

**INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION**

Real Estate Commission Rules

Proposed Readoption with Amendments: N.J.A.C. 11:5

Authorized By: New Jersey Real Estate Commission, Dawn Rafferty, Executive Director

Authority: N.J.S.A. 45:15-6, 45:15-10.4, 45:15-16.49, 45:15-17(t) and 45:15-17.4

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2003-422

Submit comments by December 19, 2003 to:

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 11:5 expires on March 12, 2004. As required by the Executive Order No. 66 (1978), the Division of the Real Estate Commission in the Department of Banking and Insurance (Department) has reviewed these rules and determined that they are necessary, reasonable and proper for the purpose for which they were promulgated.

The readoption of N.J.A.C. 11:5 is necessary because it contains real estate broker, salesperson, school and instructor licensing qualification requirements and standards of conduct for real estate licensees which implement the Real Estate Brokers and Salesmen Act, N.J.S.A.

45:15-1 et seq. The chapter also contains rules implementing the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq.

Specifically, Subchapter 1 sets forth the responsibilities, organization and functions of the Commission, the information available to the public and those records which are not open to the public.

Subchapter 2 contains the rules which implement the educational requirements for licensure, establish the criteria for the issuance of education waivers, and set forth the licensure qualifications and operating standards of schools and instructors. It sets forth the minimum hours and content for prelicensure education and provides guidelines for the instruction to be given. The subchapter also sets forth the rules and requirements for real estate schools and instructors, including their licensing and renewal procedures.

Subchapter 3 prescribes the application procedures and qualifications for licensure as a real estate broker or salesperson, and the license transfer and office closing procedures. Qualifications for licensure include submission to criminal history record checks; pre-licensing education and examinations; minimum age requirements; minimum work requirements and the payment of all appropriate fees. The subchapter also sets forth the term of the licenses, the mode of payment for any fees and the administrative rules for examinations.

Subchapter 4 sets forth the requirements applicable to employment agreements between brokers and salespersons, the supervisory responsibilities of brokers, and the standards applicable to the maintenance of main and branch offices. It sets forth the rules regarding compensation, broker supervision and oversight of individual licensees and escrowed accounts and the use of licenses for the benefit of others.

Subchapter 5 contains the rules applicable to broker's trust or escrow accounts and prescribes the business records licensees must maintain. The records required to be kept include: ledger books for all trustee accounts or escrow accounts and various other financial records; copies of all offers, contracts, listing agreements, copies of statements to owners, sellers, purchasers or tenants, receipts for security deposits and other pertinent documents. The rules require that every licensee make all the required records available for inspection by the Commission.

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

Subchapter 7 contains rules which prohibit certain conduct such as receiving compensation for dual representation; receiving kickbacks for related business referrals; excluding all outside mortgage solicitors in favor of an in-house service; blockbusting; price-fixing with another licensee; discriminatory commission splits; and pressuring the media.

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

Subchapter 9 contains the rules implementing the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq.

Subchapter 10 contains the rules on rulemaking petitions.

Subchapter 11 contains the rules on the procedures applicable to disciplinary actions, contested applications and declaratory ruling requests.

The Commission has concluded that some amendments to the rules proposed for readoption are necessary.

The current organizational chart of the Commission found at N.J.A.C. 11:15-1.2 is deleted and replaced by a new organizational chart that reflects recent changes in the structure of the Commission.

N.J.A.C. 11:5-1.3(a)4 is amended to delete the reference to the invalidated Land Sales Full Disclosure Act, N.J.S.A. 45:15-16.3 et seq., and replace it with a reference to its successor, the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq.

New N.J.A.C. 11:5-1.5(g)9 is proposed to add purchaser information submitted pursuant to N.J.S.A. 45:15-16.38 to licensee records which are nonpublic.

Amendments to clarify certain rules, so as to render them more easily understandable by licensees and the public, are also being proposed. N.J.A.C. 11:5-2.2(g)1 is amended to add a definite time limit of 10 business days for the submission of changes in school policies and regulations by licensed real estate schools. The imprecise time limit "promptly" is deleted and the time frame of within 10 business days is added.

