

# New Jersey Real Estate Commission Statutes and Rules



*Real Estate Continuing Education*

Course Reference Number C20169660



**The Professional School of Business**

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# New Jersey Real Estate Commission Statutes & Rule

## *Real Estate Continuing Education*

### Continuing Education Requirements

In order to qualify for license renewal or reinstatement, every individual licensed as a broker of record, broker-salesperson or salesperson must satisfy at least ONE of the below CE requirements:

- Completion of 12 credit hours of CE applicable to the license term (N.J.A.C. 11:5-12.4 (2012)). At least six of the twelve credits must be obtained in courses within the “core topics”. The six shall include at least 2 credit hours on ethics. The remainder can be electives.
- Successful completion of one or more broker pre-licensure education courses (within the license term) as set forth in N.J.A.C. 11:5-2.1.
- Salespersons initially licensed in the SECOND year of the NJ real estate license term shall not be required to fulfill any continuing education to renew their license upon the conclusion of that license term. (i.e., a licensee who obtains their license after July 1, 2014 will not be required to complete CE requirements to renew for the term beginning July 1, 2015).

### About the New Jersey Commission<sup>1</sup>

Established in 1921, the New Jersey Real Estate Commission was created to administer and enforce New Jersey's real estate licensing law, N.J.S.A. 45:15-1 et seq. The Commission consists of five members who have been licensed as New Jersey real estate brokers for at least ten years, two public members, and one representative of an appropriate governmental department.

The Commission meets approximately 36 times each year, and frequently acts as a quasi-judicial body rendering decisions on contested license applications and disciplinary actions. It also promulgates rules interpreting and implementing the provisions of the license law and establishing standards of practice for the real estate brokerage profession.

All applicants for licensure as a broker or salesperson must meet the standards for good character and fulfill the educational requirements for licensure established by law, and pass an examination

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<sup>1</sup> Reprinted from the New Jersey Real Estate Commission website [http://www.state.nj.us/dobi/division\\_rec/](http://www.state.nj.us/dobi/division_rec/)

conducted under the supervision of the Commission. The content of the prelicensure education courses is prescribed in regulations adopted by the Commission. The Commission also licenses the schools which provide the courses and the instructors who teach them. Instructors must fulfill educational requirements and pass an examination to qualify for licensure.

The Commission is empowered to conduct investigations, to hold hearings and to revoke licenses and/or otherwise sanction individuals and firms for violations of the license law or its administrative rules. Violations which can result in severe sanctions include commingling or misappropriating escrow monies, making substantial misrepresentations, being convicted of a theft offense, procuring a license by fraud or deceit, and "any conduct which demonstrates unworthiness, incompetency, bad faith or dishonesty."

The Commission also administers and enforces the Real Estate Sales Full Disclosure Act. This law regulates the marketing and sale in New Jersey of real estate interests located in other states and countries. Persons who wish to market such properties in New Jersey must first register their projects with the Commission. In order to qualify for registration, the applicant must demonstrate to the satisfaction of the Commission that they can convey good title to the properties, that full and accurate disclosure of all pertinent information will be made to prospective New Jersey purchasers, and that adequate financial assurances have been established to insure completion of all promised improvements.

Among its many other functions, the Commission also administers the Real Estate Guaranty Fund. This Fund was established by law to protect persons aggrieved by the embezzlement, conversion or unlawful obtaining of property by licensees in a real estate brokerage transaction. It is fully funded by assessments upon licensees and applicants. No taxpayer dollars are credited to the fund.

## Activities Requiring a License and License Types

45:15-1 License required.

No person shall engage either directly or indirectly in the business of a real estate broker, broker-salesperson, salesperson or referral agent, temporarily or otherwise, and no person shall advertise or represent himself as being authorized to act as a real estate broker, broker-salesperson, salesperson or referral agent, or to engage in any of the activities described in R.S.45:15-3, without being licensed so to do as hereinafter provided.

45:15-2. "Engaging in business" defined

Any single act, transaction or sale shall constitute engaging in business within the meaning of this article.

45:15-3. A **real estate broker**, for the purposes of R.S.45:15-1 et seq., is defined to be a person, firm or corporation who, for a fee, commission or other valuable consideration, or by reason of a promise or reasonable expectation thereof,

- lists for sale
- sells
- exchanges
- buys or rents
- offers or attempts to negotiate a sale, exchange, purchase or rental of real estate or an interest therein
- collects or offers or attempts to collect rent for the use of real estate
- solicits for prospective purchasers
- assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate
- negotiates, or offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon or transfer of any real estate for others
- any person who, for pecuniary gain or expectation of pecuniary gain conducts a public or private competitive sale of lands or any interest in lands

In the sale of lots pursuant to the provisions of R.S.45:15-1 et seq., the term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate.

A **real estate salesperson**, for the purposes of R.S.45:15-1 et seq., is defined to be any natural person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of a licensed real estate broker to sell or offer to sell, buy or offer to buy or negotiate the purchase, sale or exchange of real estate, or offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate, or to lease or rent, or offer to lease or rent any real estate for others, or to collect rents for the use of real estate, or to solicit for prospective purchasers or lessees of real estate, or who is employed by a licensed real estate broker to sell or offer to sell lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell real estate, or any parts thereof, in lots or other parcels.

A **real estate broker-salesperson**, for the purposes of R.S.45:15-1 et seq., is defined to be any natural person who is qualified to be licensed as a real estate broker but who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of a licensed real estate broker to perform the functions of a real estate salesperson as defined above.

NOTE: A broker-salesperson is also qualified to be an office manager.

A **real estate referral agent**, for the purposes of R.S.45:15-1 et seq., is defined to be any natural person employed by and operating under the supervision of a licensed real estate broker whose **real estate brokerage-related activities are limited to referring prospects for the sale, purchase, exchange, leasing or rental of real estate or an interest therein**. Referral agent licensees shall only refer such prospects to the real estate broker through whom they are licensed as a referral agent and shall only accept compensation for their activity as a referral agent from that broker. A referral agent shall not be employed by or licensed with more than

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A real estate agent is a REALTOR® when he or she becomes a member of the NATIONAL ASSOCIATION OF REALTORS®, *The Voice for Real Estate®*, the world's largest professional association. The term "REALTOR®" is a registered collective membership mark that identifies a real estate professional who is a member of the NATIONAL ASSOCIATION OF REALTORS® and abides by its strict code of ethics.

Founded in 1908, NAR has grown from its original nucleus of 120 members to more than 1 million today. NAR is composed of REALTORS® who are involved in residential and commercial real estate as brokers, salespeople, property managers, appraisers, counselors, and others who are engaged in all aspects of the real estate industry.

Members belong to one or more of 1,700 local associations/boards and 54 state and territory associations of REALTORS®. REALTORS® are pledged to a strict Code of Ethics and Standards of Practice.

