, 2006.

45:15-16.72. Maintenance of employee records

Every developer shall maintain, for a period of two years, records of any real estate brokers, broker-salespersons or salespersons licensed in the State and employed by the developer, as well as all other managerial employees located in the State and employed by the developer, including the last known address of each of those individuals.

L. 2006, c. 63, § 23, eff. Oct. 31, 2006.

45:15-16.73. Permitted action for partition

No action for partition of a timeshare interest may be initiated except as permitted by the timeshare instrument.

L. 2006, c. 63, § 24, eff. Oct. 31, 2006.

45:15-16.74. Refusal to issue, renew; revocation, suspension of registration; penalties

The commission may refuse to issue or renew any registration, or revoke or suspend any registration or place on probation or administrative supervision, or reprimand any registrant, or impose an administrative penalty not to exceed $50,000, in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), after notice and an opportunity to be heard, for any of the following causes:

a. A registrant's violation of any provision of this act or of the regulations adopted by the commission to enforce this act.

b. A conviction of the registrant or any principal of the registrant of:

(1) A felony that is punishable by death or imprisonment for a term exceeding one year under the laws of any state or federal jurisdiction;

(2) A misdemeanor under the laws of any state or federal jurisdiction if an essential element of the offense is dishonesty; or

(3) Any crime under the laws of any state or federal jurisdiction if the crime relates directly to the practice of the profession regulated by this act.

c. A registrant's making any misrepresentation for the purpose of obtaining an order of registration or exemption.

d. A registrant's discipline in another state or federal jurisdiction, State agency, or foreign country regarding the practice of the profession regulated by this act, if at least one of the grounds for the discipline is the same as or substantially equivalent to one of those set forth in this act.

e. A finding by the commission that the registrant, after having his registration placed on probationary status, has violated the terms of probation.

f. A registrant's practicing or attempting to practice under a name other than the name as shown on his registration or any other legally authorized name.

g. A registrant's failure to file a return, or to pay the tax, penalty, or interest shown in a filed return, or to pay any final assessment of tax, penalty, or interest, as required by any tax law administered by the State Department of the Treasury or any local government entity, until the requirements of any tax are satisfied.

h. A registrant's engaging in any conduct likely to deceive, defraud or harm the public.

i. A registrant's aiding or abetting another person in violating any provision of this act or of the regulations adopted by the commission to enforce this act.

j. Any representation in any document or information filed with the commission that is materially false or misleading.

k. A registrant's disseminating or causing to be disseminated any materially false or misleading promotional materials or advertisements in connection with a timeshare plan.

l. A registrant's concealing, diverting, or disposing of any funds or assets of any person in a manner that impairs the rights of purchasers of timeshare interests in the timeshare plan.

m. A registrant's failure to perform any stipulation or agreement made to induce the commission to issue an order relating to the timeshare plan.

n. A registrant's, or its agents or brokers engaging in any act that constitutes a violation of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).

o. A registrant's, or its agent's or broker's failure to provide information requested in writing by the commission, either as the result of a complaint to the commission or as a result of a random audit conducted by the commission, which would indicate a violation of this act.

p. A registrant's, or its agent's or broker's, failure to account for or remit any escrow funds coming into his possession which belonged to others.

q. A registrant's, or its agent's or broker's, failure to make available to commission personnel during normal business hours all escrow records and related documents maintained in connection therewith, within a reasonable period of time after a request from the commission personnel, but in no event later than five business days from the request.

L. 2006, c. 63, § 25, eff. Oct. 31, 2006.

45:15-16.75. Powers of commission

The commission may:

a. Accept registrations filed in this State, in other states, or with the federal government;

b. Contract with similar agencies in this State or other jurisdictions to perform investigative functions;

c. Accept grants-in-aid from any governmental or other source;

d. Cooperate with similar agencies or commissions in this State or other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules and common administrative practices;

e. Grant exemptions pursuant to the rules and regulations adopted pursuant to this act;

f. Make any necessary public or private investigations within or outside of this State to determine whether any person has violated or is about to violate any provision of this act, or to aid in the enforcement of this act or in the prescribing of rules and regulations and forms hereunder;

g. Require or permit any person to file a statement in writing, under oath or otherwise, as the commission determines, as to all the facts and circumstances concerning any matter to be investigated;

h. For the purpose of any investigation or proceeding under this act, the commission or any officer designated by regulation, may administer oaths, or affirmations, and upon its own motion or upon request of any party may subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence; and

i. Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the commission may apply to the Superior Court for an order compelling compliance with the subpoena.

L. 2006, c. 63, § 26, eff. Oct. 31, 2006.

45:15-16.76. Determinations by commission; cease and desist order

a. If the commission determines after notice and hearing that a person has:

(1) Violated any provision of this act;

(2) Directly or through an agent or employee engaged in any false, deceptive, or misleading advertising, promotional or sales methods in the State to offer or dispose of an interest in the timeshare plan;

(3) Made any material change in the plan of disposition and development of the timeshare plan subsequent to the order of registration without first complying with the provisions of section 11 [C.45:15-16.60] of this act;

(4) Disposed of any timeshare plan which have not been registered with the commission; or

(5) Violated any lawful order or rule or regulation of the commission;

The commission may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the commission will carry out the purposes of this act.

b. If the commission makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, the commission may issue a temporary cease and desist order. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held within 15 days of the receipt of the request.

