

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

Real Estate Commission Rules

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

Proposed Repeal and New Rule: N.J.A.C. 11:5-3.3

Authorized By: New Jersey Real Estate Commission, Robert L. Kinniebrew, 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 2009-97

Submit comments by June 5, 2009 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 September 1, 2009. As required by Executive Order No. 66 (1978), the Division of the Real Estate Commission (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 required fees. The subchapter also sets forth the term of the licenses, the mode of payment for any fees and the administrative rules for examinations. The subchapter also sets forth the rules for the transfer or return of licenses by brokers.

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 also sets forth the rules regarding compensation, broker supervision and oversight of individual licensees and escrow 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 trust 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 providers 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 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. 11:5-1.2 is deleted and replaced by a new organizational chart that reflects recent changes in the structure of the Commission staff. To reflect the consolidation of licensing functions within the Department of Banking and Insurance, the Licensing Section is removed from the organizational chart and from the functions of the Commission at N.J.A.C. 11:5-1.3. In addition, references to the Licensing Section throughout the chapter are changed to the Department of Banking and Insurance Licensing Service Bureau, Real Estate Section.

Amendments have been proposed to N.J.A.C. 11:5-2.6 and 3.4, and N.J.A.C. 11:5-3.3 repealed and replaced with a new rule, to reflect the replacement of a fee tendered to the Commission for a criminal history check with a fee for an electronic fingerprint scan payable directly to the State-contracted vendor. All licensees will be required to submit proof of compliance with the scanning process along with their license applications and the fees charged for the scanning process will be considered a service fee 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 application.

An amendment to N.J.A.C. 11:5-3.2 is proposed to clarify to whom fees are to be paid. 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, the requirement that any and all fees prescribed by

the Real Estate License Act shall be paid to the State Treasurer of New Jersey is being retained. No cash or currency shall be accepted.

N.J.A.C. 11:5-3.8 is amended to clarify that 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 broker as provided for in N.J.S.A. 45:15-9.

Amendments are proposed to N.J.A.C. 11:5-3.11 to codify the ability of brokers to process terminations and transfers online. The proposed amendments set forth online processes, procedures and notice requirements for online transfers and terminations. The amendments further require brokers to retain and maintain records of either online or other transfers and/or terminations for six years.

In addition to the aforementioned name change for the Licensing Services Bureau, Real Estate Section, N.J.A.C. 11:5-3.14 is amended to reflect the statutory fees charged for Real Estate licenses and that the fee for a manual fingerprint criminal record check is no longer tendered to the Commission with a license application.

An amendment is proposed for N.J.A.C. 11:5-5.4(e) to allow for the electronic storage of records provided that such records are capable of being reproduced on paper so as to depict the entire history of all activity and that the data can be maintained in an easily accessible form for the required six year retention period. The Commission notes that brokers who choose to utilize the electronic means for the storage of records should ensure that the equipment that they use is adequate for such a task.

An amendment is proposed to N.J.A.C. 11:5-6.4 to conform its language to the New Jersey Law Against Discrimination N.J.S.A. 10:5-1 et seq.

An amendment is proposed to N.J.A.C. 11:5-9.3(a)2 to allow for the submission of documents related to properties registered with the Commission under the New Jersey Real Estate Full Disclosure Act on electronic media. In addition, N.J.A.C. 11:5-9.3(a)5 and 6 are amended to add a statement of non-conviction of a partner, officer, director or principal and to replace the required copies of plats with a broker's affidavit an application for release.

N.J.A.C. 11:5-10.7 is amended to state that the Commission shall mail the results of deliberations on petitions for rulemaking to the petitioner and shall submit the results to the Office of Administrative Law for publication in the New Jersey Register.

N.J.A.C. 11:5-11.5 is amended to replace references to the new-repealed conference hearing rules formerly found in rules of the Office of Administrative Law (OAL) with a rule authorizing the Director to issue Orders to Show Cause pursuant to rules of the OAL in certain circumstances involving alleged violations of N.J.S.A. 45:15-17d, 17n, 17o and/or 19.1 or where there otherwise is danger of imminent harm to the public. It is anticipated that the OAL will adopt special hearing rules addressing such limited circumstance actions by the Real Estate Commission at a future date.

A 60-day comment period is provided for in this 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

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 maintain 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 continue to 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, repeal and new rule should also have a positive social impact. The proposed amendment to N.J.A.C. 11:5-11.5 referencing the commencement of enforcement actions in the limited circumstances as set forth therein will benefit both the licensees that are parties to such actions and the public by better assuring that such proceedings are conducted in an orderly and efficient manner.

