

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

**Broker Supervision and Oversight of Individual Licensees, Office Operations and Escrowed Monies**

**Proposed Amendment: N.J.A.C. 11:5-4.2**

Authorized By: New Jersey Real Estate Commission, Robert L. Kinniebrew, Executive Director

Authority: N.J.S.A. 45:15-6

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

Proposal Number: PRN 2008 – 222

Submit comments by September 5, 2008 to:

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The agency proposal follows:

**Summary**

The New Jersey Real Estate Commission (Commission) holds individual broker licensees responsible for their own actions and the actions of all persons employed by or licensed and operating under the authority of the broker licensee taken in the pursuit of the real estate brokerage business which violate any provision of the real estate license law, N.J.S.A. 45:15-1 et seq., or the regulations promulgated thereunder. This policy is specifically set forth in N.J.A.C. 11:5-4.2, which provides standards for the supervision and oversight of individual licensees, office operations and the handling of escrowed monies by natural persons licensed as real estate

brokers. The rule applies to individual broker licensees operating as sole proprietors (employing brokers) and to individuals licensed as the authorized broker (broker of record) of a corporation or other business entity licensed as a New Jersey real estate broker.

Pursuant to N.J.A.C. 11:5-4.2, an individual broker licensee's responsibility applies regardless of where the persons licensed and operating under their authority engage in actions in pursuit of the broker licensee's real estate brokerage business and every real estate transaction in which a broker licensee participates as a broker is considered under the ultimate supervision of the individual broker.

Pursuant to N.J.A.C. 11:5-4.2(a)3, the individual broker is also responsible for ascertaining that a separate account is maintained for the funds of others coming into the possession of the broker licensee and to make certain that no such funds of others are disbursed or utilized without his or her express authorization and knowledge. The Commission is proposing to amend this paragraph to have it clearly provide that, consistent with N.J.A.C. 11:5-5.1, the broker is also required to make certain that all funds of others received by the broker or by any person employed by or licensed through the broker licensee are properly deposited into the separate account referenced in the paragraph. N.J.A.C. 11:5-4.2(a)4 is proposed to be amended to clarify that, consistent with N.J.S.A. 45:15-3, "broker" and "broker-salesperson" are two distinct license types.

The Commission also proposes to add new subsection (b) to N.J.A.C. 11:5-4.2 to require supervising real estate brokers and broker-salespersons, that is, individual broker licensees and persons licensed as broker-salespersons who are supervising offices pursuant to either N.J.A.C. 11:5-4.4 or 4.5, to notify the Commission within two business days of the receipt of information indicating that a licensee under their supervision has failed to account for or deliver monies of

others received by a licensee under his or her supervision. N.J.A.C. 11:5-4.2(b)2 explicitly provides that the failure of a broker or broker-salesperson supervising an office to provide the notification within the timeframe set forth in the amended rule will be considered conduct demonstrating incompetency or unworthiness for licensure. Such conduct will subject the broker or broker-salesperson to sanctions pursuant to N.J.S.A. 45:15-17(e) which provides, in pertinent part, that the Commission may sanction a licensee who is guilty of:

“[a]ny 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.”

The public will be better served by requiring supervising real estate brokers and broker-salespersons to notify the Commission of the failure of a licensee under his or her supervision to account for or deliver monies within the prescribed time period.

A 60-day comment period is provided for the notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

#### Social Impact

The proposed amendments will provide better financial protection to the public by requiring supervising licensees to notify the Real Estate Commission within two business days if

they receive information that a licensee under their supervision has failed to account for or deliver monies placed in their possession while conducting business as a licensee.

#### Economic Impact

The proposed amendments make no changes in the previously established purpose, scope and definitions of the rule. The amendments merely explicitly require supervising brokers and broker-salespersons to notify the Real Estate Commission within two business days when they become aware of a possible violation by the licensees that they supervise. These amendments are intended to make the violations notification process more immediate and will have no economic impact upon consumers, the industry or the Commission. The cost to supervising brokers and broker-salespersons will be minimal. The Commission will open an investigation when it receives notice of a potential violation whether it receives the information from a licensee or a consumer. The two day notification requirement may provide earlier notice and earlier action by the Commission to better protect consumers.

#### Federal Standards Statement

Executive Order No. 27 (1994) and P.L. 1995, c. 65 require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. A Federal standards analysis is not required in this instance because the amendments proposed enhance the State's regulation of licensed real estate professionals and no Federal standards or requirements are exceeded. There are no Federal standards or requirements applicable to the proposed amendments.

### Jobs Impact

The Department does not believe that these amendments will cause any jobs to be generated or lost. The Department invites interested parties to submit any data or studies concerning the jobs impact of the amendments together with their written comments on other aspects of the proposal.

### Agriculture Industry Impact

The Department does not expect any impact upon the State agriculture industry by these proposed amendments.

### Regulatory Flexibility Analysis

There are no provisions in this proposed amendments that are excessively onerous to "small businesses" as that term is defined in N.J.S.A. 52:14B-17. These amendments will impose no new recordkeeping or other compliance requirements. Future annual costs of compliance with these rules are not expected to differ from current annual costs. This new rule has no differing standards for small businesses because the consumer protections that will be enhanced by the new two-day reporting requirement reflect a policy objective of the Commission that cannot be realized through a more relaxed requirement based upon the size of the reporting broker or broker-salesperson's business.

### Smart Growth Impact

The proposed amendments will not have an impact upon the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follow (additions indicated boldface **thus**; deletion indicated in brackets [thus]):

**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 corporation or other entities licensed as brokers.

1. - 2. (No change.)

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 all funds of others received by the individual broker or any person employed by or licensed through the broker licensee are properly deposited into such a separate account in accordance with N.J.A.C. 11:5-5.1 and 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] persons licensed as broker-salespersons.

(b) Brokers and broker-salespersons supervising main offices as set forth in N.J.A.C. 11:5-4.4 or branch offices as set forth in N.J.A.C. 11:5-4.5 shall notify the Commission of their receipt of information indicating that a licensee under their

supervision has failed to account for or deliver to them any monies of others paid to the licensee regarding a sale or rental of real estate or other funds received by the licensee as a representative of the broker acting as an escrow agent or as the temporary custodian of the funds of others in a real estate transaction. The sources of such information may include, but are not limited to, complaints by consumers and examinations of business records.

1. Such notifications shall be made in writing to the Commission within two business days of the receipt of such information. Notifications may be submitted via mail, fax or e-mail and shall include the names of the licensee and of the reporting broker or broker-salesperson and the location of the office from which the licensee was operating at the time of his or her receipt of the monies.
2. A failure by a broker or broker-salesperson to provide the notification as set forth above will be considered conduct demonstrating incompetency or unworthiness for licensure and will subject the broker or broker-salesperson to sanctions pursuant to N.J.S.A. 45:15-17(e).

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