L. 2006, c. 63, § 27, eff. Oct. 31, 2006.

45:15-16.77. Violations

a. If it appears that a person has engaged, or is about to engage, in an act or practice constituting a violation of a provision of this act, the commission, with or without prior administrative proceedings, may bring an action in the Superior Court to enjoin the acts or practices and to enforce compliance with this act or any rule, regulation or order hereunder. Upon proper showing, injunctive relief or a temporary restraining order shall be granted, and a receiver may be appointed. The commission shall not be required to post a bond in any court proceeding.

b. The commission may intervene in any suit relating to this act. Each developer registered pursuant to this act shall provide the commission with notice of any lawsuit that is filed against the developer or the registered timeshare plan that relates to rights, duties, or responsibilities of the developer or timeshare plan as set forth in this act.

L. 2006, c. 63, § 28, eff. Oct. 31, 2006.

45:15-16.78. Application for registration deemed submission to jurisdiction of courts

a. For purposes of this act, an application for registration submitted to the commission shall be deemed a submission, by the applicant, to the jurisdiction of the courts of the State of New Jersey.

b. In addition to the methods of service provided for in the Rules of Court, service may be made by delivering a copy of the process to a person designated by the commission to receive the process at its office, but that service shall not be effective unless the plaintiff, which may be the commission, in a proceeding instituted by it:

(1) Sends a copy of the process and the pleading by certified mail to the defendant or respondent at his last known address; and

(2) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within the time as the court allows.

c. If any person, including any nonresident of this State, engages in conduct prohibited by this act and has not filed a consent to service of process, and personal jurisdiction over him cannot otherwise be obtained in this State, that conduct authorizes the commission to receive service of process, in any noncriminal proceedings against him or his successor which arises from that conduct and which is brought under this act with the same force as if served on him personally. Notice shall be given as provided in subsection b. of this section.

L. 2006, c. 63, § 29, eff. Oct. 31, 2006.

45:15-16.79. Additional penalties

a. Any broker, broker-salesperson or salesperson who violates the provisions of this act shall, in addition to the penalties set forth herein, be subject to the penalties as set forth in R.S.45:15-17.

b. Any person who violates any provision of this act or any person who, in an application for registration filed with the commission, makes any untrue statement of a material fact or omits to state a material fact shall be fined not less than $250, nor more than $50,000, per violation.

c. The commission may levy and collect the penalties set forth in subsection b. of this section after affording the person alleged to be in violation of this act an opportunity for a hearing in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) on the alleged violations and a finding by the commission that the person is guilty of the violation. When a penalty levied by the commission has not been satisfied within 30 days of the levy, the penalty may be sued for and recovered by, and in the name of, the commission in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

d. The commission may, in the interest of justice, compromise any civil penalty, if in its determination the gravity of the offense does not warrant the assessment of the full fine.

L. 2006, c. 63, § 30, eff. Oct. 31, 2006.

45:15-16.80. Actions, counterclaims, remedies

a. Any person who suffers any ascertainable loss of moneys as a result of the failure of another to comply fully with the provisions of this act may bring an action or assert a counterclaim in any court of competent jurisdiction. In any action filed under this section in which a defendant is found to have knowingly engaged in any false, deceptive, misleading promotional or sales methods or discriminatory advertising on the basis of race, sex, creed, color, marital status, national origin or religion, concealed or fraudulently diverted any funds or assets so as to defeat the rights of timeshare plan purchasers, made an intentional misrepresentation or concealed a material fact in an application for registration, or disposed of any timeshare plan required to be registered under this act, which are not so registered, the court shall, in addition to any other appropriate legal or equitable remedy, award double the damages suffered, and court costs, including reasonable attorney's fees. In the case of an untruth, omission, or misleading statement the developer sustains the burden of proving that the purchaser knew of the untruth, omission or misleading statement, or that he did not rely on such information, or that the developer did not know, and in the exercise of reasonable care could not have known of the untruth, omission, or misleading statement.

b. The court, in addition to the remedies provided in this act, may award any other relief appropriate under the circumstances including, in the court's discretion, restitution of all monies paid and, where a developer has failed to provide to a purchaser a copy of the current public offering statement approved by the commission prior to execution of the contract or agreement, rescission of the contract. If the purchaser fails to establish a cause of action, and the court further determines that the action was wholly without merit, the court shall award attorney's fees to the developer.

c. Any stipulation or provision purporting to bind a purchaser acquiring an interest in a timeshare plan subject to the provisions of this act to a waiver of compliance with the provisions of this act shall be void.

L. 2006, c. 63, § 31, eff. Oct. 31, 2006.

45:15-16.81. Valid registration required for action

a. An action shall not be maintained by any developer in any court in this State with respect to any agreement, contract, or services for which registration is required by this act, or to recover the agreed price or any consideration under any agreement, or to recover for services for which a registration is required by this act, without proving that the developer had a valid order of

registration at the time of making the agreement or performing the work.

b. A person licensed in this State as a real estate broker pursuant to R.S.45:15-1 et seq. shall not represent any unregistered timeshare plan and shall not accept or collect any commission or other form of consideration from any developer unless the timeshare plan is registered pursuant to the requirements of this act.

