

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

Proposed New Rules:

Applications Processed By The Education Bureau Of The Real Estate Commission - N.J.A.C. 11:5-2.3

Examination Eligibility Certificates - N.J.A.C. 11:5-2.4

Education Bureau Forms And Processing Times - N.J.A.C. 11:5-2.5

Education Bureau Transaction Fees – N.J.A.C. 11:5-2.6

License Applications Processed By The Licensing Section Of The Real Estate Commission - N.J.A.C. 11:5-3.12

Licensing Section Forms, Instructions, Processing Times, Deadlines - N.J.A.C. 11:5-3.13

Licensing Fees - N.J.A.C. 11:5-3.14

Imposition Of Regulatory Sanctions Under N.J.S.A. 45:15-16.27, et seq., Cease And Desist Orders; Hearings - N.J.A.C. 11:5-9.19

Rulemaking-Scope - N.J.A.C. 11:5-10.1

Notice Of Proposed Adoption Of New Rule, Or Proposed Amendment Or Repeal Of Existing Rule - N.J.A.C. 11:5-10.2

Comments Concerning Proposed Adoption Of New Rule Or Proposed Amendment Or Repeal Of Existing Rule; Extensions Of Time For Comments - N.J.A.C. 11:5-10.3

Proposed Amendments:

Forms Of Documents Submitted To, And Form Documents Used By The Bureau Of Subdivided Land Sales Control In Administering N.J.S.A. 45:15-16.27, et seq.- N.J.A.C. 11:5-9.3

Fees With Respect To The Registration Of Non-New Jersey Properties Under N.J.S.A. 45:15-16.27 et seq. - N.J.A.C. 11:5-9.7

Issuance By The Commission Pursuant to N.J.S.A. 45:15-16.27 et. Seq. Of A Notice Of Filing, Order Of Registration, Notice Of Correction, Or Order Of Rejection; Petition For Reconsideration, Automatic Registration - N.J.A.C. 11:5-9.8

Annual Reporting Upon And The Termination Of Registrations - N.J.A.C. 11:5-9.11

Public Hearings Concerning Proposed Adoption Of New Rule, Or Proposed Amendment Or Repeal Of Existing Rule – N.J.A.C. 11:5-10.4

Petitions For Rulemaking-Scope – N.J.A.C. 11:5-10.5 (Recodification of former 10.1)

Procedure For The Submission Of Petitions For Rulemaking – N.J.A.C. 11:5-10.6 (Recodification of former 10.2)

Procedure For The Consideration And Disposition Of Rulemaking Petitions – N.J.A.C. 11:5-10.7 (Recodification of former 10.3)

Decisions In Enforcement Actions, Motions For Reconsideration – N.J.A.C. 11:5-11.8

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

Authority: N.J.S.A. 45:15-6 and 52:14B-1, et seq.

Calendar Reference: See Summary below for explanations of exceptions to calendar requirement.

Proposal Number: PRN

Submit comments by _____ to:

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The agency proposal follows:

SUMMARY

In furtherance of the 2001 amendments to the Administrative Procedure Act, N.J.S.A. 52:14B-1, et seq., the New Jersey Real Estate Commission in the Department of Banking and Insurance is proposing to adopt several new rules and to amend several current rules. Generally, the proposals delineate the credentials issued and the related applications and forms utilized by the Commission, and the fees applicable to certain applications or requests submitted to the Commission. In addition, the Commission's rules describing its appeal and rulemaking procedures, including procedures on rulemaking petitions, are being supplemented and amended. An amendment is also being proposed to more explicitly set forth the procedure and timeframe applicable to motions for reconsideration of final Commission decisions in enforcement actions.

With respect to the operations of the Education Bureau within the Real Estate Commission, new rules N.J.A.C. 11:5-2.3, 2.4, 2.5 and 2.6 are being proposed. Proposed new rule 11:5-2.3 lists the applications that are processed by the Education Bureau. Proposed new rule 11:5-2.4 describes the basis upon which examination eligibility certificates are issued by the Education Bureau. Proposed new rule 11:5-2.5 lists the forms that are utilized by the bureau and the processing times for various operations performed by the bureau. Finally, proposed new rule 11:5-2.6 itemizes the fees applicable to the various operations the Education Bureau performs.

With respect to the rules concerning the licensing of real estate brokers, broker-salespersons and salespersons, similar new rules are being proposed. Proposed new rule 11:5-3.12 lists the various types of applications that are processed by the Commission's licensing section. Proposed new rule 11:5-3.13 lists the forms and instructions utilized by the Licensing Section and the processing times and deadlines applicable to certain licensing transactions and applications. Finally, proposed new rule 11:5-3.14 lists the fees charged by the Commission for the various licensing transactions.