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 of non-New Jersey real estate projects.

All licensing and registration fees referred to in the rules are established by the respective controlling statutory authorities. Any changes in the licensing fees reflect the use of the State-approved fingerprint scanning vendor. The amendments regarding the vendor fee for prelicensing fingerprint scanning will have no economic effect on licensees, as these fees have been in effect for years as a result of a 2003 amendment to N.J.S.A. 45:15-9. The scanning of fingerprints is a necessary security device used to protect the public. The fees paid to the fingerprint scanning vendor are a necessary cost of doing business in this State.

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 re adoption of these rules will have a significant impact upon the cost of providing pre-licensure education courses.

The re adoption 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.

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.

In addition, the amendments stating that brokers may terminate or transfer salespersons on line and that items may be stored by electronic means will enhance the efficiency of the operations of brokers and the Commission staff and expedite the transfer of individual licensees to new brokers.

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, repeal and new rules. 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.

Agriculture Industry Impact

The Commission does not anticipate that the rules proposed for readoption with amendments, repeal and new rule will have an impact on the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments, repeal and new rule 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 real estate brokerage firms and privately owned pre-licensure schools located in New Jersey. Also included are the firms registered with the Commission under the Real Estate Sales Full Disclosure Act. However, the proposed amendments, repeal and new rule do not impose any new 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 new professional services are required by the amendments, repeal and new rule being proposed. The cost of compliance should be minimal. Most real estate licensees and registrants are small businesses. The rules, amendments, repeal and new rule do not minimize any adverse economic impact on small businesses because the rules enforce minimum industry standards which are necessary for the protection of the general public. This purpose does not provide for different compliance requirements based on business size. Accordingly, the proposed amendments, repeal and new rule and readopted rules provide no differentiation in compliance based on business size.

Smart Growth Impact

The Department does not believe that the rules proposed for readoption with amendments, repeal and new rule will have any impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The rule proposed for readoption with amendments, repeal and new rule will not have any impact on housing affordability in this State in that they apply to the standards of conduct and requirements for licensure of New Jersey real estate licensees.

Smart Growth Development Impact

The rules proposed for readoption with amendments, repeal and new rule will not have an impact on smart growth in this State and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey in that they apply to the standards of conduct and requirements for licensure of New Jersey real estate licensees.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:5.

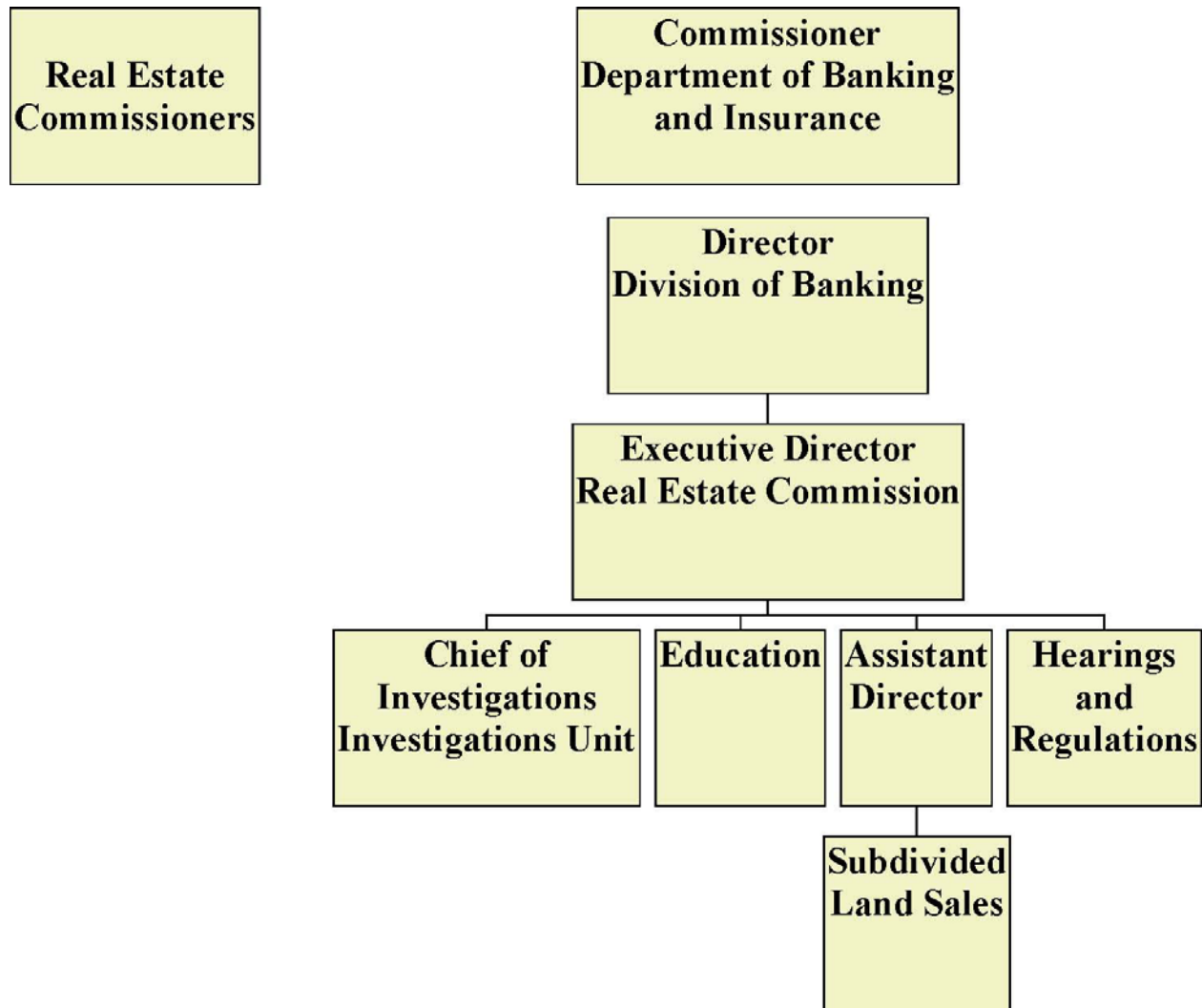
Full text of the proposed amendments, repeal and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. ORGANIZATIONAL RULES