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**Activities Requiring a Real Estate License**

**An unlicensed assistant or secretary CAN:**

- Answer phones and forward calls
- Process and submit listings and changes to an MLS system
- Follow up on loan applications after contracts have been fully executed
- Set up file procedures, track and secure documents, etc.
- Have keys made for company listings at the direction of a licensee
- Write ads for approval of a licensee; place ads as directed
- Keep records of, and deposit payments of earnest money, security deposits and rent
- Type contract forms for approval of a licensee
- Monitor files and report findings to a licensee
- Compute commission checks
- Place signs on properties
- Order items or inspections as directed by a licensee
- Prepare fliers and promotional material for approval by licensee
- Act as courier for delivering documents or picking up keys, etc. (Licensee is responsible for delivery of contracts or closing materials)
- Schedule appointments with the seller or seller's agent in order for a licensee to show listed property

**An unlicensed assistant or secretary CANNOT:**

- Make cold calls by telephone or in person to potential listers, purchasers, tenants or landlords
- In the absence of licensee, host open houses, booths at home shows, malls or fairs or distribute promotional literature at such locations
- Prepare promotional material or ads without the review and approval of a licensee
- Show property
- Answer any questions on listings, title, financing or closings from either the public or other licensees
- Discuss or explain a contract, listing, lease agreement or other real estate document with anyone outside the firm
- Work as a licensee/secretary in one firm and do real estate related activities with that firm, while licensed with another firm
- Negotiate or agree to any commission, commission split, management fee or referral fee on behalf of a licensee
- Make telephone calls for the purpose of collecting or attempting to collect late rent payments
- Be present during property inspection by a prospective purchaser in the absence of a licensee (there would be no impropriety where, for security reasons, a licensed individual requested their unlicensed assistant to accompany them to an inspection)

The above lists do not define every permitted or prohibited activity of an unlicensed assistant but should offer reasonable guidelines. In addition, the compensation of an unlicensed personal assistant or secretary should not be based on the success of their activity, i.e., a percentage of commission, but should be directly related to the duties the non-licensee is performing. *Source: Banking and Insurance Quarterly, Winter 2005*

one real estate broker at any given time. No person may simultaneously be licensed as a referral agent and a real estate broker, broker-salesperson or salesperson and no person licensed as a referral agent may engage in the business of a real estate broker, broker-salesperson or salesperson to an extent beyond that authorized by their status as a licensed real estate agent.

## License Display and Pocket Card

Although the New Jersey Real Estate License Act requires that brokers prominently display in the main office, the actual license of all licensed persons in their employ, Bulletin Number 13-11 issued by the Real Estate Commission allows brokers to display licenses at the “main office or at the branch office from which the individual works.” The licenses may be displayed on a wall or kept in a book at the real estate office. The Real Estate Commission no longer prints and mails paper licenses to employing brokers. Employing brokers may print out the licenses of all persons licensed with their firms by accessing this information on the Commission’s website.

All licensees are required to carry a “pocket license” identification card proving their status as a licensee when engaged in the business of a real estate broker, broker-salesperson, salesperson or referral agent. Employing brokers may provide these cards to licensees in their employ or require that individual licensees either print or obtain an electronic version of their own pocket card license through the Commission’s Online Licensing Services<sup>2</sup>. Licensees must carry the physical copy of their pocket license or have a digital image of their pocket license in their possession on a cell phone, tablet, laptop, or other electronic device.

## Real Estate Guaranty Fund

In order to further protect the general public from being harmed by unscrupulous licensees, New Jersey Laws have created the Real Estate Guaranty Fund. The fund is used to compensate persons who have been financially harmed by the embezzlement, conversion or unlawful obtaining of money or property in a real estate brokerage transaction by a licensed broker, broker-salesperson, salesperson, or the unlicensed employee of a broker. Naturally, the fund is available to the claimant if she/he was harmed while the licensee/employee was acting in the capacity of a licensee/employee.

The Guaranty Fund is funded by the licensees themselves. As mentioned earlier, every applicant for a license pays an initial contribution to the fund, \$20 for brokers and broker-salespersons, and \$10 for salespersons. The fund is maintained and invested by the State Treasurer and administered by the New Jersey Real Estate Commission.

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<sup>2</sup> Pocket Licenses may be printed or emailed at the Commissions Online Licensing Services - <http://reonline.nj.gov>

In order to receive payment from the Fund, a claimant must first take legal action against (sue) the licensee. Action must be taken within six (6) years of the alleged wrongdoing. At the same time, the Real Estate Commission is named as a party in the action. This puts the Commission on notice that a claim is pending. Incidentally, all licensees, by accepting their licenses, automatically make the Real Estate Commission an agent for the purpose of accepting process in such an action.

If judgment is made against the licensee, known at this point as the judgment debtor, the plaintiff must then make reasonable effort to collect the awarded amount from the licensee. The plaintiff must also certify to the Commission that a criminal complaint has been filed against the licensee. If unable to collect from the licensee, a court order must be obtained directing the Commission to make payment from the fund. The maximum amount payable from the fund is \$20,000 per transaction and no payment can be made to the spouse of the judgment debtor.

Before a claim is paid from the Fund, the judgment creditor must assign their right in the judgment, to the extent of the amount of the court order, to the Real Estate Commission. Through the assignment the Commission is given the right to recover the amount from the judgment debtor. In addition, if the judgment debtor was a broker or salesperson, his/her license is revoked and cannot be reinstated until the judgment is satisfied in full, including reimbursement of the real estate guaranty fund together with interest.

Whenever there are insufficient funds to cover the amount of claims, the Commission is empowered to require additional contributions by licensees, not to exceed the initial contributions at any one time. Whenever there are excess funds (more than the anticipated need for two years), the Commission may use the funds for research and educational projects to increase the proficiency and competency of licensees.

## Real Estate Offices

Every licensed real estate broker must maintain a designated main office open to the public. The office must be open to the public during normal business hours.

If the office is located in the broker's residence, it must be independent of the living quarters and have a separate exterior entrance that is visible from the front of the property.

Under no circumstances may an office be located in the home of a salesperson or broker-salesperson in the broker's employ.

The name under which the broker is licensed to do business must be conspicuously displayed on the exterior of the office along with the words "licensed real estate broker". Individuals operating



as sole proprietors and licensed as employing brokers must also display their own name. Firms licensed as corporate or partnership brokers must also display the name of the Broker of Record. This affords the public the opportunity to contact the individual directly responsible for the operations of the office and the supervision of licensees. Uncomplicated access to the name of the person ultimately responsible may lead to the satisfactory resolution of a problem between a member of the public and a licensee with that office; thus, reducing the chance of public harm and complaints to the Commission.

Every office must be properly supervised. Commission regulations require that proper supervision be the full time occupation of the supervisor during normal business hours and not be otherwise employed during those hours. Furthermore, the supervisor must be physically present in the office during these hours unless the business requires that she/he be away. Allowance is made for vacations and emergencies.

In the main office, the supervisor is usually the broker of record. However, the broker may delegate this responsibility to a licensed broker-salesperson in his/her employ. Any branch offices must be supervised by a licensed broker-salesperson employed by the broker.

It must be remembered that the broker is ultimately responsible for all activities of all the offices, licensees, and employees. Every real estate transaction in which a licensed organization participates in, must be under the ultimate supervision of the employing broker, or if applicable, the broker of record. The broker must supervise, track and oversee the brokerage activity of persons licensed under their authority regardless of where such activity takes place. Also, the broker of record must always be accessible to personnel and as mentioned earlier, must be physically present in the main office or a branch office at least one day each week.

A broker may have as many branch offices as she/he wishes but each must meet the following requirements:

- All of the above requirements, except the display of licenses, apply to each branch office.
- A branch office license is issued for each branch office. It contains the name of the broker and the address of the branch office. The initial fee for a branch office license is \$150. The biennial renewal fee is \$100.
- A branch office license is displayed in the branch office. The name of the supervisor and all salespersons and broker-salespersons doing business at that office must be posted in the branch office. Nothing would prevent a licensee, other than the office supervisor, from moving from the main office to a branch office or from the one branch office to another. No license transfer or notification to the Commission would be required. However, since the name of the office supervisor must always be on record with the Commission and she/he must manage the branch office full time, any change of office supervisor requires notification to the Commission and payment of a \$50 fee.

- Although the branch office supervisor usually handles the day to day functioning of the branch office, it is still the Employing Broker or Broker of Record who is ultimately responsible for all of his/her offices and personnel.

The Real Estate Commission must be immediately notified of any change of business address of the main office or a branch office and a new license must be issued to the broker and all persons licensed through the broker. There is a \$50 fee for the issuance of a new broker license and a \$10 fee for each individual license. Failure to notify the commission of a change of business address will result in automatic cancellation of the license.