New rules and amendments are also being proposed concerning the operations of the Bureau of Subdivided Land Sales Control ("the Bureau"), through which the Commission administers the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq. ("the Act"). Amendments are proposed to Rule 11:5-9.3 to include therein a list of the forms utilized by the Bureau, and to Rule 11:5-9.7 to include therein the fees applicable to the various submissions made to the Bureau. (The fees to defray the cost of inspections performed on projects on which applications for registration are submitted are separately described at N.J.A.C. 11:5-9.9.)

Amendments to Rule 11:5-9.8 are proposed to include therein a description of the procedures and timelines applicable to the issuance of Notices of Deficiency and Orders of Rejection of registration applications and Orders of Registration. An amendment to Rule 11:5-9.11(b) is also proposed to render its text more consistent with N.J.S.A. 45:15-16.40(c) and, by making a non-substantive grammatical change, render it more easy to read.

Finally, new rule 11:5-9.19 is being proposed to set forth the procedures applicable to enforcement actions for violations of the Act, including the issuance of Cease and Desist orders pursuant to N.J.S.A. 45:15-16.42.

As noted above, the Commission is also proposing to amend its rules regarding its rulemaking procedures. Proposed new rules 11:5-10.1 and 10.2 set forth, respectively, the scope of the Commission's rulemaking rules and the procedures applicable to Notices of Proposed Rulemaking by the Commission. Proposed new rule 11:5-10.2 sets forth the manner in which the Commission will provide secondary notice of its rulemaking proposals and indicates that such notice will be provided at least 30 days prior to the Commission's intended action of adopting a new rule, or amending or repealing an existing rule. Proposed new rule 11:5-10.3 sets forth the manner in which the Commission will receive comments on rulemaking proposals. Pursuant to the 2001 amendments to the APA, it also delineates the standard that the Commission will apply when determining whether sufficient public interest has been demonstrated in extending the time period for the submission of comments on a rulemaking proposal. The amendments to rule 11:5-10.4 address the requirements applicable to public hearings on proposed rulemaking by the Commission. Again, pursuant to the 2001 amendments to the APA, language is proposed to be added to the rule specifying that if sufficient public interest in holding a public hearing on a rulemaking proposal is demonstrated, the Commission shall conduct such a hearing and provide at least 15 days notice of such a hearing to interested parties. The standard for determining whether sufficient public interest has been demonstrated in holding a public hearing on proposed rulemaking is also specified in the language proposed to be added to this rule. The Commission's current rules N.J.A.C. 11:5-10.1 and 10.2 are proposed to be recodified as 11:5-10.5 and 10.6, respectively. These rules address petitions for rulemaking. The proposed revisions would conform these rules to the requirements applicable to such petitions reflected in the recent amendments to the Administrative Procedures Act. The proposed amendments to rule 11:5-10.3, which is proposed to be recodified as rule 11:5-10.7 and which delineates the procedures for the consideration and disposition of rulemaking petitions, also reflect revisions mandated by the recent amendments to the APA. These include extending the time period within which the Commission must respond to a conforming petition from 30 to 60 days after its receipt of the petition. In addition, where the Commission refers a petition for further deliberations, in accordance with the amended APA the proposed amendments indicate that such additional deliberations must be completed within 90 days of the referral being made, and that within the succeeding 90 days the Commission must provide a written statement to the petitioner explaining its reasons for a denial of the petition, or grant the petition and initiate a rulemaking proceeding.

Finally, amendments are being proposed to N.J.A.C. 11:5-11.8, which addresses Commission decisions in enforcement actions. The language proposed to be added to this rule refers to motions for reconsideration of such final decisions. The proposed new language merely indicates that the timeframe for the filing of those motions is that which is specified in the Commission's general rule on motions in administrative hearings, N.J.A.C. 11:5-11.4. In addition, as is the case with other motions, the proposed new

language would also indicate that such motions will be considered on the papers unless oral argument is requested and that request is granted by the Commission, or is directed by the Commission.