L. 2006, c. 63, § 32, eff. Oct. 31, 2006.

45:15-16.82. Rules

The commission shall adopt rules for the implementation and enforcement of this act in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

L. 2006, c. 63, § 33, eff. Oct. 31, 2006.

45:15-16.83. Forms, procedures

The commission may prescribe forms and procedures for submitting information to the commission.

L. 2006, c. 63, § 34, eff. Oct. 31, 2006.

45:15-16.84. Investigation of matters relative to application for registration

The commission shall thoroughly investigate all matters relating to an application for registration under this act and may require a personal inspection of any timeshare plan, accommodation, and any offices where any of the foregoing may transact business. All reasonable expenses incurred by the commission in investigating such matters shall be paid by the registrant. The commission may require a deposit sufficient to cover the expenses prior to incurring the expenses.

L. 2006, c. 63, § 35, eff. Oct. 31, 2006.

45:15-16.85. Existing timeshare plans remain in full force and effect

All timeshare plans that were registered and approved pursuant to the provisions of the "Real Estate Sales Full Disclosure Act," P.L.1989, c.239 (C.45:15-16.27 et seq.) and "The Planned Real Estate Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.) in effect on the effective date [Oct. 31, 2006] of this act shall remain in full force and effect after the effective date of this act and shall be considered registered under this act and shall not be required to file any further documentation under this act, except as to comply with the requirements of section 11 [C.45:15-16.60].

Developers who have filed timeshare plans that were exempt from the requirements of the "Real Estate Sales Full Disclosure Act," P.L.1989, c.239 (C.45:15-16.27 et seq.) and "The Planned Real Estate Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.) shall be required to file a registration application with the commission within 90 days from the effective date [Oct. 31, 2006] of this act unless they are otherwise exempt under this act. These developers and timeshare plans shall be allowed to continue operating as long as a registration application is filed with the commission within the timeframe stated above and as long as they, in good faith, continue to work with the commission to correct any and all deficiencies in the registration application.

Any existing injunction or temporary restraining order validly obtained under the "Real Estate Sales Full Disclosure Act," P.L.1989, c.239 (C.45:15-16.27 et seq.) or "The Planned Real Estate Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.) which prohibits unregistered practice of timeshare developers, timeshare plans, and their agents shall not be invalidated by the enactment of this act and shall continue to have full force and effect on and after the effective date of this act. Any existing disciplinary action or investigation pursuant to a violation under the "Real Estate Sales Full Disclosure Act," P.L.1989, c.239 (C.45:15-16.27 et seq.) or "The Planned Real Estate Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.) shall not be invalidated by the enactment of this act and shall continue to have full force and effect on and after the effective date of this act.

L. 2006, c. 63, § 36, eff. Oct. 31, 2006.

45:15-17. Investigation of actions of licensees; suspension or revocation of licenses and causes therefor

The commission may, upon its own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any real estate broker, broker-salesperson, or salesperson, or any person who assumes, advertises or represents himself as being authorized to act as a real estate broker, broker-salesperson, or salesperson or engages in any of the activities described in R.S.45:15-3 without being licensed so to do. The lapse or suspension of a license by operation of law or the voluntary surrender of a license by a licensee shall not deprive the commission of jurisdiction to proceed with any investigation as herein provided or prevent the commission from taking any regulatory action against such licensee, provided, however, that the alleged charges arose while said licensee was duly licensed. Each transaction shall be construed as a separate offense.

In conducting investigations, the commission may take testimony by deposition as provided in R.S.45:15-18, require or permit any person to file a statement in writing, under oath or otherwise as the commission determines, as to all the facts and circumstances concerning the matter under investigation, and, upon its own motion or upon the request of any party, subpoena witnesses, compel their attendance, take evidence, and require the production of any material which is relevant to the investigation, including any and all records of a licensee pertaining to his activities as a real estate broker, broker-salesperson, or salesperson. The commission may also require the provision of any information concerning the existence, description, nature,

custody, condition and location of any books, documents, or other tangible material and the identity and location of persons having knowledge of relevant facts of any other matter reasonably calculated to lead to the discovery of material evidence. Upon failure to obey a subpoena or to answer questions posed by an investigator or legal representative of the commission and upon reasonable notice to all affected persons, the commission may commence an administrative action as provided below or apply to the Superior Court for an order compelling compliance.

The commission may place on probation, suspend for a period less than the unexpired portion of the license period, or may revoke any license issued under the provisions of R.S.45:15-1 et seq., or the right of licensure when such person is no longer the holder of a license at the time of hearing, or may impose, in addition or as an alternative to such probation, revocation or suspension, a penalty of not more than $5,000 for the first violation, and a penalty of not more than $10,000 for any subsequent violation, which penalty shall be sued for and recovered by and in the name of the commission and shall be collected and enforced by summary proceedings pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), where the licensee or any person, in performing or attempting to perform any of the acts mentioned herein, is deemed to be guilty of:

a. Making any false promises or any substantial misrepresentation; or

b. Acting for more than one party in a transaction without the knowledge of all parties thereto; or

c. Pursuing a flagrant and continued course of misrepresentation or making of false promises through agents, broker-salespersons, or salespersons, advertisements or otherwise; or

d. Failure to account for or to pay over any moneys belonging to others, coming into the possession of the licensee; or