## Employment Agreements

When a salesperson or referral agent associates with a broker an employment contract must be drawn up and signed by both parties. Since the responsibility for entering into this contract is imposed on both the broker and the salesperson, the Real Estate Commission could take disciplinary action against either or both if the regulation is not complied with. The contract must include the following terms:

1. The rate of compensation that is to be paid to the salesperson
2. A stipulation that the broker will pay all commissions due the salesperson within ten (10) business days after receipt by the broker or as soon thereafter as such funds have cleared the broker's bank, or in accordance with another payment schedule explicitly set forth in the employment agreement
3. It is not uncommon for the salesperson to be paid a lower rate of commission for deals that close or listings that are renewed after the employment is terminated. Rates of commission paid after termination must be specified in the contract.
4. A provision that changes may be made only in written agreement signed by both parties

Real estate brokers must review with referral licenses the restrictions imposed by law upon the activities of a referral agent. The referral agent must acknowledge that he or she is aware that the activities of a referral agent are limited to referring prospective consumers of real estate brokerage services to the employing broker. Applications for licensure as a referral agent and renewals must include certifications confirming this.

## Grounds For License Revocation

The Real Estate Commission is empowered to revoke or suspend a license, place a licensee on probation, refuse to renew a license, and/or impose monetary fines. It should be noted that the Commission has jurisdiction over not only licensees but also any person claiming to be a licensee or performing any acts for which a license is required. In such a case, the Commission may

suspend or revoke the person's RIGHT to be licensed. Before disciplinary action may be taken, a person has the right to a hearing before the Commission. A person must be given at least ten (10) days notice of any hearing. The Commission may subpoena witnesses and administer oaths for the hearing. Decisions of the commission are reviewable by the Superior Court.

Fines imposed by the Real Estate Commission are up to \$5,000 for a first violation and up to \$10,000 for any subsequent violation. Upon a third violation, the licensee may be deemed by the Commission as a repeat offender and the Commission may direct that no license shall henceforth be issued to that person. Each transaction is considered a separate offense. A fine may be imposed in lieu of or in addition to revocation or suspension.

There are twenty specific grounds for disciplinary action but, as the last one indicates, violating any of the laws or regulations is grounds for action. The twenty reasons are as follows.

- a. Making any false promises or substantial misrepresentation
- b. Acting for more than one party in a transaction without the knowledge of all the parties
- c. Pursuing a flagrant and continued course of misrepresentation or making of false promises through agents, broker-salespersons or salespersons, advertisements or otherwise
- d. Failure to account for or to pay over any moneys belonging to others, coming into the possession of the licensee
- e. Any conduct which demonstrates unworthiness, incompetency, bad faith or dishonesty. The failure of any person to cooperate with the commission in the performance of its duties or to comply with a subpoena issued by the commission compelling the production of materials in the course of an investigation, or the failure to give a verbal or written statement concerning a matter under investigation may be construed as conduct demonstrating unworthiness
- f. Failure to provide his client with a fully executed copy of any sale or exclusive sales or rental listing contract at the time of execution thereof, or failure to specify therein a definite terminal date which terminal date shall not be subject to any qualifying terms or conditions
- g. Using any plan, scheme or method for the sale or promotion of the sale of real estate which involves a lottery, a contest, a game, a prize, a drawing, or the offering of a lot or parcel or lots or parcels for advertising purposes, provided, however, that a promotion or offer of free, discounted or other services or products which does not require that the recipient of any free, discounted or other services or products enter into a sale, listing or other real estate contract as a condition of the promotion or offer shall not constitute a violation of this subsection if that promotion or offering does not involve a lottery, a contest, a game, a drawing or the offering of a lot or parcel or lots or parcels for advertising purposes. A broker shall disclose in writing any compensation received for such promotion or offer in the form and substance as required by the federal "Real Estate Settlement Procedures Act of 1974," 12 U.S.C. ss.2601 et seq., except that,

notwithstanding the provisions of that federal act, written disclosure shall be provided no later than when the promotion or offer is extended by the broker to the consumer

- h. Being convicted of a crime, knowledge of which the Commission did not have at the time of last issuing a license to the licensee
- i. Collecting a commission as a real estate broker in a transaction when at the same time representing either party in the transaction in a different capacity for a consideration
- j. Using any trade name or insignia of membership in any real estate organization of which the licensee is not a member
- k. Paying any rebate, profit, compensation or commission to anyone not possessed of a real estate license, except that: (1) free, discounted or other services or products provided for in subsection g. of this section shall not constitute a violation of this subsection; and (2) a real estate broker may provide a purchaser of residential real property, but no other third party a rebate of a portion of the commission paid to the broker in a transaction, so long as: the broker and the purchaser contract for such a rebate at the onset of the broker relationship in a written document, electronic document or a buyer agency agreement; the broker complies with any State or federal requirements with respect to the disclosure of the payment of the rebate; and the broker recommends to the purchaser that the purchaser contact a tax professional concerning the tax implications of receiving that rebate. The rebate paid to the purchaser shall be in the form of a credit, reducing the amount of the commission payable to the broker, or a check paid by the closing agent and shall be made at the time of closing
- l. Any other conduct, whether of the same or a different character than one specified in this section, that constitutes fraud or dishonest dealing.
- m. Accepting a commission or valuable consideration as a real estate broker-salesperson or salesperson for any of the acts defined in the law from any person other than the employer who must be a licensed broker
- n. Procuring a real estate license for one's self or another by fraud, misrepresentation or deceit
- o. Commingling the money or property of the principal with one's own or failure to maintain a separate account from personal and business accounts or failure to deposit the money of others in the separate account whenever the money is received while acting as a real estate broker or escrow agent or while acting as a temporary custodian in a real estate transaction
- p. Selling property in the ownership of which he is interested in any manner whatsoever, unless he first discloses to the purchaser in the contract of sale his interest therein and his status as a real estate broker, broker-salesperson, salesperson or referral agent
- q. Purchasing any property unless he discloses to the seller in the contract of sale his status as a real estate broker, broker-salesperson, salesperson or referral agent
- r. Charging or accepting any fee, commission or compensation in exchange for providing information on purportedly available rental housing, including lists of such units supplied verbally or in written form, before a lease has been executed or, where no lease is drawn,

before the tenant has taken possession of the premises without complying with all applicable rules promulgated by the commission regulating these practices

- s. Failing to notify the commission within thirty days of having been convicted of any crime, misdemeanor or disorderly persons offense, or of having been indicted, or of the filing of any formal criminal charges, or of the suspension or revocation of any real estate license issued by another state, or of the initiation of formal disciplinary proceedings in another state affecting any real estate license held, or failing to supply any documentation available to the licensee that the commission may request in connection with such matter
- t. The violation of any of the provisions of this article or of the administrative rules adopted by the commission pursuant to the provisions of this article. The commission is expressly vested with the power and authority to make, prescribe and enforce any and all rules and regulations for the conduct of the real estate brokerage business consistent with the provisions of Chapter 15 of Title 45 of the Revised Statutes.

Another New Jersey law provides that persons who are six months or more in arrears on their child support obligations or are the subject of a child support warrant will have their real estate license, or any professional license they hold revoked effective 20 days after notification by the Commission.

## Commissions & Compensation

A salesperson, broker-salesperson, or referral agent may work for only one employing broker at a given time. A salesperson, broker-salesperson, or referral agent, may receive a commission or fee earned in a real estate transaction only from his or her employing broker. This includes any bonuses paid by a seller or other party that a salesperson may be entitled to. Such bonuses must pass through the broker. An exception to this rule would be when a licensee is owed a commission or other fee from a former employing broker. Under those circumstances the former broker may pay the amount due directly to the salesperson or broker-salesperson.

A duly licensed real estate broker of this State may pay a referral fee or referral commission to a person not licensed if the person is a licensed real estate broker of another jurisdiction in which the licensed broker maintains a bona fide office. A licensed real estate broker of another jurisdiction may make a referral, receive a referral fee or referral commission, and bring or maintain an action in the courts of this State against a duly licensed real estate broker of this State for the collection of the fee or commission.

