

## INSURANCE

### (a)

#### DEPARTMENT OF BANKING AND INSURANCE

#### REAL ESTATE COMMISSION

#### Licensing; Conduct of Business

#### Adopted Amendments: N.J.A.C. 11:5-3.13, 3.14, and 6.1

#### Adopted New Rule: N.J.A.C. 11:5-3.16

Proposed: October 16, 2023, at 55 N.J.R. 2171(a).

Adopted: July 24, 2024, by Justin Zimmerman, Acting Commissioner.

Filed: July 24, 2024, as R.2024 d.078, with non-substantial changes not requiring additional public notice and opportunity to comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and 45:15-1 et seq.; and P.L. 2021, c. 281.

Effective Date: August 19, 2024.

Expiration Date: January 24, 2030.

#### Summary of Public Comments and Agency Responses:

Three comments were received regarding the amendments and new rule. The comments were submitted by Daniel T. Jones, Fresnel Partners, and Jarrod C. Grasso, Chief Executive Officer, New Jersey Realtors (NJR) submitted two comments.

COMMENT: One commenter expressed that the text of proposed new N.J.A.C. 11:5-3.16 should clarify whether multiple salespersons or broker-salespersons may register a single entity. The commenter provided the contextual examples of spouses who are both licensed as salespersons or broker-salespersons; and multiple salespersons or broker-salespersons who form a "team." The commenter further expressed the opinion that the proposed new rule should allow multiple licensees to register a single entity with the Real Estate Commission (Commission) for "practical administration of the law."

RESPONSE: The Commission agrees that it would be beneficial to clarify the text of the new rule. Additional language has been included at N.J.A.C. 11:5-3.16 clarifying that multiple salespersons or broker-salespersons may not register a single entity with the Commission. P.L. 2021, c. 281 does not authorize any group of licensees, such as spouses or "teams" to form a single entity for the purpose of common payment from an unlicensed, non-broker entity.

COMMENT: One commenter expressed strong support for the proposed amendments and new rule. However, a subsequent comment from the same commenter expressed concern with certain language of the proposed new rule. The commenter expressed approval of the proposed language at N.J.A.C. 11:5-3.16(a), as effectuating the intent of P.L. 2021, c. 281, which amends N.J.S.A. 45:15-16 to allow real estate salespersons and broker salespersons to be paid by an LLC registered with the Commission. However, the commenter asserted that the language at proposed N.J.A.C. 11:5-3.16(g) contradicts the intent of P.L. 2021, c. 281, and suggested that subsection (g) be deleted from the final version of N.J.A.C. 11:5-3.16.

The commenter contends that subsection (g) contradicts the legislative intent of P.L. 2021, c. 281, by limiting payment by an entity to only the individual salesperson or broker-salesperson who registered that entity with the Commission. The comment refers to the Legislative Statement for Senate Bill S3590, which indicates that the Bill was intended, in part, to affirm that licensed salespersons and broker-salespersons may take advantage of the pass-through business income deduction made available pursuant to section 199A of the Federal Internal Revenue Code as part of the Federal tax reforms of the 2017 "Tax Cut and Jobs Act." The commenter argues that "[s]ection 199A allows all members of an LLC to take advantage of the pass-through provision and clearly is not limited to a member who happens to be the one who registers the LLC with an administrative agency." The commenter notes that, for New Jersey State tax purposes, single-member limited liability companies and sole

proprietorships may not elect to utilize the Pass-Through Business Alternative Income Tax, which is otherwise available to pass-through entities pursuant to N.J.S.A. 54A:12-1 through 6. The commenter stated that this precludes salespersons and broker-salespersons who are the sole member of a limited liability company from availing themselves of the Pass-Through Business Alternative Income Tax. The commenter claims that, therefore, N.J.A.C. 11:5-3.16(g), as proposed, undermines the legislative intent of P.L. 2021, c. 281.

RESPONSE: The Commission appreciates the general support expressed by the commenter, however, it disagrees with the conclusions. The Commission has made revisions upon adoption to clarify that an entity formed pursuant to N.J.S.A. 45:15-16.a may not be registered by more than one salesperson or broker-salesperson.