e. Any conduct which demonstrates unworthiness, incompetency, bad faith or dishonesty. The failure of any person to cooperate with the commission in the performance of its duties or to comply with a subpoena issued by the commission compelling the production of materials in the course of an investigation, or the failure to give a verbal or written statement concerning a matter under investigation may be construed as conduct demonstrating unworthiness; or

f. Failure to provide his client with a fully executed copy of any sale or exclusive sales or rental listing contract at the time of execution thereof, or failure to specify therein a definite terminal date which terminal date shall not be subject to any qualifying terms or conditions; or

g. Using any plan, scheme or method for the sale or promotion of the sale of real estate which involves a lottery, a contest, a game, a prize, a drawing, or the offering of a lot or parcel or lots or parcels for advertising purposes, provided, however, that a promotion or offer of free, discounted or other services or products which does not require that the recipient of any free, discounted or other services or products enter into a sale, listing or other real estate contract as a condition of the promotion or offer shall not constitute a violation of this subsection if that promotion or offering does not involve a lottery, a contest, a game, a drawing or the offering of a lot or parcel or lots or parcels for advertising purposes. A broker shall disclose in writing any compensation received for such promotion or offer in the form and substance as required by the federal "Real Estate Settlement Procedures Act of 1974," 12 U.S.C. ss.2601 et seq., except that, notwithstanding the provisions of that federal act, written disclosure shall be provided no later than when the promotion or offer is extended by the broker to the consumer; or

h. Being convicted of a crime, knowledge of which the commission did not have at the time of last issuing a real estate license to the licensee; or

i. Collecting a commission as a real estate broker in a transaction, when at the same time representing either party in a transaction in a different capacity for a consideration; or

j. Using any trade name or insignia of membership in any real estate organization of which the licensee is not a member; or

k. Paying any rebate, profit, compensation or commission to anyone not possessed of a real estate license, except that: (1) free, discounted or other services or products provided for in subsection g. of this section shall not constitute a violation of this subsection; and (2) a real estate broker may provide a purchaser of residential real property, but no other third party a rebate of a portion of the commission paid to the broker in a transaction, so long as: the broker and the purchaser contract for such a rebate at the onset of the broker relationship in a written document, electronic document or a buyer agency agreement; the broker complies with any State or federal requirements with respect to the disclosure of the payment of the rebate; and the broker recommends to the purchaser that the purchaser contact a tax professional concerning the tax implications of receiving that rebate. The rebate paid to the purchaser shall be in the form of a credit, reducing the amount of the commission payable to the broker, or a check paid by the closing agent and shall be made at the time of closing; or

l. Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing; or

m. Accepting a commission or valuable consideration as a real estate broker-salesperson or salesperson for the performance of any of the acts specified in this act, from any person, except his employing or contracting broker, who must be a licensed broker; or

n. Procuring a real estate license, for himself or anyone else, by fraud, misrepresentation or deceit; or

o. Commingling the money or other property of his principals with his own or failure to maintain and deposit in a special account, separate and apart from personal or other business accounts, all moneys received by a real estate broker, acting in said capacity, or as escrow agent, or the temporary custodian of the funds of others, in a real estate transaction; or

p. Selling property in the ownership of which he is interested in any manner whatsoever, unless he first discloses to the purchaser in the contract of sale his interest therein and his status as a real estate broker, broker-salesperson, or salesperson; or

q. Purchasing any property unless he first discloses to the seller in the contract of sale his status as a real estate broker, broker-salesperson, or salesperson; or

r. Charging or accepting any fee, commission or compensation in exchange for providing information on purportedly available rental housing, including lists of such units supplied verbally or in written form, before a lease has been executed or, where no lease is drawn, before the tenant has taken possession of the premises without complying with all applicable rules promulgated by the commission regulating these practices; or

s. Failing to notify the commission within 30 days of having been convicted of any crime, including any sex offense that would qualify the licensee for registration pursuant to section 2 of P.L.1994, c.133 (C.2C:7-2) or under an equivalent statute of another state or jurisdiction, misdemeanor or disorderly persons offense, or of having been indicted, or of the filing of any formal criminal charges, or of the suspension or revocation of any real estate license issued by another state, or of the initiation of formal disciplinary proceedings in another state affecting any real estate license held, or failing to supply any documentation available to the licensee that the commission may request in connection with such matter; or

t. The violation of any of the provisions of R.S.45:15-1 et seq. or of the administrative rules adopted by the commission pursuant to the provisions of R.S.45:15-1 et seq. The commission is expressly vested with the power and authority to make, prescribe and enforce any and all rules and regulations for the conduct of the real estate brokerage business consistent with the provisions of chapter 15 of Title 45 of the Revised Statutes.

If a licensee is deemed to be guilty of a third violation of any of the provisions of this section, whether of the same provision or of separate provisions, the commission may deem that person a repeat offender, in which event the commission may direct that no license as a real estate broker, broker-salesperson, or salesperson shall henceforth be issued to that person.

Amended 1948, c. 155, § 2; 1953, c. 229, § 5; 1954, c. 193, § 2; 1966, c. 11, § 5; 1977, c. 331, § 5; 1989, c. 126, § 3; 1993, c. 51, § 20; 2001, c. 68, eff. Apr. 19, 2001; 2009, c. 238, § 11, eff. July 1, 2011; 2009, c. 273, § 1, eff. Jan. 17, 2010; 2018, c. 71, § 16, eff. Jan. 1, 2018.