### Net Listings

No licensed individual, partnership, firm or corporation shall enter into a "net listing" contract for the sale of real property, or any interest therein. A "net listing" is defined as an agency agreement in which a prospective seller lists real estate for sale with an authorization to a broker to sell at a specified net dollar return to the seller, and which provides that the broker may retain

as commission the difference between the specified dollar return to the seller and the actual sales price.

### Price-Fixing

No licensee shall combine, conspire, suggest, or recommend to, or with any other licensee(s) that any rate, commission or fee to be charged by them, or any division of such commission by them be fixed, established, maintained, suggested or stabilized. Intra-office communications with regard to the establishment of commissions or division of commissions is not prohibited.

No licensee shall directly or indirectly recommend or suggest to any other licensee(s) that such person(s) adhere to any schedule or recommendation of another concerning the rates, commissions or fees to be charged or the methodology or approach by which a commission, rate or fee is arrived at, or division of fees to be made, in the conduct of business. This does not prohibit any intra-office communications with regard to the establishment of commissions or division of commissions. Information imparted solely for the purposes of instruction, and not for the purpose of recommending guidelines or a preferred method of pricing, at any bona fide trade association seminar or educational courses shall be excepted from the proscription set forth here.

### Discriminatory Commission Splits

No licensee shall directly or indirectly take any punitive or retaliatory action against any other licensee(s) where such action is based upon the failure or refusal to adhere or to adopt any commission. No licensee shall adopt a discriminatory commission split against another broker because of such other broker's failure or refusal to adhere to or adopt any commission; if a listing broker varies his commission split policy with any selling broker on a cooperative sale, the listing broker shall maintain a file at his place of business which shall contain in writing an explanation for the variation and which reflects who made the decision and why it was made. Nothing in this section shall prohibit a listing broker from varying his commission split policy with respect to any one or more selling brokers in order to achieve equality of commission splits with such other selling broker or brokers in connection with their commission split policy with such listing broker.

### Broker to Broker Cooperation

Unless directed in writing not to do so, every licensee must fully cooperate with any other New Jersey licensee, utilizing cooperation arrangements which shall protect and promote the interests of the licensee's client or principal. Full cooperation requires a listing broker:

- to notify any multiple listing system to which a listing is to be submitted of having acquired the listing within 48 hours of the effective date of the listing
- to transmit to their principal(s) all written offers submitted through the offices of other licensees on properties listed with the listing broker within twenty-four (24) hours of receipt of the written offer

- not to place unreasonable restrictions upon the showing of properties listed with them to prospective purchasers who are working through cooperating brokers. A requirement that all appointments for showings must be made through the listing broker's office is not considered an unreasonable restriction.

All of the preceding requirements shall be complied with on all listings unless the client or principal, with full knowledge of all relevant facts, expressly relieves the listing broker from one or more of these requirements in writing. Such a writing shall be signed by the owner and made an attachment to the listing agreement and be made available for inspection by other brokers upon request.

Should the client or principal direct the listing broker not to cooperate at all with all other licensees, evidence of this intent must be in writing in the form of a Waiver of Broker Cooperation and signed by the client or principal. Copies of this Waiver of Broker Cooperation and of the listing agreement to which it relates shall be provided to the client or principal and to their authorized representative by the broker. This waiver shall become a part of the listing agreement at the time it is signed, and shall be made available for inspection by other brokers upon request. However, no direction or inducement from the client or principal shall relieve the licensee of his responsibility of dealing fairly and exercising integrity with all other licensees. The required text for the waiver appears below.

***WAIVER OF BROKER COOPERATION***

*I UNDERSTAND THAT COOPERATION AMONGST BROKERS PRODUCES WIDER EXPOSURE OF MY PROPERTY AND MAY RESULT IN IT BEING SOLD OR LEASED SOONER AND AT A HIGHER PRICE THAN WOULD BE THE CASE WERE MY BROKER NOT TO COOPERATE WITH OTHER BROKERS. I FURTHER UNDERSTAND THAT WHEN MY BROKER COOPERATES WITH OTHER BROKERS, I CAN STILL HAVE THE ARRANGEMENTS FOR THE SHOWING OF THE PROPERTY AND ALL NEGOTIATIONS WITH ME OR MY ATTORNEY MADE ONLY THROUGH MY LISTING BROKER'S OFFICE, SHOULD I SO DESIRE.*

However, despite my awareness of these factors, I direct that this property is to be marketed only through the efforts of the Listing Broker. This listing is not to be published in any multiple listing service. I will only consider offers on this property which are obtained by, and I will only allow showings of this property to be conducted by the Listing Broker or his or her duly authorized representatives. THE LISTING BROKER IS HEREBY DIRECTED NOT TO COOPERATE WITH ANY OTHER BROKER.

By signing below, the parties hereto confirm that no pressure or undue influence has been exerted upon the owners as to how this property is to be marketed by the Listing Broker.

The owner(s) further confirm receipt of fully executed copies of the listing agreement on this property, and of this Waiver of Broker Cooperation form.

DATED: \_\_\_\_\_ Owner \_\_\_\_\_  
 \_\_\_\_\_ Owner \_\_\_\_\_  
 Listing Broker \_\_\_\_\_

Waiver of Broker Cooperation

## Listing Agreement Mandatory Language

Listing agreements must state the amount or rate of commission. No listing agreement or contract for the sale of real property, or any interest therein, shall contain a prescribed or predetermined fee, commission rate, or commission amount; nor shall any such writing contain a commission clause or provision which suggests (such as a small blank space and a percent sign) to a seller that the commission is a prescribed rate or amount.

The commission clause or provision in all listing agreements for the sale of one to four family dwelling units or an interest therein, or in all contracts for such sale, if there is no listing agreement, shall contain in print larger than the predominant size print in the writing, the language:

*"As seller you have the right to individually reach an agreement on any fee, commission, or other valuable consideration with any broker. No fee, commission or other consideration has been fixed by any governmental authority or by any trade association or multiple listing service."*

Nothing herein is intended to prohibit an individual broker from independently establishing a policy regarding the amount of fee, commission or other consideration to be charged in transactions by the broker.

## Advertising Rules

Unless otherwise specified, the following rules apply to all forms of advertising including all publications, radio or television broadcasts, all electronic media including e-mail and the Internet, business stationery, business cards, business and legal forms and documents, signs and billboards.

- A. All advertising by a licensed individual, partnership, firm or corporation must include their regular business name. The regular business name is the name in which the individual, partnership, firm or corporation is on record with the Real Estate Commission as doing business as a real estate broker.

All advertising by a referral agent, a salesperson, or a broker-salesperson must include the name in which they are licensed and the regular business name of the individual, partnership, firm or corporate broker through whom they are licensed. The business name must appear in larger print or be displayed in a more prominent manner than the name of the salesperson or broker-salesperson. A salesperson is only authorized to act through a licensed broker and it is important that the public be made aware of the broker affiliation and the identity of that broker.



Although not required, if an advertisement contains a reference to the licensed status of the person placing the ad, that status must be indicated by using only the terms listed in Table 1.

<b>If licensed as a:</b>	<b>Only use the terms:</b>
Referral agent	Referral Agent, Referral Associate
Salesperson	Salesperson, Sales Representative, Sales Associate, and where permitted REALTOR-ASSOCIATE®, or Realtist Associate®
Broker-salesperson	Broker-Associate, Associate Broker, Broker-Salesperson, and where permitted REALTOR-ASSOCIATE®
Broker	Broker, and where permitted REALTOR®, or Realtist®

*Table 1*

- B. A salesperson, broker-salesperson or team of licensees may create a webpage on the worldwide web. However, if the webpage is not linked electronically to a webpage for the broker through whom they are licensed, the telephone number of the brokerage office must be displayed in wording as large as the predominant size wording on the webpage. Displaying the address of the brokerage firm is optional.

If the webpage of a salesperson, broker-salesperson or team of licensees is linked electronically to the webpage of the broker it must clearly indicate how to link to the broker in wording as large as the predominant size wording on the webpage.