A similar amendment is made to N.J.A.C. 11:5-3.9(a), which mandates the return to the Commission of a broker's license when the broker ceases to be active. A time limit of within five business days of the cessation of business replaces the imprecise time limit of "immediately."

An amendment to N.J.A.C. 11:5-2.2(n) also clarifies the time parameters of a rule. The rule requires itemization of any additional fees charged by a licensed school for supplies,

materials or books. The amendment requires that itemization to be made prior to the payment of any fees.

An amendment to N.J.A.C. 11:5-3.6(c) addresses the salesperson licensing procedure. The amendment clarifies the language on the current requirement that an applicant must pass the State salesperson examination as well as apply for their license within one year of successfully completing their required prelicensure education.

N.J.A.C. 11:5-6.1(e) is amended to clarify the descriptive words that a licensed broker-salesperson may use on their business card. In addition to broker-salesperson, they may use broker-associate, associate broker or realtor-associate.

N.J.A.C. 11:5-6.4(g) required a licensee to secure any acceptance of an offer that is orally given "forthwith." This time limit has been deleted and replaced with "within 24 hours," which is consistent with other references that appear earlier in the same provision.

The final revision proposed for the rules affects N.J.A.C. 11:5-9.7(d), which specifies the copying fees which the Commission charges to reproduce certain public records maintained pursuant to the Real Estate Sales Full Disclosure Act. The reference to a cost of \$0.50 per page has been deleted and replaced with a reference to the fees set forth in N.J.S.A. 47:1A-5(b), which prescribes the fees chargeable for the production of copies of public records.

Social Impact

N.J.A.C. 11:5 implements the Real Estate Brokers and Salesmen Act and the Real Estate Full Disclosure Act and should be continued. It is essential to keep in effect clearly stated rules for the licensing of real estate professionals, the regulation of their brokerage and instructional

activity, and the marketing and sale of interests in non-New Jersey real estate to New Jersey consumers.

These rules have had and will in the future have a positive social impact by enhancing the professionalism of real estate licensees and the quality of brokerage services provided to the public. The rules on licensure qualification, employment and supervision, recordkeeping, business conduct and prohibited activities all impose standards which are consistent with provisions in the licensing law and necessary to implement its provisions. The same is true of Subchapter 9 which contains the rules applicable to developers who register their non-New Jersey real estate projects with the Commission under the Real Estate Sales Full Disclosure Act.

Real estate brokerage is a complex business. A typical transaction can involve more than \$100,000 in consideration and the assumption by a consumer of long-term debt obligations. Adequate protection of the public interest compels the establishment of safeguards to ensure the proper handling of funds entrusted to licensees by consumers, the full disclosure of material information about the condition of property, the extent to which the licensees involved may also be providing other related services for compensation, and the brokerage business relationship in which the licensees are operating in a given transaction. Receiving adequate disclosure in the advertisements of licensees and registered non-New Jersey developers is also essential to ensure that New Jersey consumers receive sufficient information so to enable them to make informed choices when deciding whether and how to respond to such promotional material.

Finally, Subchapters 1, 10 and 11 have a positive social impact, as they serve to inform licensees and consumers about the organization of the Commission, the functions of its various sections, and the procedural requirements applicable to petitions submitted to and contested matters heard and determined by the Commission.

The proposed amendments should also have a positive social impact. The amendments clarifying imprecise time limits will benefit both the industry and consumers by eliminating possible sources of contention. In addition, the amendment stating that purchaser information submitted pursuant to N.J.S.A. 45:15-16.38 is nonpublic protects the business interests of the registrants and the privacy of consumers.

Economic Impact

The proposed readoption of N.J.A.C. 11:5 is not expected to alter the economic impact of the rules on real estate licensees and registrants on non-New Jersey real estate projects.

All licensing and registration fees referred to in the rules are established by the respective controlling statutory authorities. Thus the readoption of these rules will have no effect upon current fee amounts. The fees charged for pre-licensure courses are established by the market place. Major costs incurred by schools are those related to physical plant, course development and instructor compensation. It is not anticipated that the readoption of these rules and the adoption of the various proposed amendments will have a significant impact upon the cost of providing pre-licensure education courses.