The Commission's proposal provides for a comment period of 60 days. Therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, it 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 new rules and rule amendments will have a positive social impact. Incorporating information about licensing requirements, procedures, fees and timelines into the Commission's rules will ensure a greater dissemination of this information to the public. Consequently, persons interested in obtaining New Jersey real estate licenses or in concluding transactions affecting existing licenses will be better equipped to accomplish those objectives in a timely and efficient manner. Similarly, providing comprehensive information on the procedures applicable to the Commission's rulemaking, including those applicable to petitions for rulemaking and requests for public hearings on rulemaking actions, will better enable persons interested in participating in the rulemaking process to do so. This will facilitate the receipt by the Commission of a broader spectrum of public input on its proposed rulemaking actions, which will better assure that final rulemaking actions are taken only after the Commission has considered a variety of positions held by persons affected by the proposed rulemaking.

ECONOMIC IMPACT

The proposed new rules and rule amendments will have a favorable economic impact. Itemizing in the rules the applications and other forms utilized by the various sections in the Commission, the fees charged for the various licensing and related transactions, and the processing timeframes and statutorily established deadlines applicable to various transactions will assist the public in acquiring initial credentials or changes affecting previously issued credentials in a more efficient manner. Similarly, providing information on rulemaking procedures will enable interested persons to utilize such procedures in a more efficient manner. Consequently, time spent researching such information independently, or obtaining it through direct inquiries to the Commission staff, will be reduced.

FEDERAL STANDARDS STATEMENT

A Federal Standards analysis is not required because the proposed new rules, and amendments are not subject to any federal standards.

JOBS IMPACT

It is not anticipated that the proposed new rules and amendments will have any impact on the number of jobs generated or lost in the private sector in New Jersey.

AGRICULTURAL INDUSTRY IMPACT

The proposed new rules and amendments will not have an impact on the agricultural industry in New Jersey.

REGULATORY FLEXIBILITY ANALYSIS

The proposed new rules and amendments do not impose reporting or recordkeeping requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules and amendments do not impose any compliance requirements on licensees and applicants for licensure by the Commission beyond those imposed by the Real Estate Brokers and Salesmen's Act, N.J.S.A. 45:15-1 et seq. No exceptions to the compliance requirements for small businesses are established by the pertinent statutory provisions.

SMART GROWTH IMPACT

The proposed new rules and rule amendments will not have an impact on the achievement of smart growth or the implementation of the state development and redevelopment plan.

Full Text of the proposed new rules and amendments follows (additions indicated with underlines thus; deletions indicated with brackets [thus]:)

Proposed new sections

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

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

1. Real Estate Instructor license;
2. Real Estate School license;
3. License for additional teaching location of a licensed real estate school;
4. Approval of Real Estate School Director;
5. Approval of experience report for broker license applicant.

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

- (1) Waiver of salesperson prelicensure education requirement;
- (2) Partial waiver of broker prelicensure education requirement and/or complete waiver of broker experience requirement;
- (3) Waiver of broker experience and certain prelicensure education requirements based upon status of applicant as a qualifying disabled veteran pursuant to N.J.S.A. 45:15-11.

11:5-2.4 Examination eligibility certificates

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

1. broker license candidates who have fulfilled or, to the extent permitted by N.J.A.C. 11:5-3.8 and 11:5-2.1(e), had waived the broker license experience and/or education requirements;
2. instructor license candidates who have fulfilled or, to the extent permitted by N.J.A.C. 11:5-2.2(k), had waived the instructor license education requirement; and
3. salesperson license candidates who, as provided in N.J.A.C. 11:5-2.1(e), have had the salesperson's license education requirement waived.

11:5-2.5 Education Bureau forms and processing times

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

1. Application for real estate school license for non-public school;
2. Application for licensure of additional teaching location for a non-public real estate school;
3. Application for real estate school license for public college, university or adult education program;
4. Application for real estate instructor license;
5. Application for change in address of administrative office or primary teaching location of non-public real estate prelicensure school;
6. Application for relicensure of public college, university or adult education program with new director;

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

8. Application for waiver of salesperson prelicensure education requirement;

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

10. Experience report for Broker License Applicant;

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

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

1. Applications for real estate instructor licenses, school licenses, and additional teaching location licenses - 3 weeks;

2. Applications for a change of address of a licensed school - 3 weeks;

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

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

5. Applications for waivers of the prelicensure education requirements and/or the broker experience requirement which do not require the review of additional information - 4 weeks;

6. Applications for approval of experience as a real estate salesperson to fulfill the experience requirement for licensure as a broker. (See N.J.S.A. 45:15-9 and N.J.A.C. 11:5-3.8) – 4 weeks.

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 Appendix A.