11:5-1.2 Organization of the Commission

The organization chart of the **Division 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] **four** sections whose functions are as follows:

[1. The Licensing Section is responsible for processing license applications, transfers, terminations, renewals and upgrades, and for providing licensing information to the public and to licensees.]

Recodify existing 2. - 4. as 1. - 3. (No change in text.)

[5. The Administration Section is responsible for the budget and accounting functions and also for ensuring that personnel operate in a manner which will accomplish their designated duties in conjunction with the staff of the Department of Banking and Insurance. It is also responsible for other functions including administration of the Real Estate Guaranty Fund.]

[6.] **4.** (No change in text.)

SUBCHAPTER 2. EDUCATION

11:5-2.6 Education Bureau transaction fees

The fees applicable to transactions processed by the Education Bureau of the Real Estate Commission are listed in the table below.

EDUCATION BUREAU TRANSACTION FEES

<u>Description</u>	<u>Amount</u>
Criminal history check <u>and</u> <u>electronic fingerprint scan</u>	[\$ 18.00] <u>State-contracted vendor fee (paid</u> <u>directly to vendor)</u>
...	

SUBCHAPTER 3. LICENSING

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

[Any] **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.

11:5-3.3 Criminal history record check

(a) The applicant, if a natural person, shall submit with his or her application for salesperson's or broker's license a New Jersey State Police Request for Criminal History Record Information and a certified check or money order to pay for its processing.

(b) The applicant, if a corporation or partnership, shall submit with its application for license New Jersey State Police Requests for Criminal History Record Information, and certified checks or money orders to pay for their processing, for each officer, director, partner, or owner of a controlling interest.

(c) The Commission may require an individual licensee or any officer, director, partner or owner of a controlling interest of a licensed corporation or partnership to complete and submit to the Commission a New Jersey State Police fingerprint card, and submit a certified check or money order in payment of the processing fee for the card.]

(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 application for a salesperson's, broker-salesperson's or broker's license 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.

11:5-3.4 Examination rules

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

1. - 3. (No change.)

4. The real estate broker license and salesperson 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 or salesperson 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) (No change.)

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.

[1.] **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. (No change.)

ii. (Such work in [(a)1i] **(a)2i** above was performed during any five days in each of the three-year period; and

iii. (No change.)

[2.] **3.** (No change in text.)

(b) – (e) (No change.)

11:5-3.11 [Expediting of license issuance and] **License** transfer **and termination** procedures

(a) (No change.)

(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 [expedite] **personally facilitate** the transfer process, the license shall be so delivered, provided that:

1.– 2. (No change.)

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

i. [mail] **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. (No change.)
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. [Mail] **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] **(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 or salesperson with his or her firm or where a broker-salesperson or salesperson 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 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 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.