The Commission disagrees with the commenter's interpretation of the legislative intent of P.L. 2021, c. 281. The language of N.J.S.A. 45:15-16, as amended by P.L. 2021, c. 281, evidences an intent to provide specific authority for a salesperson or broker-salesperson to form a business entity for the discreet purpose of allowing such a licensee to be compensated through a such an entity. Prior to the change to the law made pursuant to P.L. 2021, c. 281, such a practice was strictly prohibited pursuant to N.J.S.A. 45:15-16, which stated, without exception, that salespersons and broker-salespersons may not accept payment for brokerage activity from any person other than their employing or contracting broker.

Beyond this narrowly tailored authorization, P.L. 2021, c. 281, does not evidence a legislative intent for a substantial departure from the regulatory framework governing the conduct of all licensees. A key principle of the statutory and regulatory framework governing the conduct of real estate licensees is that all real estate brokerage activity may only be conducted on behalf of, in association with and overseen by a duly licensed real estate broker. An important mechanism within this framework is provided by the prohibition on payment for licensed acts from any person other than a salesperson's or broker-salesperson's licensed broker. The Commission notes that the New Jersey Real Estate License Act, N.J.S.A. 45:15-1 through 42 does not include a single reference to real estate "teams" or other non-broker licensee groups. Neither the text nor legislative history of P.L. 2021, c. 281, evidences an intent to address a group of licensees operating as part of a non-broker business entity, such as a "team" of salespersons or broker-salespersons.

The Commission first notes that this interpretation is supported by a plain reading of the language added at N.J.S.A. 45:15-16 pursuant to P.L. 2021, c. 281, § 1, which only contemplates licensees and business entities in the singular. For example: "A real estate salesperson or broker-salesperson may form a limited liability company...and the real estate salesperson or broker-salesperson..." N.J.S.A. 45:15-16.b; P.L. 2021, c. 281, § 1 (emphasis added).

The Legislative Statement indicates that the Bill was intended as specific permission for a single, express purpose, as follows:

The *specific permission* for a salesperson or broker-salesperson to operate through a limited liability company or other entity is intended to eliminate any confusion as to whether they may take advantage of the pass-through business income deduction made available under section 199A of the Federal Internal Revenue Code as part of the federal tax reforms of the 2017 "Tax Cut and Jobs Act." (Emphasis added).

The Legislative Statement makes no mention of the New Jersey Pass-Through Business Alternative Income Tax Act, N.J.S.A. 54A:12-1 et seq. Accordingly, the proposed amendments and new rule are consistent with the intent of P.L. 2021, c. 281.

#### Federal Standards Statement

The adopted amendments at N.J.A.C. 11:5-6.4(m) require that licensees comply with applicable disclosure standards in the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. §§ 2601 et seq. The adopted amendments and new rule are not subject to any other Federal standards. Accordingly, the adopted amendments and new rule do not exceed any Federal standards. Therefore, a Federal standards analysis is not required.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *\*thus\**; deletions from proposal indicated in brackets with asterisks *\*[thus]\**):

## SUBCHAPTER 3. LICENSING

## 11:5-3.13 Licensing Bureau forms, instructions, processing times, deadlines

(a) The following forms are utilized by the Licensing Bureau:  
1.-31. (No change.)

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

33. Change of license type; and

34. Registration of entity to receive commission income or other valuable consideration.

(b)-(c) (No change.)

## 11:5-3.14 Licensing fees

The fees applicable to transactions processed by the Licensing Bureau 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):

...

Registration:

<u>License</u>	<u>Fee</u>
Registration of entity to receive commission income	\$50.00

## 11:5-3.16 Registration of entities to receive commission income or other valuable consideration

(a) Pursuant to N.J.S.A. 45:15-16, a salesperson or broker-salesperson may accept payment of a real estate brokerage commission or other valuable consideration or any part thereof from a limited liability company or other entity formed and registered with the Commission. Such registered entity may receive a real estate brokerage commission or other valuable consideration from a broker.

(b) For the purpose of this section, the following definitions shall apply:

1. "Commission or valuable consideration" means compensation for the performance of activities specified at N.J.S.A. 45:15-3.

2. "Domestic entity" means a limited liability company or other entity that is formed pursuant to New Jersey law.

3. "Foreign entity" means a limited liability company or other entity that is formed pursuant to the law of a jurisdiction other than New Jersey.