APPENDIX A

EDUCATION BUREAU TRANSACTION FEES

<u>Criminal history check</u>	<u>\$ 15.00</u>
<u>Application fee, school license</u>	<u>\$ 50.00</u>
<u>Application fee, instructor license</u>	<u>\$ 25.00</u>
<u>Initial License fee, non-public school</u>	<u>\$200.00 for licenses issued in the first year of a two year license term;</u> <u>\$100.00 for licenses issued in the second year of a two-year term.</u>
<u>Renewal fee, non-public school</u>	<u>\$200.00 plus \$100.00 for each additional licensed location</u>
<u>License fee, additional teaching location</u>	<u>\$100.00 for licenses issued in the first year of a two year license term;</u> <u>\$50.00 for licenses issued in the second year of a two year term.</u>
<u>Change of address (school)</u>	<u>\$50.00</u>
<u>License fee, instructor</u>	<u>\$100.00 for licenses issued in the first year of a two year license term;</u> <u>\$50.00 for licenses issued in the second year of a two-year term.</u>
<u>Renewal fee, instructor</u>	<u>\$50.00</u>
<u>Change of name (school)</u>	<u>\$25.00</u>
<u>Change of name for individual</u>	<u>\$25.00</u>
<u>Change of school director</u>	<u>\$50.00</u>
<u>Application fee, waiver of salesperson education</u>	<u>\$25.00</u>

Application fee, waiver of broker education or experience \$25.00

Application fee, approval of experience report for broker license applicant \$25.00

Proposed new sections

11:5-3.12 License applications processed by the Licensing Section of the Real Estate Commission

(a) Applications for the following license types are processed by the Licensing Section of the Real Estate Commission:

1. Real Estate Salesperson;
2. Real Estate Broker-salesperson;
3. Real Estate Broker -- Sole Proprietor;
4. Real Estate Broker -- Business entity;
5. Real Estate Broker -- Broker of Record of a licensed business entity;
6. Branch office

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

(a) The following forms are utilized by the Licensing Section of the Real Estate Commission:

1. Original salesperson license application;
2. Original broker/broker-salesperson application;
3. Name change (by license or application);
4. Broker status change;
5. Salesperson or broker-salesperson transfer of license (on rear of license document);
6. Broker's Authorized Designee or Power of Attorney;

7. Change of business address;
8. Application for broker license for business entity (includes application for broker of record license)
9. Application for sole proprietor broker license;
10. Application for reactivation within current license term or for reinstatement of salesperson license;
11. Application for reactivation within current license term or for reinstatement of broker-salesperson license;
12. Office Closing affidavit;
13. Application for branch office license;
14. Change of branch office supervisor;
15. Initial Application for Renewal of Broker License and of all related licenses;
16. First Supplemental Renewal Application (lists licensees who became licensed with the broker between the date on which the Initial Renewal Application form was generated and the date on which the First Supplemental Renewal Application form was generated.)
17. Second Supplemental Renewal Application (lists licensees who became licensed with the broker between the date on which the First Supplemental Renewal Application form was generated and the expiration date of the license term in which the renewal forms are generated.)
18. Change of corporate representative and multiple license;
19. Change of broker of record;
20. Change of corporate title;
21. Corporate license and multiple broker license;
22. Reinstatement of business entity broker license ;
23. Reinstatement of sole proprietor broker license;
24. Additional broker of record license to sole proprietor broker;

- 25. Change of tradename or new tradename;
- 26. Multiple broker of record license;
- 27. Temporary broker's license;
- 28. Change of Broker of Record Affidavit;
- 29. Individual irrevocable consent to service of process;
- 30. Corporate irrevocable consent to service of process;
- 31. Partnership/LLC/other irrevocable consent to service of process
- 32. New Jersey State Police, State Bureau of Identification Request for Criminal History Record Check form.

(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 Section.

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

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

i. Original salesperson, broker-salesperson or broker

1 year from date on which prelicensure course and education requirements were completed (See N.J.A.C. 11:5-3.6(c) for salespersons and 11:5-3.8(e) for brokers and broker-salespersons)

ii. Applications for the reinstatement of a salesperson, broker-salesperson or brokers license

2 years from the expiration date of the last license held unless exempted as provided in N.J.S.A. 45:15-9