11:5-3.12 License applications processed by the [Licensing] Real Estate Section of the [Real Estate Commission] 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 [Section of the] **Services Bureau**, Real Estate [Commission]

Section:

1. – 6. (No change.)

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

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

1. -31. (No change.)

[32. New Jersey State Police, State Bureau of Identification Request for Criminal History Record Check]

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

(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) – (e) (No change.)

11:5-3.14 Licensing fees

The fees applicable to transactions processed by the **Department of Banking and Insurance** Licensing [Section of the] **Services Bureau**, Real Estate [Commission] **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[, \$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] and, where applicable, Real Estate Guaranty Fund fees of \$10.00 for salespersons 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**):

<u>License</u>	<u>Fee</u>
Corporations, partnerships and other business entities	\$ 270.00
Broker of record	\$ [285.00] <u>270.00</u>
Sole proprietor broker	\$ [285.00] <u>270.00</u>
Broker-salesperson	\$ [285.00] <u>270.00</u>
Salesperson	\$ [175.00] <u>160.00</u>
Branch office	\$ 150.00
Temporary broker license	\$ [250.00] <u>300.00</u>
Multiple broker license	\$ [270.00] <u>300.00</u>

Renewal Fees:

Late Renewal Fees:

<u>License</u>	<u>Fee</u>
Corporations, partnerships and other business entities	\$ 40.00
Broker	\$ 40.00
Broker-salesperson	\$ 20.00
Salesperson	\$ 20.00
[Branch office]	[\$ 10.00]

...

SUBCHAPTER 5. TRUST ACCOUNTS/RECORDS OF BROKERAGE ACTIVITY

11:5-5.4 Records to be maintained by broker

(a) –(d) (No change.)

(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. [Paper copies]**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] **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.**

SUBCHAPTER 6. CONDUCT OF BUSINESS

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

(a) - (j) (No change.)

(k) No licensee shall deny real estate brokerage services to any person for reasons of race, [religion, color, sex, affectional or sexual orientation, marital status, national origin or because a person is handicapped;] **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, [religion, color, sex, affectional or sexual orientation, marital status, national origin or because a person is handicapped] **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 ["handicapped" means suffering from physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness including epilepsy, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or from any mental, physiological or developmental disability resulting from anatomical, psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques. Handicapped shall also mean suffering from AIDS or HIV infection, as defined in N.J.S.A. 10:5-5(ff) and (gg)] **“disability” shall have the same meaning as the definition of “disability” codified at N.J.S.A. 10:5-5q.**

(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.

11:5-9.3 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. (No change.)

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. – 4. (No change.)

5. An affidavit or affirmation as prescribed in the Commission's forms shall be executed for each of the following documents:

i. – iv. (No change.)

v. **Statement of Non-conviction and** [Partner] **partner, officer, director or principal disclosure;**

vi. – vii. (No change.)

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. – iii. (No change.)

[iv. Copies of all plats pertinent to the subdivision]

iv. Broker's Affidavit and application for release;

v. (No change.)

[vi. A list of the officers of the corporation]

vi. Statement of Non-conviction and partner, officer, director or principal disclosure;

vii. –ix. (No change.)

7. -9. (No change.)

(b) (No change.)

SUBCHAPTER 10. RULEMAKING AND PETITIONS FOR RULEMAKING

11:5-10.7 Procedure for the consideration and disposition of rulemaking petitions

(a) – (b) (No change.)

(c) Commission action on a petition shall either:

1. – 2. (No change.)

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.**

SUBCHAPTER 11. PROCEDURES ON DISCIPLINARY ACTIONS, CONTESTED APPLICATIONS, DECLARATORY RULING REQUESTS

11:5-11.5 [Conference hearing] **Hearing** procedure

[(a)] 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 [conference] hearing [as defined in N.J.A.C. 1:1-2.1], **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.

[(b) The Order to Show Cause shall be served upon the respondent at least 10 days prior to the hearing.

(c) The respondent shall not be required to file a written answer, but shall be required to appear on the return date of the Order to Show Cause and admit or deny the allegations in the Order to Show Cause and present all defenses to the alleged violations.

(d) The respondent may notify the Commission by telephone or letter of any witnesses to be subpoenaed on the respondent's behalf and shall provide to the Commission the addresses at which such witnesses can be served.

(e) Discovery and motions in conference hearings shall be limited in accordance with N.J.A.C. 1:1-10.6 and 1:1-12.1, respectively.]

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