(c) The following requirements apply to domestic and foreign entities that a salesperson or broker-salesperson seeks to register:

1. A salesperson or broker-salesperson may only have one entity registered with the Commission at a time;

2. The entity must be duly registered to transact business in New Jersey and in good standing with the New Jersey Department of the Treasury;

3. Foreign entities must be in good standing with the state of domicile; \*and]\*

4. The salesperson or broker-salesperson seeking registration of an entity must be a member, partner, shareholder, or otherwise have an ownership interest in the entity for which registration is being sought\*[\*]\*; and

**5. An entity formed pursuant to N.J.S.A. 45:15-16.a may not be registered by more than one salesperson or broker-salesperson.\***

(d) The registration process shall be on a form prescribed by the Commission and shall require the following:

1. The full legal name of the entity being registered;

2. A Standing Certificate issued to the entity by the New Jersey Department of the Treasury, attesting to the legal status of the entity, dated no more than 30 days prior to the filing date of the request for registration;

3. For domestic entities, a certified copy of the Certificate of Formation, or other formation certificate, issued by the New Jersey Department of the Treasury, Division of Revenue;

4. For foreign entities, a Certificate of Authority to transact business in New Jersey, issued by the New Jersey Department of the Treasury, Division of Revenue; and

5. Payment of the registration fee set forth at N.J.A.C. 11:5-3.14.

(e) The registration of an entity is not required to be renewed as part of the ordinary biennial license renewal requirement, set forth at N.J.S.A. 45:15-10. The registration of an entity shall expire in the following circumstances:

1. Upon the revocation of the license of the salesperson or broker-salesperson to whom the entity is registered;

2. Upon the failure of the salesperson or broker-salesperson to whom the entity is registered to timely reinstate an unexpired license within the timeframes set forth at N.J.S.A. 45:15-9. Upon any subsequent reinstatement of such a license, such a salesperson or broker-salesperson shall complete the registration process in this section, prior to the entity receiving any commission or other valuable consideration; and

3. Upon written request from the salesperson, or broker-salesperson to whom the entity is registered, for the entity to no longer be registered with the Commission.

(f) A salesperson or broker-salesperson who registers an entity, pursuant to this section, must notify the Commission within 30 days of any material change to the registered entity, including, but not limited to:

1. The salesperson or broker-salesperson's transfer of ownership interest or disassociation with the registered entity;

2. The merger or dissolution of a registered entity;

3. The registered entity fails to maintain good standing with the New Jersey Department of the Treasury, Division of Revenue; or

4. For foreign entities, the revocation of the Certificate of Authority to transact business in New Jersey.

(g) A licensed employing or contracting broker may pay a commission or valuable consideration to a registered entity instead of the individual salesperson or broker-salesperson that registered the entity in accordance with this section. The individual salesperson or broker-salesperson who registered the entity in accordance with this section may accept payment of the commission or valuable consideration or any part thereof from the registered entity.

## SUBCHAPTER 6. CONDUCT OF BUSINESS

## 11:5-6.1 Advertising rules

(a)-(l) (No change.)

(m) Licensees may include offers of free, discounted, or other services or products in advertisements or promotional material, subject to the requirements and restrictions set forth in this chapter.

1. Examples of such products or services include, but are not limited to, free or subsidized appraisals, homeowners' warranties, property, radon, and pest inspections, surveys, mortgage fees, offers to pay other costs typically incurred by parties to real estate transactions, coupons offering discounts on commissions charged by brokerage firms, and cash payments.

i. "Appraisal" as used in this subsection 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 prices in the market place must be considered. A comparative market analysis or study (CMA) is not an appraisal, as described herein in this subparagraph. Any written 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 statement shall appear in print as large as the predominant size print in any writing reporting the results of the CMA.

ii. Nothing in this subsection 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. 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.

3. Whenever a licensee participates in a promotion or offering of free, discounted, or other services or products that confers upon the recipient a monetary benefit of greater than \$1,000 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. 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;

ii. If the 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; and

iii. If 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 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.

4. The written disclosure referenced at (m)3 above shall be provided to consumers no later than when the promotion or offer is extended to 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.

5. No licensee may utilize a marketing or promotional program that 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 at (m)3 above, other than an action necessary to accomplish the delivery of the disclosure to the consumer.

(a)

## DEPARTMENT OF BANKING AND INSURANCE

### Notice of Readoption Producer Licensing

#### Readoptions with Technical Changes: N.J.A.C. 11:17A, 11:17B, 11:17C, and 11:17D

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and 17:22A-26 through 57.