- C. The advertisement must clearly indicate, after the business name, that the advertising is being done by a person or firm engaged in the real estate brokerage business, as opposed to an investment, development, or some other real estate related business. Use of the word "agency" as part of the business name will satisfy the requirement. If "agency" is not part of the name, the regulation gives the following examples of words that may appear after the business name:

<b>PERMITTED</b>	<b>PROHIBITED (when used alone)</b>
Realtor®	realty
Realtist®	real estate
real estate broker	land sales
broker	land investments
real estate agency	

Note that some permitted words are trade marks and cannot be used by anyone who is not a member of the organization that owns the trade mark.

This regulation would not apply if the licensee owns the property. It also does not apply to lawn signs placed on residential properties of four units or less.

- D. Any advertisement which contains the home telephone number, cell-phone number, beeper or pager number, home fax number, or e-mail address of a salesperson, broker-salesperson, or team of licensees, shall also include the telephone number of the brokerage office through whom they are licensed. Each number listed must also be identified. For example, a home telephone number must be preceded or followed by the word "home" or some other identifying word or reasonable abbreviation such as "res" for residence.
- E. Any advertisement that references an office address must be a location licensed as a main office or branch office of the broker. Salespersons and broker-salespersons may not make reference in an advertisement to a "home-office".
- F. A licensee's business card must indicate their license status by using only the terms listed in Table 1.
- G. Often a real estate advertisement will refer to a mortgage or the terms of a mortgage being available for a property. Whenever an advertisement refers to amounts of down payment, monthly payments, or suggests in any way that a mortgage can be obtained, the words "to a qualified buyer" must be included. The reason for this regulation is simply that not everybody qualifies for any particular mortgage. Failure to indicate this might be misleading. This requirement does not apply to mortgages that are already a lien on the property and may be assumed.
- H. When an advertisement specifies an amount of down payment, monthly payment, carrying charge, taxes, or mortgage money obtainable, words such as "approximate" or "estimated" must be used in such a way as to make them clearly associated with the amount. If such amounts are mentioned the broker must maintain written proof of the validity of the statements for a period of twelve (12) months from the date of the last publication.
- I. All advertisements must specify the municipality in which the property is located. This regulation does not apply to magazine or newspaper ads published under a municipality heading such as in a classified section.
- J. No advertisement, application or inquiry may express directly or indirectly any limitation, specification or discrimination as to race, religion, creed, sex, affectional or sexual orientation, marital status, or national origin, ancestry or as to whether a person is handicapped.
- K. Franchised real estate offices are ones that are authorized by a much larger company (the franchisor) to use that company's trade name, reputation and operating procedures. The Real Estate Commission felt that regulations were necessary to ensure that the general public knew

that each office was, for the most part, owned and operated by a different broker. The public should also know that it is the individual broker, not the franchisor, who is licensed to do business in this state. To accomplish this, it is prohibited for a licensee or group of licensees to use any logo, insignia, emblem, trade name, or other form of identification that suggests or implies common ownership or common management. This does not apply to bona fide branch offices. In order to comply, whenever a franchised licensee uses the name of a franchisor in an advertisement, she/he must also include (in a manner reasonably calculated to attract the attention of the public):

1. the franchised licensee's regular business name
- AND
2. a legend stating substantially, "Each office independently owned and operated"

The legend need not appear on for sale signs or in small "spot" classified ads, defined as an advertisement which is no more than one column wide and 20 lines long and which describes no more than two properties. It also need not appear on business cards or advertisements placed or distributed by offices which are wholly owned by the franchisor, which contains the office address and contains language which identifies the office as being wholly owned by the franchisor.

The regulation states that it is not intended to prohibit the use of any logo, insignia, emblem, or trade name of any bona fide association provided the licensee is a member, nor is it intended to prohibit franchising provided the intent of the License Law is maintained.

Licensees are prohibited from joining any organization (MLS, franchise, network or trade association) that has requirements or standards which violate the Real Estate License Act, the Real Estate Sales Full Disclosure Act, the New Jersey Antitrust Act, or the New Jersey Law Against Discrimination or imposes prescribed or predetermined fees, commission rates or amounts, or commission splits between cooperating brokers. Similarly, a licensee may not join any organization that interferes with his/her obligation of fidelity to the client or the obligation to deal fairly with all parties to a transaction.

- L. Any advertisement that refers to membership in a multiple listing service must specify the complete name of the MLS. This regulation does not apply to small "spot" classified ads, (as defined above) business cards, or business signs.
- M. Whenever a home warranty offer is contained in an ad it must comply with all federal and state home warranty legislation, including the New Home Warranty and Builder's

Registration Act<sup>3</sup>, and the Magnuson-Moss Warranty Act. The ad must specify whether the warranty is by inspection or non-inspection of the premises, whether or not it is mandatory, and who is responsible for payment for the warranty. No advertisement may contain such an offer unless the warranty can be secured for the property being advertised.

N. Licensees may include offers of free or discounted services or products in advertisements or promotional material provided:

- the free or discounted offer, including free appraisals, does not involve a lottery, a contest, a game, or a drawing, or the offer of a lot or parcel or lots or parcels
- the consumer is not required to enter into a sale, listing or other real estate contract as a condition of the promotion or offer

Examples of free or discounted services would include things like homeowners warranties, pest or radon inspections, surveys, mortgage fees and other costs typically incurred by parties to a real estate transaction.

The term "appraisal" as used here 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 price in the market place must be considered. It is not intended to include "market studies", or a "comparative market analysis" (CMA) commonly offered. However, when a licensee provides a written comparative market analysis they must include a statement indicating that the CMA is not an appraisal and should not be considered the equivalent of an appraisal. The statement must appear in print as large as the predominant size print in the report.

When a licensee offers a free or discounted service or product which confers upon the recipient a monetary benefit of greater than token value (more than \$5), the licensee must provide (at the time the free or discounted service or product is provided or written confirmation of the consumer's right to receive is provided) written disclosure to the recipient of the promotional material or offering stating in a clear and conspicuous manner:

- that the consumer is not required to enter into any sale, listing or other real estate contract as a condition for receiving the free or discounted offer
- whether the consumer is required to perform any action to qualify to receive the free or discounted offer and if so, what specific actions are required. A consumer's attendance at any listing presentation, informational session or other meeting is considered to be an action by the consumer.

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<sup>3</sup> No builder shall engage in the business of constructing new homes unless they are registered with the Department of Community Affairs and participate in the new home warranty security fund or an approved alternate new home warranty security program.

- the date by which the consumer will receive the service or product if the delivery of the service or product does not occur at the time the disclosure is provided. If the delivery date is unknown to the licensee at the time the promotion is extended to the consumer, the written disclosure shall so state.
- if the licensee has or will receive compensation for participating in a promotion or offering of free, discounted, or other services or products, the disclosure must state the compensation the licensee shall or will receive.

Advertisements may use words such as “included” or “included in the purchase price” in reference to items included by the owner in the sale of the property.

- O. It is not permitted to advertise a property that is exclusively listed by another broker unless prior written consent is obtained from the listing broker. The listing broker may not grant or withhold such consent without the knowledge of the owner.

Regarding listings disseminated through the internet, listing brokers shall be deemed to have given their consent with the knowledge of the owner where:

- a written listing agreement contains the seller’s authorization for the listing information to be posted on the website of the broker, or of a multiple listing service to which the broker belongs, or another party to whom the broker or MLS submits information on listings

AND

- the website on which the listing information initially appears has no measures to prevent other parties from electronically linking to that information

- P. Licensees are not required in their advertisements to include a statement that the advertiser is “licensed by the NJ Real Estate Commission”. However, if such a statement is used, the additional statement “licensure does not imply endorsement” must be included in a clear and conspicuous manner. This does not apply to office exterior signs designed to comply with the law requiring the words “Licensed Real Estate Broker.”
- Q. Any advertisement referencing a commission rate or fee charged by the advertising licensee’s brokerage firm must also include the statement, “In New Jersey commissions are negotiable” in a clear and conspicuous manner.
- R. No advertisement shall contain false, misleading or deceptive claims or misrepresentations. In all advertisements which make expressed or implied claims that are likely to be misleading in the absence of certain qualifying information such qualifying information shall be disclosed in the advertisement in a clear and conspicuous manner.