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|---|--|
| iii. <u>Brokerage firm Office Closing Affidavit</u> | <u>within 30 business days from date of closing</u>
<u>(See N.J.A.C. 11:5-3.9(c))</u> |
| iv. <u>Brokerage firm Change of address</u> | <u>prior to or immediately upon move to new address</u>
<u>(See N.J.S.A. 45:15-12 and 45:15-13)</u> |
| v. <u>Temporary broker license</u> | <u>within 30 business days from date of death or of incapacity of sole proprietor broker or broker of record</u>
<u>(See N.J.S.A. 45:15-11.3)</u> |
| vi. <u>License Renewals</u> | |
| 1. <u>Initial renewal application</u> | <u>By June 30 of the year in which the license is due to expire</u>
<u>(See N.J.A.C. 11:5-3.1)</u> |
| 2. <u>1st supplemental renewal issued</u> | <u>45 days from date application issued</u> |
| 3. <u>2nd supplemental renewal application</u> | <u>30 days from date application issued</u> |

(d) Late fees are assessed for license renewals postmarked and received by the Commission after the deadlines referenced in (d)(vi) above. Those fees are set forth in Appendix B.

11:5-3.14 **Licensing fees**

The fees applicable to transactions processed by the Licensing Section of the Real Estate Commission are listed in Appendix B. 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.

APPENDIX B

LICENSE FEES

Initial License Fees (amounts include \$25.00 application fee, \$15.00 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)

<u>Corporations, partnerships and other business entities</u>	<u>\$145.00</u>
<u>Broker of Record</u>	<u>\$160.00</u>
<u>Sole Proprietor Broker</u>	<u>\$160.00</u>
<u>Broker-salesperson</u>	<u>\$160.00</u>
<u>Salesperson</u>	<u>\$100.00</u>
<u>Branch office</u>	<u>\$ 75.00</u>
<u>Temporary broker license</u>	<u>\$150.00</u>
<u>Multiple broker license</u>	<u>\$145.00</u>
<u>Renewal Fees</u>	
<u>Corporations, partnerships and other business entities</u>	<u>\$100.00</u>
<u>Broker of Record</u>	<u>\$100.00</u>
<u>Sole Proprietor Broker</u>	<u>\$100.00</u>
<u>Broker-salesperson</u>	<u>\$100.00</u>
<u>Salesperson</u>	<u>\$ 50.00</u>
<u>Branch office</u>	<u>\$ 50.00</u>
<u>Late Renewal Fees</u>	
<u>Corporations, partnerships and other business entities</u>	<u>\$ 20.00</u>
<u>Broker</u>	<u>20.00</u>
<u>Broker-salesperson</u>	<u>10.00</u>
<u>Salesperson</u>	<u>10.00</u>
<u>Branch office</u>	<u>10.00</u>

Transfers

Broker-salesperson \$ 25.00

Salesperson \$ 25.00

Reinstatements of unexpired licenses (amounts include \$25.00 application fee)

Corporations, partnerships and other business entities \$125.00

Broker of Record \$125.00

Sole Proprietor Broker \$125.00

Broker-salesperson \$125.00

Salesperson \$ 75.00

Branch office \$ 75.00

Changes

Name change \$ 25.00

Change of business address

Sole proprietor brokers and corporations,
partnerships or other business entities
(plus \$5.00 for each individual licensee.) \$ 25.00

Change of Status -- Sole Proprietor, Broker,
Broker of Record or Broker-salesperson \$ 25.00

Change of Branch Office Supervisor \$ 25.00

11:5-9.3 Forms, [form] of documents

(a) The forms used by the Bureau of Subdivided Land Sales Control in the New Jersey Real Estate Commission are listed in Appendix C. 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 through 9 – No change.

APPENDIX C

BUREAU OF SUBDIVIDED LAND SALES FORMS

1. Broker-Developer application/affidavit
2. Statement of Non-conviction and partner, officer, director or principal disclosure
3. Consent to Service of Process
4. Annual report of registered properties
5. Application for limited exemption or complete exemption
6. New Jersey Public Offering Statement -- Timeshare (may not be required where situs state Public Offering Statement is deemed acceptable)
7. New Jersey Public Offering Statement -- Non-timeshare (may not be required where situs state Public Offering Statement is deemed acceptable)
8. Application for Registration Questionnaire

11:5-9.7 **Fees with respect to the [sale] registration of interstate properties**

(a) All applicants for registration shall pay application fees as prescribed in N.J.S.A. 45:15-16.34 and in (f) below.

(b) All applicants for an exemption or a limited exemption shall pay application fees as prescribed in N.J.A.C. 11:5-9.18 and in (f) below:

(c) 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 fee schedule prescribed in N.J.S.A. 47:1A-1.

(e) No change.

(f) Fees charged by the Bureau of Subdivided Land Sales Control are listed in Appendix D.