The readoption of these rules will have a substantial economic impact on real estate licensees. The requirements regarding termination agreements and accountings of commissions due salespersons, N.J.A.C. 11:5-4.1; the content of advertisements, N.J.A.C. 11:5- 6.1; the content of contracts, leases and listing agreements, N.J.A.C. 11:5- 6.2; and the sale of interstate properties, N.J.A.C. 11:5- 9 established by these rules do impose additional costs of doing business upon licensees. Further, the procedures mandated for the maintenance of escrow accounts, N.J.A.C. 11:5-5.1 and 5.2; the keeping of business and trust account records, N.J.A.C.

11:5-5.3, 5.4 and 5.5; the supervision of offices, N.J.A.C. 11:5-4.4 and 4.5; the closing of offices, N.J.A.C. 11:5-3.9; the operation of prelicensure schools, N.J.A.C. 11:5-2.2; the operation of rental referral agencies, N.J.A.C. 11:5-6.5; the division of compensation in cooperative transactions, N.J.A.C. 11:5-7.5 and 7.6; and the provisions pertaining to the Real Estate Guaranty Fund, N.J.A.C. 11:5-8.2 all have a substantial economic impact upon licensees' operations.

Several other rules to be readopted operate to lower the costs incurred by licensees. These include the rules on criminal history record checks, N.J.A.C. 11:5-3.3; the sponsoring of applications or transfers of licenses, N.J.A.C. 11:5-3.18; and the expediting of license procedures, N.J.A.C. 11:5-3.11.

The procedural rules, particularly Subchapters 10 and 11, assist licensees and other persons affected by the rules to identify and prepare for expenses associated with administrative hearings and the filing of pleadings with and appeals to the full Commission.

The proposed amendments should have little economic effect. The amendment to N.J.A.C. 11:5-9.7, which revises the fees to be paid for copies of the statement of record of any registered subdivision from \$.50 per page to the fee prescribed by N.J.S.A. 47:1A-5(b), has no current effect as it merely reiterates a statutory provision which is currently in effect. However, the amendment requiring that any additional fees that are to be charged by a licensed school be itemized by the school prior to payment of the fees may have some economic effect. Students will be better able to assess the total cost of the course, including the additional fees. This knowledge will allow a student to make an informed decision on their ability to afford a course before they are economically committed. Conversely, this could have a slight negative economic effect on some schools, which may lose the business of those who decide not to take the course.

Federal Standards Statement

A Federal standards analysis is not required because N.J.A.C. 11:5 is not subject to any Federal requirements or standards.

Jobs Impact

The Commission does not anticipate the creation or loss of any jobs as a result of the readoption of these rules and the adoption of the proposed amendments.

It is the Commission's belief that these rules, as they have been in operation, do not result in the generation or loss of jobs.

Regulatory Flexibility Analysis

The rules proposed for amendment apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Included among these small businesses are over 5,000 real estate brokerage firms and 28 privately owned pre-licensure schools located in New Jersey. Also included are the approximately 400 firms registered with the Commission under the Real Estate Sales Full Disclosure Act. However, the proposed amendments do not impose new any reporting, recording or other compliance requirements on small businesses, other than establishing specific timeframes for the performance of certain functions which licensees are currently required to perform within a non-specific period of time.

The rules proposed for readoption also apply to "small businesses." Chapter 5 sets forth numerous reporting, recordkeeping and other compliance requirements which directly impact small businesses. These include requirements on applications for real estate licenses and the

registration of non-New Jersey residential real estate projects, the maintenance of brokers' escrow account ledgers and other business records, the content of advertising, licensee and office supervision, disclosures, notices regarding office closings, course content and other operations of licensed schools, license transfer procedures and the operation of rental referral agencies. The capital costs that small businesses will incur in complying with these rules are discussed in the Economic Impact above.

To provide for uniform and consistent applicability of these rules and to avoid the granting of a prescribed advantage to those entities that qualify as "small businesses," no different treatment has been accorded small businesses by these rules and no such treatment will be accorded pursuant to this proposed readoption. Compliance with the requirements referred to above may continue to be accomplished by existing staff; no professional services are required. The cost of compliance should be minimal. Because most real estate licensees and registrants are small businesses, such businesses are not exempt from the recordkeeping and compliance requirements and the amendments are not designed to minimize any adverse economic impact on small businesses.