- S. Under no circumstances is the licensee to represent that the property is “sold”, or that they participated in the sale of a property, until a closing has occurred and title to the property was transferred from the seller to the buyer.

If a property being advertised is tied to a sales contract which has survived attorney review, the advertisement (defined to include communications to other licensees through notices submitted to a multiple listing service or otherwise) or yard sign shall include the term “under contract” but could not state “sale pending” or a similar claim.

- T. All advertisements (with the exception of business cards) by referral agents must include the following statement in a clear and conspicuous manner: Services limited to referring prospects to broker.

## Safeguarding of Funds

One of the primary responsibilities of a real estate broker is to establish and maintain a special bank account in which is deposited the money of others that she/he receives in a transaction. This account is known as an escrow or trust account. The monies deposited in the account are known as escrow or trust funds. The funds deposited into the trust account do not belong to the broker, but rather to a party or parties to a transaction in which the broker is involved. The trust account is necessary because often a party to a transaction, usually the purchaser, will give a deposit, known as an earnest money deposit, to show good faith when making an offer. The deposit money will eventually belong to the seller if the offer is accepted and the deal closes. However, if the offer is not accepted or something else goes wrong with the deal, it may be necessary to return the money to the purchaser. It is the broker's responsibility, through the trust account, to safeguard these funds until proper disbursement can be made. A broker acting as a property manager may also hold escrow funds for the owner of the property she/he is managing.

There are others, such as attorneys and banks, that are permitted by law to handle trust funds. Anybody who does so is acting as an escrow agent.

Real estate brokers are required to establish and maintain an escrow account in a depository institution approved by the New Jersey Real Estate Commission. The name of the financial institution(s) where the account is maintained and the account number(s) must be given to the Real Estate Commission with every application for a broker license or renewal. The account must be maintained in the name in which the individual, partnership or corporation is licensed to do business and must be designated as a "trust account" or "escrow account". The words "trust account" or "escrow account" must appear on all checks and deposit slips. The broker of record must be a signatory on the account. Others may be authorized to sign trust account checks, but only if licensed as a salesperson or broker-salesperson. Unlicensed individuals may not be

additional signatories on a trust account. The responsible broker must make certain that no funds of others are disbursed or utilized without his or her express authorization and knowledge.

The Commission must be immediately notified of any changes regarding a trust account. The financial institution where the account is maintained must be located in New Jersey, except in the case of non-resident licensees who must maintain a trust account in their resident state. A broker-salesperson does not maintain a trust account.

In some transactions, one or more of the parties may want the escrow money deposited in an interest bearing account. Interest bearing trust accounts may be established for specific transactions provided they are opened in an approved institution and clearly identified as pertaining to that transaction. These accounts must also be separate and apart from all other escrow funds. With an interest bearing trust account, problems will develop if there is not an agreement between the parties upon establishment of the account, regarding the disposition of the interest in the future. In other words, the buyer and seller must agree in advance who the interest belongs to at closing. Brokers are prohibited from receiving, obtaining or using any interest earned on the funds for the broker's own personal or business use.

Trust accounts must be separate from all other accounts of the broker, both business and personal. A broker's own funds must never be deposited in the trust account, however, a nominal amount of personal or business funds may be kept in the account when:

- a sum is clearly necessary for service charges or minimum balance purposes if required by the financial institution.

OR

- any law or government regulation requires the broker to do so.

OR

- a broker that accepts credit cards for short term rental transactions (discussed below) may maintain a reserve amount in the special escrow account to cover all transaction fees incurred by the broker on charged transactions and an estimated amount to cover charge-backs of payments by cardholders. Transaction fee reserves must be replenished at least monthly. If a broker is notified that a charge-back has occurred after some or all of the funds have been disbursed from the account, the broker must, within one (1) business day, replenish the reserve funds in an amount equal to the amount charged-back. Brokers may increase the reserve amount as often as necessary but may reduce reserve amounts only on an annual basis.

As an alternative, the broker may designate a business account that will act as the sole source of funds for the payment of transaction fees or charge-backs, in the contract between the broker and the credit card company

Any other combination of a broker's own funds with the funds of others is referred to as commingling and is strictly prohibited. Any of the following constitutes commingling:

1. Combining the money of his/her principal with his/her own
2. Failure to deposit promptly (within five (5) business days) into the trust account, all monies of others received by the broker, while acting in the capacity of a broker, escrow agent, or as the temporary custodian of the funds of others in a real estate transaction
3. Failure to promptly (within 5 business days) segregate any moneys received that are to be held for the benefit of others
4. There are times when a broker who holds trust funds in the escrow account, is authorized to take their commission from those funds. While there is nothing wrong with this, the amount constituting the commission must be withdrawn within 5 business days. Failure to do so would constitute commingling.

It is important to note that if an offer is withdrawn within five business days, or is rejected by the receiving party without a counteroffer within five business days, the licensee need not deposit the funds into an escrow account and may return the deposit to the offering party in the same form in which it was received by the licensee. Where negotiations are ongoing beyond five business days, the licensee must deposit the funds into the escrow account within five business days of receipt even though the offer may not yet be accepted. Occasionally the party making the offer will request that the licensee retain the deposit monies in the event the offerer decides to submit another offer on the same or a different property. The five business day rule would also apply in this situation.

Conversion of funds is a common form of commingling. Conversion is the wrongful and illegal act of intentionally taking, using or converting another person's property, such as money, to one's own use. Examples of conversion might include, blatantly taking trust funds for personal use and using the trust account as a business account to pay a salesperson or other business expense.

Any licensee who receives monies of others while representing a broker acting as an escrow agent or temporary custodian of the funds of others in a real estate transaction, may accept cash, a negotiable instrument made payable to the broker's firm, a charge against a check debit card resulting in a credit to the broker's trust account, a wire transfer of funds, or a charge on the credit card of a tenant in a short term rental transaction. A licensee should not accept a postdated check unless the other party has consented. If a buyer wants to give a short term promissory note, the licensee would be guilty of bad faith if she/he accepts a note and does not disclose this fact to the principal.

Following receipt, the licensee must immediately account for and deliver the funds to the broker for deposit into the escrow or trust account maintained by the broker, or for such other disposition as is required by the escrow agreement under the terms of which the funds were provided to the licensee.



Credit card charges may only be accepted in short term rental transactions. A “short term rental” is a rental of residential property for not more than 125 consecutive days with a specific termination date. Payments of this type must be credited to a special trust account, distinct from the trust accounts maintained by the broker for other purposes. Prior to accepting credit card charges, the broker must inform the owner in writing of the potential for such payments to be “charged-back” by the tenant and obtain the written authorization of the owner for the broker to accept such payments. When the written authorization is obtained by the listing broker, it must be made a part of or an addendum to the listing agreement. The owner’s written authorization must be retained by the broker to whom it was given (listing broker or otherwise) along with other business records pertaining to that transaction. If the consumer initiates a charge-back, under no circumstances is the broker permitted to apply or set-off against the disputed amount, any monies paid on another transaction that consumer is involved in.

Brokers accepting credit cards must also establish a written statement regarding their policy on credit card cancellations. The policy must include:

- the time period during which the cardholder may cancel the charged payment (cancellation period may not terminate prior to the delivery of a written lease containing the final terms of the rental agreement or a full acceptance by the parties of the terms of verbal agreement)
- a statement that in the event a cancellation request is not received within the specified cancellation time period, the request will not be honored and disposition of the money will be governed by the terms of the lease or rental agreement

The written cancellation policy must be provided to owners upon listing the property with the broker or upon presentation of a rental offer, whichever occurs first. It must be provided to prospective tenants at the time the broker first accepts a credit card charge from that tenant.