45:15-17.1. Temporary suspension of license

The commission may, on its own motion, enter an order temporarily suspending the license of any licensee upon making a finding that prima facie evidence exists that the licensee has violated subsection d. or subsection o. of R.S. 45:15-17. At least 24 hours prior to entering the order, the commission shall give notice to the licensee of the application for the order and shall provide the licensee with an opportunity to be heard. The notice may be given either by telephone or in writing and may be served personally or sent by certified mail to the last known business address of the licensee.

When the commission orders the temporary suspension of a license, it shall advise the licensee of the date upon which the commission shall hold an evidentiary hearing on the violations upon which the temporary suspension is based, which date shall be no more than 30 days following the date of the order entering the temporary suspension.

L. 1993, c. 51, § 23.

45:15-17.2. Freezing accounts during suspension of broker's license

Upon entering an order temporarily suspending the license of any broker, the commission may also enter an order directing that some or all of the accounts maintained by the broker in any depository institution in the State be temporarily frozen. The commission shall serve copies of the order upon the institution either in person or by certified mail within ten days and, where a broker's trust or escrow account is frozen, upon all persons known to the commission for whom the broker was acting as escrow agent or trustee. In the event the commission subsequently determines that the suspension shall not be continued, it shall immediately notify the depository institution and other interested parties that the temporary freeze order is dissolved. If the commission orders that the license suspension shall continue for more than 30 days or that a license revocation shall be imposed, the commission shall, within 10 days of that ruling, make application to Superior Court for payment into the court of all funds in the accounts temporarily frozen by order of the commission. The commission shall provide notice of the application to the broker and all known interested parties. Following payment into court, the monies or any portion of them shall thereafter only be released upon court order obtained by the broker or other interested party, upon notice to the commission and in compliance with court rules.

L. 1993, c. 51, § 24.

45:15-17.3. Sanctions for noncomplying sales of mobile homes

A real estate licensee who acts as an agent or broker in the sale of a mobile or manufactured home, as defined in subsection a. of R.S. 39:10-19, in a manner which does not comply with all requirements of R.S. 39:10-1 et seq. applicable to the sale of any such mobile or manufactured home, shall, pursuant to

R.S. 45:15-17, be subject to sanctions by the New Jersey Real Estate Commission for engaging in conduct which demonstrates incompetency.

L. 1994, c. 150, § 2.

45:15-17.4. Rules, regulations

The New Jersey Real Estate Commission, after consultation with the Director of the Division of Motor Vehicles, shall, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), promulgate rules and regulations to effectuate the provisions of this act.

L. 1994, c. 150, § 3.

45:15-18. Notification to licensee of charges made in license suspension, revocation

With the exception of a temporary suspension imposed by the commission pursuant to section 23 of P.L.1993, c.51 (C.45:15-17.1), the commission shall, before suspending or revoking any license, and at least ten days prior to the date set for the hearing, notify in writing the licensee of any charges made, and afford him an opportunity to be heard in person or by counsel. Such written notice may be served either personally or sent by certified mail to the last known business address of the licensee. If the licensee is a broker-salesperson or salesperson, the commission shall also notify the broker employing or contracting with him, specifying the charges made against such licensee, by sending a notice thereof by certified mail to the broker's last known business address. The commission shall have power to bring before it any licensee or any person in this State pursuant to subpoena served personally or by certified mail, or the commission may take testimony by deposition in the same manner as prescribed by law in judicial proceedings in the courts of this State. Any final decision or determination of the commission shall be reviewable by the Appellate Division of the Superior Court.

Amended 1953, c. 43, § 73; 1993, c. 51, § 25; 2009, c. 238, § 12, eff. July 1, 2011; 2018, c. 71, § 17, eff. Jan. 1, 2018.

45:15-19. Cause for revocation of license

Any unlawful act or violation of any of the provisions of R.S.45:15-1 et seq., by any real estate broker-salesperson or salesperson, shall not be cause for the revocation of any real estate broker's license, unless it shall appear to the satisfaction of the commission that the real estate broker employing or contracting with such licensee had guilty knowledge thereof.

Amended 1993, c. 51, § 26; 2009, c. 238, § 13, eff. July 1, 2011; 2018, c. 71, § 18, eff. Jan. 1, 2018.

45:15-19.1. License revoked upon conviction

When, during the term of any license issued by the commission, the licensee shall be convicted in a court of competent jurisdiction in the State of New Jersey or any state (including federal courts) of forgery, burglary, robbery, any theft or related offense with the exception of shoplifting, criminal conspiracy to defraud, or other like offense or offenses, or any crime involving, related to or arising out of the licensee's activities as a real estate broker, broker-salesperson, or salesperson, and a duly certified or exemplified copy of the judgment of conviction shall be obtained by the commission, the commission shall revoke forthwith the license by it theretofore issued to the licensee so convicted. The commission shall revoke the license of any licensee convicted of any sex offense that would qualify the licensee for registration pursuant to section 2 of P.L.1994, c.133 (C.2C:7-2) or under an equivalent statute of another state or jurisdiction.

L. 1953, c. 229, § 6; amended 1989, c. 126, § 4; 1993, c. 51, § 27; 2009, c. 238, § 14, eff. July 1, 2011; 2018, c. 71, § 19, eff. Jan. 1, 2018.