Authorized By: Justin Zimmerman, Acting Commissioner,  
Department of Banking and Insurance.

Effective Dates: July 15, 2024, Readoption;  
August 19, 2024, Technical Changes.

New Expiration Date: July 15, 2031.

**Take notice** that pursuant to the provisions at N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 11:17A, 11:17B, 11:17C, and 11:17D were scheduled to expire on August 14, 2024. These rules were originally adopted in December 1989, and amended thereafter, to reflect the current standards and practices required by the Department of Banking and Insurance (Department) for insurance producers licensed in this State. These rules continue to provide insurance producers with a clear set of performance guidelines and standards of conduct concerning their daily operations and interaction with the Department and the public.

N.J.A.C. 11:17A defines activities for which one must be licensed as an insurance producer; specifies certain prohibited unfair trade practices; and sets forth marketing and related requirements.

N.J.A.C. 11:17B sets forth the rules concerning commissions and fees that may be paid to or charged by insurance producers.

N.J.A.C. 11:17C sets forth standards for licensed insurance producers concerning the management of funds and general recordkeeping for insurance-related transactions.

N.J.A.C. 11:17D sets forth procedures for reinstating suspended or revoked licenses and for imposing administrative penalties, and includes a schedule of fines for violations of certain provisions of Title 17 and 17B of the New Jersey Statutes and rules adopted or orders issued by the Commissioner.

The Department has reviewed N.J.A.C. 11:17A, 17B, 17C, and 17D and has determined that the existing rules continue to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. Accordingly, pursuant to N.J.S.A. 52:14B-5.1.c(1), these rules are readopted and shall continue in effect for a seven-year period, with the following technical changes to correct the Department's website, update addresses, and correct cross-references. Specifically, the following technical changes are made:

At N.J.A.C. 11:17A-1.2, a change is made to the cross-reference N.J.A.C. 11:3-2.2 to reflect the correct cross-reference to N.J.A.C. 11:3-2A.2.

At N.J.A.C. 11:17A-2.6(b), the Department's website address is corrected to [www.dobi.nj.gov](http://www.dobi.nj.gov).

At N.J.A.C. 11:17D-2.1(d)1, the contact information of the Manager of Enforcement is updated to the Chief of Investigations.

At N.J.A.C. 11:17D-2.4(a)1 and 4, changes are made to the cross-references to N.J.A.C. 11:17-2.7(f) and (c), respectively, to reflect the correct cross-references to N.J.A.C. 11:17-2.8(f) and (c), respectively.

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

## CHAPTER 17A INSURANCE PRODUCER STANDARDS OF CONDUCT; MARKETING

### SUBCHAPTER 1. ACTIVITIES FOR WHICH A PERSON MUST BE LICENSED AS AN INSURANCE PRODUCER

#### 11:17A-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

...  
"Insurer" means any company that underwrites or issues an insurance policy or contract including fraternal benefit societies as defined at N.J.S.A. 17:44B-1 et seq., risk retention groups and purchasing groups as defined at 15 U.S.C. § 3901 and N.J.S.A. 17:47A-1 et seq., limited assignment distribution (LAD) carriers as defined at N.J.A.C. 11:3-[2.2]**2A.2**, and organizations and/or groups formed [under] **pursuant to** N.J.A.C. 11:2-36.

### SUBCHAPTER 2. UNFAIR TRADE PRACTICES

#### 11:17A-2.6 Identification of insurance producer

(a) (No change.)

(b) In addition to (a)1 [through], **2, and** 3 above, an insurance producer shall maintain evidence that he or she holds an active producer license in this State at the business address on file with the Department and shall provide proof of licensure to an insured or prospective insured upon the person's request. Evidence of licensure includes verification available through the National Insurance Producer Registry (NIPR) or the Department's online licensee search on the Department's [web site [www.njdobi.org](http://www.njdobi.org)] **website at [www.dobi.nj.gov](http://www.dobi.nj.gov)**.

## CHAPTER 17D INSURANCE PRODUCER STANDARDS OF CONDUCT; ADMINISTRATIVE PROCEDURES AND PENALTIES

### SUBCHAPTER 2. ADMINISTRATIVE PENALTIES AND PROCEDURES

#### 11:17D-2.1 Procedures for the imposition of administrative penalties

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