Smart Growth Impact

The Department does not believe that the new rules will have any impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C.

11:5.

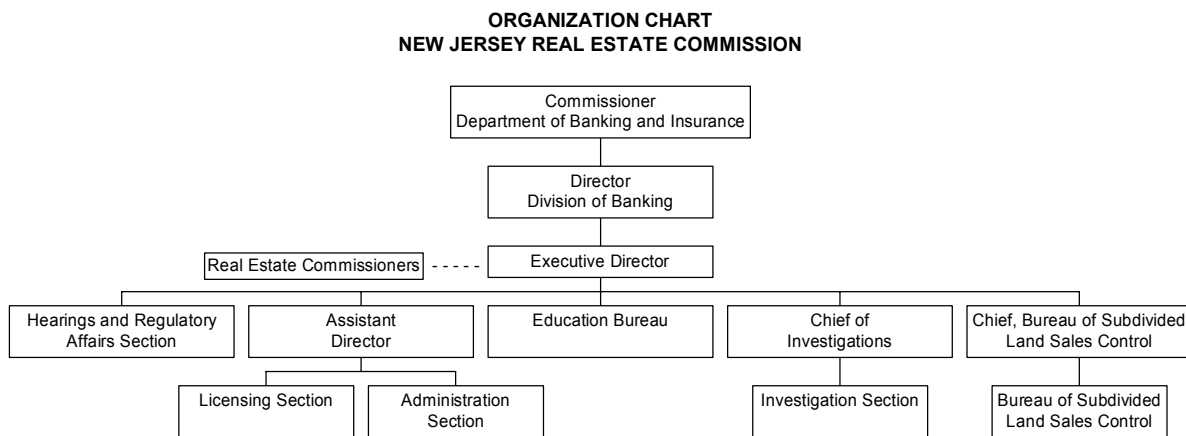
Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. ORGANIZATIONAL RULES

11:5-1.2 Organization of the Commission

The organization chart of the Real Estate Commission is as follows:

(Agency Note: The current organization chart of the Real Estate Commission is proposed for deletion, but is not reproduced herein. The proposed new organization chart appears below.



11:5-1.3 Functions of the Commission

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

1. – 3. (No change)

4. The Bureau of Subdivided Land Sales Control [within the Investigations

Section] is responsible for enforcing the provisions of the [Land Sales Full Disclosure Act] **the**

New Jersey Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq. Its duties

include, but are not limited to, reviewing applications for the registration of new projects,

conducting inspections of conditionally registered projects, and reviewing applications for the renewal of projects.

5. –6 . (No change.)

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

(a) - (f) (No change.)

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

1. – 6. (No change.)

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

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.

SUBCHAPTER 2. EDUCATION

11:5-2.2 Licensed Schools and instructors; requirements

(a) - (f) (No change.)

(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 [paragraph] (g) above, from the information submitted with the original application for school licensure or as otherwise previously supplied, shall be [promptly] disclosed to the Commission **within 10 business days** in writing, or on a form which the Commission prescribes.

(h) - (m) (No change.)

(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) - (x) (No change.)

SUBCHAPTER 3. LICENSING

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

(a) - (b) (No change.)

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

(d) (No change.)

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 [immediately] **within five business days of the cessation of business** return to the Commission his license, and **the** licenses of all salespersons and broker-salespersons for cancellation.

(b) - (d) (No change.)

SUBCHAPTER 6. CONDUCT OF BUSINESS

11:5-6.1 Advertising rules

(a) - (d) (No change.)

(e) 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 [any of the aforementioned words or by the use of] the words **broker-associate, associate broker, realtor-associate or** broker-salesperson. 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) - (r) (No change.)

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

(a) - (f) (No change.)

(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 [forthwith] the acceptance in writing **within 24 hours**.

(h) - (l) (No change.)

SUBCHAPTER 9. RULES INTERPRETING AND IMPLEMENTING THE REAL ESTATE
SALES FULL DISCLOSURE ACT, N.J.S.A. 45:15-16.27 ET SEQ.

11:5-9.7 Fees with respect to the sale of interstate properties

(a) - (c) (No change.)

(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 [of \$0.50 per page] **in accordance with the copying fees set forth in N.J.S.A. 47:1A-5(b).**

(e) (No change.)

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