APPENDIX D

BUREAU OF SUBDIVIDED LAND SALES CONTROL FEES

<u>Out of State Property Registration application fee</u>	<u>\$500.00</u>
<u>plus \$35.00 per unit fee up to a maximum of \$3,000</u>	
<u>Limited Exemption</u>	<u>\$250.00</u>
<u>Complete Exemption</u>	<u>\$ 80.00</u>
<u>Amendments to registrations</u>	<u>\$250.00</u>

11:5-9.8 **Issuance by the Commission of a Notice of Filing, Order of Registration, Notice of Correction, or Order of Rejection; Petition for Reconsideration, Automatic Registration**

(a) No change.

(b) Within 90 days from the date of a notice of filing the Commission shall either issue a Notice of Deficiency or an Order of Rejection or, if the Commission affirmatively determines that the requirements of N.J.S.A. 45:15-16.27, et seq. and N.J.A.C. 11:5-9.1, et seq. have been met, an order of registration. If within the said 90 day time period no order of rejection is entered and no Notice of Deficiency as set forth in (c) below is issued, the subdivision or subdivided lands shall be deemed registered unless the applicant has consented in writing to a delay.

(c) If during the 90 days following the date of the Notice of Filing, the Commission determines that any of the requirements of N.J.S.A. 45:15-16.27 et seq. or of N.J.A.C. 11:5-9.1, et seq. have not been met, the Commission shall issue a Notice of Deficiency to the applicant. The Notice of Deficiency shall indicate that the properties referenced in the application for registration are not registered and that the application must be corrected in a manner specified in the notice within 30 days from the date that the Notice of Deficiency is received by the applicant.

1. In the event the requirements of the Notice of Deficiency are not met within the time allowed, the Commission may enter an order rejecting the registration. All such orders shall include the factual and legal basis for the rejection and shall provide that, unless appealed, the terms of the order shall become final after 30 days.

(d) Upon the issuance of an Order of Rejection, the applicant shall have the right to file an appeal with the Commission and shall be entitled to a hearing thereon, provided that the appeal shall be filed within 30 days of the date of the Order of Rejection.

(1.) In the event an appeal is filed by the applicant, the Order of Rejection shall not be deemed final until such time as a hearing has been held and a determination rendered. While an appeal of an Order of Rejection remains pending, no property which was the subject of the Notice of Filing referenced in the Order of Rejection shall be considered registered.

11:5-9.11 Annual reporting upon and the termination of registrations

(a) No change.

(b) The registrant may file an application for termination of its obligations with the Commission in which the registrant shall certify the grounds for termination.

1. Upon a determination by the Commission that an annual report is no longer necessary for the protection of the public interest [because] or that the registrant no longer retains any interest and no longer has any contractual, bond or other obligations to New Jersey purchasers in the subdivision, including having fulfilled all undertakings referred to in the Public Offering Statement, and that the registrant has ceased all marketing activity in New Jersey, the Commission shall issue an order terminating the responsibilities of the registrant under the Act. Such a determination may be made by the Commission upon the registrant making application for the issuance of an Order of Termination, accompanied by acceptable proofs that the above requirements have been met.

11:5-9.19 Imposition of regulatory sanctions; cease and desist orders; hearings

(a) Prior to issuing an Order revoking or suspending a registration and/or imposing any penalty authorized by the Act, and/or directing that a registrant permanently cease and desist from taking any action or continuing any course of conduct, the Commission shall provide written notice of the charges which allegedly support the entry of such an Order and afford the registrant to whom such notice is directed the opportunity for a hearing on the charges. All such hearings shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the rules promulgated thereunder by the Office of Administrative Law and any rules of the Commission applicable to such hearings.

1. If the Commission makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Every temporary cease and desist order shall include in its terms a provision that upon written request of the party to whom the order was directed, a hearing will be held within 15 days of the Commission's receipt of the request.

SUBCHAPTER 10. RULEMAKING AND PETITIONS FOR RULEMAKING

11:5-10.1 Rulemaking-scope

Unless otherwise specified herein, the procedures governing the promulgation of administrative rules by the New Jersey Real Estate Commission pursuant to the authority granted in N.J.S.A. 45:15-6, 45:15-10.14, 45:15-16.49, 45:15-17(t), 45:15-17.4 and 45:15-42, shall be those established in the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) and the “Rules for Agency Rulemaking,” set forth in N.J.A.C. 1:30-1.1 et seq.