45:15-19.2. License suspended when licensee is indicted

In the event that any licensee shall be indicted in the State of New Jersey or any state or territory (including federal courts) for murder, kidnapping, aggravated sexual assault or any sex offense that would qualify the licensee for registration pursuant to section 2 of P.L.1994, c.133 (C.2C:7-2) or under an equivalent statute of another state or jurisdiction, robbery, burglary, arson, any theft offense, bribery, racketeering, distribution of a controlled dangerous substance or conspiracy to distribute a controlled dangerous substance, forgery, criminal conspiracy to defraud, or other like offense or offenses, or any crime involving, related to or arising out of the licensee's activities as a real estate broker, broker-salesperson, or salesperson, and a certified copy of the indictment is obtained by the commission, or other proper evidence thereof be to it given, the commission shall have authority, in its discretion, to suspend the license issued to such licensee pending trial upon such indictment.

L. 1953, c. 229, § 7; amended 1989, c. 126, § 5; 1993, c. 51, § 28; 2009, c. 238, § 15, eff. July 1, 2011; 2018, c. 71, § 20, eff. Jan. 1, 2018.

45:15-19.3. No supercedure

No provision of R.S.45:15-1 et seq., or any amendment or supplement thereof, shall be deemed to supersede P.L.1968, c.282 (C.2A:168A-1 et seq.).

L. 2018, c. 71, § 21, eff. Jan. 1, 2018.

45:15-20. Nonresident licenses

A nonresident may become a real estate broker, broker-salesperson, or salesperson by conforming to all of the provisions of R.S.45:15-1 et seq. All nonresident licenses issued by the commission prior to July 1, 1994 may be renewed upon payment of the renewal fees established pursuant to R.S.45:15-15. All nonresident licenses so renewed shall be issued by the commission in the same form as a resident license. In the event that any person to whom a nonresident license is issued fails to maintain or renew the license or to obtain a new license from the commission for a period of two or more consecutive years, the person shall be required to fulfill the requirements for initial licensure

established pursuant to R.S.45:15-9 prior to the issuance of any further license.

A licensed broker whose main office is not located within this State shall only provide brokerage services concerning real estate located within this State either personally or through persons in the broker's employ or with whom the broker has contracted who are the holders of real estate broker-salesperson or salesperson licenses issued by the commission. In the event that a broker maintains one or more branch offices in this State, no person shall engage in the business of a real estate broker, broker-salesperson, or salesperson at those offices unless the person is a holder of a license issued by the commission authorizing him to do so.

Amended 1938, c. 227, § 2; 1949, c. 214; 1961, c. 88, § 3; 1993, c. 51, § 29; 2009, c. 238, § 16, eff. July 1, 2011; 2018, c. 71, § 22, eff. Jan. 1, 2018.

45:15-21. Filing of irrevocable consent to service

Every applicant for a license whose business address is outside this State shall file an irrevocable consent that suits and actions may be commenced against such applicant by the commission or by any person in any of the courts of record of this State, by the service of any process or pleading authorized by the laws of this State, in any county in which the plaintiff may reside, by serving the same on the secretary of the commission, said consent stipulating and agreeing that such service of such process or pleadings on said secretary shall be taken and held in all courts to be as valid and binding as if due service had been made personally upon the applicant in this State. This consent shall be duly acknowledged, and, if made by a corporation, shall be authenticated by its seal. The consent from a corporation shall be accompanied by a duly certified copy of the resolution of the board of directors, authorizing the proper officers to execute it. In all cases where process or pleadings shall be served, under the provisions of this article, upon the secretary of the commission, such process or pleadings shall be served in duplicate, one of which shall be filed in the office of the commission and the other shall be forwarded immediately by the secretary of the commission, by registered mail, to the last known business address of the licensee against which such process or pleadings are directed.

Every licensee whose business address is outside this State shall, by acceptance of a license for that out-of-state address, automatically and irrevocably consent to the commission's jurisdiction over and investigative authority regarding the licensed business premises, and all records and conduct of the licensee both within and outside of the State. The licensee shall also automatically and irrevocably consent that service of any pleading or subpoena issued by the secretary of the commission pursuant to R.S. 45:15-17 or R.S. 45:15-18 which is delivered by certified mail to the licensee's last known address, shall constitute valid and binding service of the subpoena or pleading upon the licensee as if service had been made personally upon the licensee in this State.

Amended 1993, c. 51, s. 30.

45:15-22. Repealed by L. 1993, c. 51, § 58, eff. May 20, 1993

45:15-23. Repealed by L. 1989, c. 126, § 7, eff. July 3, 1989

45:15-24. Commitment for nonpayment of judgment

The trial shall be with a jury upon the demand of any party to the action. The court shall, if judgment be rendered for the plaintiff, cause any such defendant, who refuses or neglects to pay forthwith the amount of the judgment rendered against him and all costs and charges incident thereto, to be committed to the county jail for a period not exceeding thirty days.

Amended by L. 1953, c. 43, p. 817, 75.

45:15-25, 45:15-26. Repealed by L. 1953, c. 43, §§ 76, 77

45:15-27. Disposition of penalties

Any penalty recovered for any violation of this article shall be applied by the commission to the same purpose as other funds of the commission collected in accordance with the provisions of this article.

Amended by L. 1953, c. 43, p. 817, 78.

45:15-28. Repealed by L. 1953, c. 43, § 79

45:15-29. Payment of fines, penalties; funding of commission's expenses

a. All fines and penalties received by the commission pursuant to the provisions of this article shall be paid by it into the State treasury monthly. The payments shall be made on or before the tenth day of each month following their receipt, and at the time of payment a statement thereof shall be filed with the Director of the Division of Budget and Accounting.

b. All expenses incurred by the commission shall be paid from fees collected by the commission pursuant to the provisions of article I of chapter 15 of Title 45 of the Revised Statutes. Monies collected annually pursuant to this subsection shall be dedicated to the commission for the purposes of funding its incurred expenses for the current fiscal year, which expenses shall include, in addition to the direct cost of personal service, the cost of maintenance and operation, the cost of employee benefits and the workers' compensation paid for and on account of personnel, rentals for space occupied in State-owned or State-leased buildings and all other direct and indirect costs of the administration thereof.

Amended 1995, c. 156, s. 15.

45:15-29.1. Employees transferred

Such employees of the New Jersey Real Estate Commission, as the Commissioner of Insurance may determine are needed for the proper performance of the work of the division of the New Jersey Real Estate Commission in the Department of Insurance, are hereby transferred to the Department of Insurance. Persons so

transferred shall be assigned to such duties as the Commissioner of Insurance shall determine.

L. 1948, c. 88, § 6; amended 1993, c. 51, § 31.

45:15-29.2. Rights under Title 11 and under pension laws not affected

Nothing in this act shall be construed to deprive any person of any right or protection provided him by Title 11 of the Revised Statutes, Civil Service, or under any pension law or retirement system.

L. 1948, c. 88, p. 502, 7.

45:15-29.3. Orders, rules, regulations continued

The orders, rules and regulations heretofore made or promulgated by the New Jersey Real Estate Commission shall continue with full force and effect until amended or repealed by the New Jersey Real Estate Commission constituted hereunder as the Division of the New Jersey Real Estate Commission in the Department of Insurance.

L. 1948, c. 88, § 9; amended 1993, c. 51, § 32.

45:15-29.4. "New Jersey Real Estate Commission," reference

Whenever the term "New Jersey Real Estate Commission" occurs or any reference is made thereto, in any law, contract or document, the same shall be deemed to mean or refer to the New Jersey Real Estate Commission constituted hereunder as the Division of the New Jersey Real Estate Commission in the Department of Insurance.

L. 1948, c. 88, § 10, amended 1993, c. 51, § 33.

45:15-29.5. Actions, proceedings not affected

This act shall not affect actions or proceedings, civil or criminal, brought by or against the New Jersey Real Estate Commission and pending on the effective date of this act, and such actions or proceedings may be prosecuted or defended in the same manner and to the same effect by the New Jersey Real Estate Commission constituted hereunder as the Division of the New Jersey Real Estate Commission in the Department of Insurance as if the foregoing provisions had not taken effect; nor shall any of the foregoing provisions affect any order or recommendation made by, or other matters or proceedings before, the New Jersey Real Estate Commission; and all such matters or proceedings pending before the New Jersey Real Estate Commission on the effective date of this act shall be continued by the New Jersey Real Estate Commission constituted hereunder as the Division of the New Jersey Real Estate Commission in the Department of Insurance.

L. 1948, c. 88, § 11; amended 1993, c. 51, § 34.

ARTICLE 2. REAL ESTATE AUCTIONEERS [REPEALED]

45:15-30 to 45:15-33. Repealed by L. 1953, c. 229, § 9

ARTICLE 3. REAL ESTATE GUARANTY FUND

45:15-34. Real estate guaranty fund established

A real estate guaranty fund is established as a special trust fund to be maintained by the State Treasurer and administered by the New Jersey Real Estate Commission in accordance with the provisions of this act to provide a fund from which recovery may be obtained by any person aggrieved by the embezzlement, conversion or unlawful obtaining of money or property in a real estate brokerage transaction by a licensed real estate broker, broker-salesperson, or salesperson or an unlicensed employee of a real estate broker; provided, however, that the amount of such recovery shall not exceed in the aggregate the sum of $10,000 in connection with any one transaction regardless of the number of claims, persons aggrieved, or parcels of, or interests in real estate involved in the transaction. The maximum amount recoverable per transaction shall be increased to $20,000 for claims filed on the basis of causes of action which accrue after the effective date of P.L.1993, c.51 (C.45:15-12.3 et al.).

L. 1976, c. 112, § 1; amended 1993, c. 51, § 35, eff. May 20, 1993; 2009, c. 238, § 17, eff. July 1, 2011; 2018, c. 71, § 23, eff. Jan. 1, 2018.

45:15-35. Additional amount payable upon initial issuance of license

Upon the initial issuance of a biennial license as a real estate broker, broker-salesperson, or salesperson the licensee shall pay to the commission, in addition to the license fee fixed by R.S.45:15-15, an additional amount to be forwarded by the commission to the State Treasurer and accounted for and credited by him to the real estate guaranty fund. The additional amount payable by a broker or broker-salesperson shall be $20 and by a salesperson, $10.

L. 1976, c. 112, § 2; amended 1993, c. 51, § 36; 1996, c. 38, § 4, eff. Dec. 18, 1996; 2009, c. 238, § 18, eff. July 1, 2011; 2018, c. 71, § 24, eff. Jan. 1, 2018.