11:5-10.2 Notice of proposed adoption of new rule, or proposed amendment or repeal of existing rule

- (a) The Commission shall provide primary notice of any proposal to adopt a new rule, or amend or repeal any existing rule, by filing such notice with the Office of Administrative Law for publication in the New Jersey Register through the procedures established in N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:30-1.1 et seq.
- (b) With the exception of rules which, pursuant to N.J.S.A. 52:14B-4, may be adopted without prior notice, in addition to the primary notice described in (a) above in all circumstances the Commission shall provide secondary notice of proposals to adopt a new rule, or amend or repeal an existing rule, through the following methods:
 - 1. Notice to the news media maintaining a press office to cover the New Jersey State House complex;
 - 2. Notice posted on the bulletin board of the office of the New Jersey Real Estate Commission;
 - 3. Notice posted on the web-site of the New Jersey Real Estate Commission at “www.state.nj.us/dobi/”;and
 - 4. Notice mailed to all persons who have submitted written or e-mail requests to the Commission for advance notice of its rulemaking proposals.
- (c) In addition to the methods for providing secondary notice of proposed rulemaking specified in (b) above, the Commission may provide such notice in the text of a newsletter or similar publication mailed to all licensed offices of New Jersey real estate brokers and/or a written communication from the New Jersey Real Estate Commission mailed to all licensed offices of New Jersey real estate brokers.
- (d) The Commission shall provide secondary notice under (b) above at least 30 days prior to its intended action of adopting a new rule, or amending or repealing any existing rule.

11:5-10.3 Comments concerning proposed adoption of new rule, or

proposed amendment or repeal of existing rule; extensions of time for comments

(a) For a period of no less than 30 days following the publication of any proposal to adopt a new rule, or amend or repeal an existing rule, the Commission shall afford all interested persons reasonable opportunity to submit written comments on the proposal in accordance with the procedures established in N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:30-1.1 et seq. Said period shall be deemed the “comment period.”

(b) A written comment may be submitted via mail, delivery service, facsimile transmission, e-mail or any other means which results in the Commission’s receipt of a writing containing the text of the comment.

(c) If during the comment period sufficient public interest is demonstrated in an extension of the time for the submission of comments, the Commission shall provide an additional 30 day period for the receipt of comments from interested persons. In determining whether sufficient public interest has been demonstrated for the purposes of extending the comment period pursuant to N.J.A.C. 1:30-5.4, the Commission shall consider the following criteria:

1. Whether comments received indicated a previously unrecognized impact on regulated entities or persons; or
2. Whether comments received raise unanticipated issues related to the notice of proposal.

(d) Where a 30 day extension of the comment period under (c) above is granted, the proposal shall not be adopted until the

Commission has considered all comments received during the entire comment period as extended.

11:5-10.4 Public hearings [for promulgation amending or repealing rules] concerning proposed adoption of new rule, or proposed amendment or repeal of existing rule

(a) No change.

(b) No change

(c) If during the comment period following the publication of any proposal to adopt a new rule, or amend or repeal any existing rule sufficient public interest in holding a public hearing on the proposal is demonstrated, the Commission shall conduct such a hearing. The Commission shall provide at least 15 days notice of such a public hearing, which shall be conducted in accordance with the procedures established in N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:30-1.1 et seq.

(d) In determining whether sufficient public interest has been demonstrated for purposes of conducting a public hearing pursuant to N.J.A.C. 1:30-5.5, the Commission

shall consider a request for such a hearing that has been submitted on a form prescribed by the Department of Banking and Insurance. Such a request shall be submitted within 60 days following the publication of the notice of proposal in the New Jersey Register.

1. A person interested in having a public hearing held on a notice of proposal shall submit an application on a form prescribed by the Department of Banking and Insurance to New Jersey Real Estate Commission, Department of Banking and Insurance, P.O. Box 328, Trenton, NJ 08625-0328. The application shall contain the following information:

i. The person's name, address, telephone number, agency or association (if applicable);

ii. The citation and title of the proposed rule and the date the notice of proposal was published in the New Jersey Register; and

iii. The reasons a public hearing regarding the notice of proposal is considered necessary pursuant to (c) below.

(c) Sufficient public interest for the purpose of holding a public hearing pursuant to N.J.A.C. 17:30-5.5 shall be demonstrated if, within 60 days of the publication date of the proposal, the Commission determines that the consideration of additional data, findings and/or analysis regarding the notice of proposal is necessary in order to ensure that the proposed rulemaking does not violate the intent of the statutory authority.

11:5-[10.1] 10.5 Petitions for rulemaking-scope

This [subchapter] subsection shall apply to all petitions made by interested persons for the [promulgation, amendments or repeal] adoption of a new rule, or the amendment or repeal of any existing rule by the New Jersey Real Estate Commission, in accordance with N.J.S.A. 52:14B-4(f).

11:5-[10.2] 10.6 Procedure for the submission of petitions for rulemaking

(a) Any interested person may petition the Real Estate Commission to [promulgate, amend or repeal a rule] adopt a new rule, or amend or repeal an existing rule. [Such petition shall state clearly and concisely:] Such interested person shall be deemed a "petitioner." The petitioner may include with any petition the text of the proposed new rule, amended rule or repealed rule. All petitions for rulemaking shall clearly and concisely state:

1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking action which is requested;
3. The reasons for the request;
4. The petitioner's interest in the request, including, without limitation, any relevant organizational affiliation or economic interest; and

5. References to the Commission's authority to take the requested action.

(b) [Petitions should be sent] A petitioner shall submit a petition to the following address:

New Jersey Real Estate Commission
PO Box 328
Trenton, New Jersey 08625-0328

(c) [Filing a petition shall be made] A petitioner shall file a petition by forwarding an original and two copies to the Commission at the address indicated in (b) above.

(d) [Any document submitted to the Real Estate Commission which is not in substantial compliance with (a) above shall not be deemed to be a petition for a rule] Any submission by a petitioner which is not in substantial compliance with the requirements specified above shall not be considered a petition for rulemaking requiring further Commission action pursuant to N.J.S.A. 52:14B-4(f).

(e) Within 30 days of [its receipt of] receiving a petition for rulemaking[,] the Commission shall review the same to ascertain if the submission [complies] is in substantial compliance with the requirements set forth above, [and, in] In the event that the Commission determines that the submission is not in substantial compliance with those requirements [(a) above], the Commission shall notify the petitioner of such noncompliance and of the particular deficiency or deficiencies in the submission [on] upon which [the decision of the Commission] the Commission's determination was based. The Commission shall also advise the petitioner that any deficiencies may be corrected and that the corrected petition may be [re-submitted] resubmitted for further consideration.

11:5-[10.3] 10.7 Procedure for the consideration and disposition of rulemaking petitions

(a) [Upon receipt of] Subsequent to making a determination that a petition is in substantial compliance with N.J.A.C. 11:5-[10.2] 10.6, the Commission [will] shall file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register. The Commission's notice [will] shall include:

1. The name of the petitioner;
2. The substance or nature of the rulemaking action which is requested;
3. The problem or purpose which is the subject of the request; and
4. The date that the petition was received.

(b) Within [30] 60 days of receiving [the] a petition which is in substantial compliance with N.J.A.C. 11:5-10.6, the Commission [will] shall consider the petition

and decide upon an action to be taken on the petition. During that time period, [The] the petitioner may be requested to attend a [Commission] public meeting of the Commission and answer questions concerning the petition. The Commission [will] shall mail to the petitioner, and file with the Office of Administrative Law for publication in the New Jersey Register, a notice of action on the petition which [will] shall include:

- (1) The name of the petitioner;
 - (2) The New Jersey Register citation for the notice of petition, if that notice appeared in a previous Register;
 - (3) Certification by the Commission that the petition was duly considered pursuant to law;
 - (4) The nature or substance of the Commission's action upon the petition; and
 - (5) A brief statement of reasons for the Commission's action.
- (c) Commission action on a petition [may include:] shall either:
1. [Denying] Deny the petition, and give a written statement of the Commission's reasons for such denial;
 2. [Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law] Grant the petition and file a notice of proposed rule or a notice of preproposal with the Office of Administrative Law within 90 days of granting the petition; or
 3. Refer the matter for further deliberations, the nature of which [will] shall be specified to the petitioner and in the notice of action and which deliberations [will] shall [conclude upon a specified date.] be concluded within 90 days of referring the matter for further deliberations. [The results of these further deliberations will be mailed to the petitioner and submitted to the OAL for publication in the New Jersey Register.] 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 rule-making proceeding within 90 days.

Proposed revisions

New material is underlined

11:5-11.8 Decisions in enforcement actions, motions for reconsideration

(a) No change.

(b) Motions for reconsideration of final decisions of the Real Estate Commission shall be made within the timeframe specified in N.J.A.C. 11:5-11.4.

All such motions shall be considered on the papers unless oral argument is requested and that request is granted by the Commission or the Commission directs oral argument on the motion.

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