45:15-36. Management and investment of funds

The State Treasurer shall hold, manage and through the Division of Investment, invest and reinvest funds of the real estate guaranty fund and credit all interest and other income earned thereon to the real estate guaranty fund in the same manner as provided by law with respect to investment of pension and retirement funds administered by the State. The Real Estate Commission shall keep the State Treasurer advised of the anticipated cash demands for payment of claims against the fund.

L. 1976, c. 112, 3, eff. Feb. 1, 1977.

45:15-37. Payments from real estate guaranty fund

No claim shall be made for payment from the real estate guaranty fund except upon the reduction to final judgment, which shall include reasonable attorney fees and costs, of a civil action

against the broker, broker-salesperson, or salesperson or unlicensed employee of a broker, and, where the judgment creditor has pursued all available remedies, made all reasonable searches, and has been unable to satisfy the judgment from the licensee's assets, the entry of a court order which directs the New Jersey Real Estate Commission to make payment from the fund. No such order shall authorize a payment to the spouse or personal representative of the spouse of the judgment debtor.

No order shall be entered unless the claimant, either at the time of filing the civil action or thereafter, files a certification affirming that a criminal complaint alleging the misappropriation of funds by the broker, broker-salesperson, or salesperson or unlicensed employee has been filed with a law enforcement agency of this State or of a county or municipality in this State. The criminal complaint shall refer to the same conduct to which reference is made in the civil action as forming the basis for a claim against the real estate guaranty fund. The certification shall specify the date on which the criminal complaint was filed and the law enforcement agency with which it was filed. A copy of the certification shall be provided to the New Jersey Real Estate Commission upon its being filed. The requirement to file a certification shall apply prospectively only to claims seeking reimbursement from the fund filed on the basis of causes of action which accrue after the effective date of P.L.1993, c.51 (C.45:15-12.3 et al.).

Upon delivery by the New Jersey Real Estate Commission to the State Treasurer of a certified copy of the court order together with an assignment to the New Jersey Real Estate Commission of the judgment creditor's right, title and interest in the judgment to the extent of the amount of the court order, the State Treasurer shall make payment to the claimant from the real estate guaranty fund.

L. 1976, c. 112, § 4; amended 1993, c. 51, § 37, eff. May 20, 1993; 2009, c. 238, § 19, eff. July 1, 2011; 2018, c. 71, § 25, eff. Jan. 1, 2018.

45:15-38. Civil action which may result in court order for payment; limitations of action; joinder of commission

Any civil action which may result in a court order for payment from the real estate guaranty fund shall be instituted within six years of the accrual of the cause of action and the New Jersey Real Estate Commission shall be joined as a necessary party to any such civil action. Nothing in this section shall affect the right of any aggrieved person to pursue other rights or remedies authorized by law.

L. 1976, c. 112, 5, eff. Feb. 1, 1977; Amended by L. 1984, c. 124, 1, eff. Aug. 8, 1984

45:15-39. Secretary of commission constituted as agent

Any person to whom is issued a license to be a real estate broker, broker-salesperson, or salesperson shall, by the securing of said license, make and constitute the secretary of the commission or the person in charge of the office of the commission as agent for the acceptance of process in any civil proceeding hereunder.

L. 1976, c. 112, § 6; amended 1993, c. 51, § 38; 2009, c. 238, § 20, eff. July 1, 2011; 2018, c. 71, § 26, eff. Jan. 1, 2018.

45:15-40. Insufficiency of funds; replenishment; excess amounts

a. If at any time the funds available in the real estate guaranty fund are insufficient to satisfy in full court orders for payment therefrom, payment shall be made in the order in which such court orders were issued; and the New Jersey Real Estate Commission shall by regulation impose further additional amounts to be paid by brokers, broker-salespersons, or salespersons to replenish the guaranty fund. No such additional amount assessed at any one time shall exceed the amounts specified in section 2 of P.L.1976, c.112 (C.45:15-35).

b. If at any time the funds available in the real estate guaranty fund are, in the opinion of the New Jersey Real Estate Commission, in excess of amounts anticipated to be necessary to meet claims for a period of at least two years, the commission may, with the approval of the Commissioner of Banking and Insurance, allocate and receive from the guaranty fund a specified amount thereof for research and educational projects to increase the proficiency and competency of real estate licensees.

L. 1976, c. 112, § 7; amended 1993, c. 51, § 39; 2009, c. 238, § 21, eff. July 1, 2011; 2018, c. 71, § 27, eff. Jan. 1, 2018.

45:15-41. Revocation of license upon issuance of court order for payment from fund

Upon the issuance of a court order for payment from the real estate guaranty fund the license of the broker, broker-salesperson, or salesperson, whose acts gave rise to the claim, shall be revoked and no such broker, broker-salesperson, or salesperson shall be eligible for reinstatement of his license until he shall have satisfied the judgment in full including reimbursement of the real estate guaranty fund together with interest.

L. 1976, c. 112, § 8; amended 1993, c. 51, § 40; 2009, c. 238, § 22, eff. July 1, 2011; 2018, c. 71, § 28, eff. Jan. 1, 2018.

45:15-42. Rules and regulations

The Real Estate Commission is authorized to issue rules and regulations to implement the provisions of this act.

L. 1976, c. 112, 9, eff. Feb. 1, 1977.