When the Commission finds it has sufficient evidence that a licensee has committed a violation of commingling, with at least twenty-four (24) hours’ notice, they may temporarily suspend the licensee until a formal hearing is held. The hearing must take place not more than thirty (30) days following the date of the temporary suspension.

When the license of a broker is temporarily suspended due to an alleged commingling violation, the Commission may also temporarily freeze some or all of the broker's bank accounts. The Commission will notify the financial institution and all persons known to the Commission for whom the broker was acting as an escrow agent.

A licensee may not accept an earnest money deposit from a prospective purchaser without putting the money in the trust account or making sure that other provisions have been made for

safeguarding the funds, such as having them placed in escrow with an attorney, if the licensee has any doubt about:

- the seller's ability to perform his/her contractual obligations
- OR
- the ability of the seller to return the funds if required

Technically, this requirement does not apply unless the licensee has a doubt or any reason to doubt the seller's ability. Students would be well advised to always have a doubt.

In any situation where the money is not properly safeguarded, such as a seller insisting that the deposit be immediately paid directly to him/her, before accepting the deposit from the purchaser, the licensee must adequately inform the purchaser of the risk involved and obtain from him/her a separate signed document in which the purchaser acknowledges that:

- she/he is aware of the risk
- AND
- where the money is going
- AND
- the fact that the licensee has not made any representations about the seller's solvency or ability to repay the money

Once the money is in the trust account and there is a contract signed by both parties the broker may not disburse any of the funds at any point without authorization from both parties.

## Attorney Review Clause

All contracts prepared by licensees for the sale of residential real estate containing one to four dwelling units and for the sale of a vacant one-family building lot in transactions in which the licensee has a commission or fee interest shall contain, at the top of the first page and in print larger than the predominant size print in the writing, the following language:

**THIS IS A LEGALLY BINDING CONTRACT THAT WILL BECOME FINAL WITHIN THREE BUSINESS DAYS. DURING THIS PERIOD YOU MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND CANCEL THE CONTRACT. SEE SECTION ON ATTORNEY REVIEW FOR DETAILS.**

The contract shall also contain the following language within the text of every such contract.

**ATTORNEY REVIEW:**

### 1. Study by Attorney

The Buyer or the Seller may choose to have an attorney study this contract. If an attorney is consulted, the attorney must complete his or her review of the contract within a three-day period. This contract will be legally binding at the end of this three-day period unless an attorney for the Buyer or Seller reviews and disapproves of the contract.

### 2. Counting the Time

You count the three days from the date of delivery of the signed contract to the Buyer and the Seller. You do not count Saturdays, Sundays or legal holidays. The Buyer and the Seller may agree in writing to extend the three-day period for attorney review.

### 3. Notice of Disapproval

If an attorney for the Buyer or the Seller reviews and disapproves of this contract, the attorney must notify the Broker(s) and the other party named in this contract within the three-day period. Otherwise this contract will be legally binding as written. The attorney must send the notice of disapproval to the Broker(s) by certified mail, by telegram, or by delivering it personally. The telegram or certified letter will be effective upon sending. The personal delivery will be effective upon delivery to the Broker's office. The attorney may but need not also inform the Broker(s) of any suggested revisions in the contract that would make it satisfactory.

The contract shall also contain the names and full addresses of all persons to whom a Notice of Disapproval must be sent in order to be effective as provided in item three of the Attorney Review Provision.

Leases prepared by licensees for a term of one year or more for residential dwelling units in transactions in which they have a commission or fee interest shall, must also include the attorney review clause. The words *contract, buyer and seller* are replaced with the words *lease, tenant and landlord*.

## Miscellaneous Licensee Responsibilities

- A. Every broker shall keep records of all funds of others received by him or her for not less than six years from the date of receipt of any such funds.
- B. With the exception of the materials described in C below, on transactions where a broker has not received the property or funds of others, the following records shall be maintained for six years from the earlier of the date of the listing or property management agreement or of the contract or lease:

1. Copies of all fully executed leases, contracts of sale, property management and listing agreements;
  2. Copies of bills for brokerage services rendered in such transactions;
  3. Copies of all records showing payments to persons licensed with the paying broker and to co-operating brokers; and
  4. Copies of all bank statements, cancelled checks and duplicate deposit slips pertaining to the broker's general business account.
- C. Unaccepted offers and expired listing agreements during the term of which no contract of sale was executed or no tenancy was entered into shall be maintained for six months from the date of the offer or the expiration date of the listing agreement.
- D. Every licensee shall make reasonable effort to ascertain all material information concerning the physical condition of every property for which he or she accepts an agency or which he or she is retained to market as a transaction broker, and concerning the financial qualifications of every person for whom he or she submits an offer to his or her client or principal. Information about social conditions and psychological impairments as defined in (d) below is not considered to be information which concerns the physical condition of a property.
1. A reasonable effort to ascertain material information shall include at least:
    - i. Inquiries to the seller or seller's agent about any physical conditions that may affect the property; and
    - ii. A visual inspection of the property to determine if there are any readily observable physical conditions affecting the property.
  2. As used in this section, information is "material" if a reasonable person would attach importance to its existence or non-existence in deciding whether or how to proceed in the transaction, or if the licensee knows or has reason to know that the recipient of the information regards, or is likely to regard it as important in deciding whether or how to proceed, although a reasonable person would not so regard it.
- E. At the time of the taking of any listing of residential property, a licensee shall furnish to the owner a copy of a summary of the New Jersey Law Against Discrimination N.J.S.A. 10:5-1 et seq. which summary shall have been prepared and furnished by the Attorney General of the State of New Jersey, shall state the provisions of the Law Against Discrimination, and shall state which properties are covered by this law and which properties are exempt from this law. Should the owner profess an unwillingness to abide by or an intention to violate this law then the licensee shall not accept these listings.
- F. It shall be the duty of a licensee to recommend that legal counsel be obtained whenever the interests of any party to a transaction seem to require it.
- G. In all contracts and leases on residential real estate they prepare, licensees shall include the following statement in print as large as the predominant size print in the document:

*MEGAN'S LAW STATEMENT--Under New Jersey law, the county prosecutor determines whether and how to provide notice of the presence of convicted sex offenders in an area. In their professional capacity, real estate licensees are not entitled to notification by the county prosecutor under Megan's Law and are unable to obtain such information for you. Upon closing the county prosecutor may be contacted for such further information as may be disclosable to you.*

- H. Licensees shall immediately deliver to all parties to any fully executed instrument a clear copy with original signatures of any such fully executed instrument. Licensees shall provide their clients with a fully executed copy of any sale or exclusive sale or rental listing contract at the time of execution thereof.
- I. If any offer on any real property or interest therein is made orally, the licensee shall advise the offeror that he is not obligated to present to the owner or his authorized representative any offer unless the offer is in writing. Unless a writing containing or confirming the terms of the listing agreement otherwise provides, the licensee shall transmit every written offer on any real property or interest therein presented to or obtained by the licensee during the term of the listing to the owner or his authorized representative within 24 hours of receipt of the written offer by their firm. For the purposes of this section, the term of a listing shall be deemed to expire either on the termination date established in the listing agreement, or upon the closing of a pending sale or lease. If any acceptance of an offer is given orally, the licensee shall secure the acceptance in writing within 24 hours.
- J. Licensees must transmit to their principal(s) all written offers on their listings submitted by licensees with other firms within 24 hours of receipt of the written offer by their firm.j

## Real Estate Sales Full Disclosure Act

Before property located outside the state of New Jersey can be promoted for sale in this state the developer must comply with very strict requirements. These requirements apply to "subdivisions" or "subdivided lands" which is defined to mean any land situated outside the State of New Jersey whether contiguous or not, of more than 99 lots if one or more lots, parcels, units, or interests is promoted in New Jersey under a single plan or promotion. It also includes any condominium, any form of homeowners association, any housing cooperative and any community trust or other trust device. The provisions of the Act do not apply to:

- an owner for his own account in a single or isolated transaction
- cemetery lots or interests
- sales required by a court order
- sales by a government agency
- commercial or industrial transactions
- developments comprised wholly of rental units, where the relationship created is one of landlord and tenant
- subdivisions of less than 100 lots, parcels, units or interests

- situations where the common elements or interests, which would otherwise subject the offering to this act, are limited to the provision of unimproved, unencumbered open space, except where registration is required by the "Interstate Land Sales Full Disclosure Act" with the Office of Interstate Land Sales Registration, in the Department of Housing and Urban Development
- a development comprised wholly of rental units, where the relationship created is one of landlord and tenant
- the sale of interests that are only mortgage interests, real estate investment trusts (REIT), or some form of security regulated by a Federal Agency
- a subdivider or developer who qualifies for and completes secondary registration

Before the promotion for such sales may begin, application must be made to the New Jersey Real Estate Commission, Bureau of Subdivided Land Sales Control (BSLSC), to register the subdivision. The application must be accompanied by the appropriate fees and a copy of the statement of record and public offering statement described below. The Commission must either approve or reject the application within 90 days. If the application is not rejected within 90 days, the subdivision is deemed to be registered. If, within the 90 days, the Commission determines that the requirements have not been met, it must notify the applicant and allow 30 days for corrections to be made. This notification postpones the actual rejection or allows the applicant to comply and obtain approval.

The application must state the New Jersey broker authorized to represent the subdivider in this state. This broker is known as the "broker of record". The subdivider may designate additional brokers to participate in the promotion or sale. These additional brokers are known as supplemental brokers. The Real Estate Commission will issue a "Broker's Release" which is a document affirming that the broker to whom it is issued has been approved by the Commission as the designated New Jersey broker of record or as a supplemental broker of a registrant, and has been authorized by the Commission to commence solicitation and sales efforts on behalf of that registrant in New Jersey.

Also included with the application must be a legal description of the property and an irrevocable appointment of the Commission to accept legal service on behalf of the applicant.

The initial registration fee is \$500.00 plus \$35.00 for each additional lot or unit up to a maximum fee of \$3,000. Additional fees are charged for any subsequent changes. If the Commission determines that an inspection of the property is necessary, the applicant must pay an inspection fee equal to an amount adequate to cover the travel expense.

Before approving a registration, the Commission must determine that:

1. the subdivider is capable of conveying the interest to a qualified purchaser

2. there is reasonable assurance that the proposed improvements will be completed as represented
3. the advertising material and the general promotional plan is not false, misleading or discriminatory
4. that the public offering statement requirements (described below) have been complied with
5. the subdivider or its officers have not been convicted of a crime or civil offense involving land disposition and there is no reason to believe that fraud or deception is intended with this plan
6. the public offering requirements described below have been met

Within 30 days after each anniversary of the registration, the subdivider must file an annual report that reflects any material changes to the original information and must include an audited financial statement.

The Real Estate Commission may from time to time, pursuant to its rules and regulations, exempt from any of the provisions of this act any subdivision or any lots in a subdivision, if it finds that the enforcement of this act with respect to such subdivision or the lots therein, is not necessary in the public interest or required for the protection of purchasers by reason of the small amount involved or the limited character of the offering.

### Statement of Record

The statement of record, filed by the applicant upon registration, is a document containing details about the subdivision and its promoters. The statement of record must be available to the general public for inspection and must contain the following information:

1. the name and address of each person having an interest in the lots and the extent of that interest
2. details about the land itself including a legal description, total area, topography, and a map of the individual lots showing their size and relation to existing streets. The map must be drawn to scale and sealed by an engineer or surveyor.
3. details concerning the condition of the title to the land including all encumbrances and restrictions
4. details about the terms and conditions of the sale or rental of the lots or units
5. information concerning access to the subdivision, the existence of any unusual conditions relating to noise or safety, the availability of sewer facilities and other utilities and the nature of any improvements to be made by the developer including an estimate for completion
6. a statement as to whether or not the property is subject to any adverse natural forces and specifically whether or not it is located in a federal flood zone

7. if there is a blanket encumbrance on the property, a statement revealing the consequences that default would have on an individual purchaser and what steps, if any, have been taken to protect the individual purchasers
8. copies of the articles of incorporation or other documents creating the business entity of the subdivider
9. copies of the deed or other instrument establishing title in the name of the developer and copies of any document creating a lien, encumbrance or easement.
10. copies of the conveyances to be used in selling or leasing the property
11. copies of instruments creating easements or other restrictions
12. certified and uncertified financial statements of the developer as required by the commission
13. copies of any management contracts, leases or similar contract or agreement affecting the subdivision
14. a statement of the status of compliance with the requirements of all laws, ordinances, regulations, and other requirements of governmental agencies, including the federal government, having jurisdiction over the premises
15. any other information and any other documents and certification as the commission may require as being reasonably necessary for the protection of purchasers

Any material changes in the above information must be reported to the Commission immediately.

### Public Offering Statement

The Public Offering Statement is a statement that must be given to prospective purchasers who must be given reasonable time to examine it. Failure by the developer to abide by this or any other provision of the law allows the purchaser to rescind any contracts for purchase. The Public Offering Statement must fully and accurately disclose the physical characteristics of the land and any unusual circumstances that affect it. Among other things, the statement must contain the following information:

1. The name and address of the developer and the New Jersey broker authorized to represent the developer
2. a general description of the subdivision stating the total number of lots, parcels units or interests
3. the terms of any encumbrances, liens, easements or restrictions including zoning regulations that affect the property and a statement of all existing taxes and existing or proposed assessments
4. a statement of the use for which the property is offered including information about improvements and the estimated cost, date of completion and responsibility for them
5. a summary of any management contract, lease for recreational facilities, or other agreement that affects the property and how any such contract may affect the



purchaser. The statement must also disclose any relationship between the developer and the other party to the contractor.

The Public Offering Statement may not be used before registration and afterward only in its entirety. The information must be presented in narrative format. No person may advertise that the Commission approves or recommends the subdivision.

Prior to distributing a Public Offering Statement in a language other than English, copies of the statement written in English and the alternate language must be filed with the Real Estate Commission accompanied by a certification attesting to the accuracy of the translation. The language used in contracts, deeds, etc., must be the same as the language used in the advertisement.

### Cancellation

Any contract for the purchase or lease of subdivided land must contain the following right of rescission which must appear in 10-point bold type or larger, directly above the signature space. Note that this right may be exercised by the purchaser for any reason or for no reason whatsoever.

*Note to purchaser or lessee -- You are entitled to the right to cancel this contract by midnight of the seventh calendar day following the day on which you have executed this contract or agreement.*

Any money paid by a purchaser must be held in escrow at least until this seven day period has expired. In some cases, depending on the type of transaction, it must be held in escrow longer.

### Advertising

The Real Estate Sales Full Disclosure Act was enacted because of the wide spread deception and fraud that was prevalent in the sale of out of state property. Purchasers were particularly vulnerable to abuse because it was inconvenient to inspect the property and because if there was fraud, the fact that the developer was not located in this state made it more difficult to take legal action.

To a large extent, New Jersey Residents were and still are greatly influenced by the advertisements and promotional literature that is published. For this reason, strict advertising regulations have been enacted. Some of the more important regulations follow. They apply to any dissemination of information intended to induce a person to purchase or acquire an interest in the title to subdivided lands including newspaper or periodical, radio or television ads, billboards or signs, any copying process producing more than 10 copies, or the display of model homes or units.

- Reference may not be made to any common element or facility that does not presently exist unless that fact is prominently stated and the proposed date for completion must be included
- If a purchase price is mentioned, the full purchase price must be specified and any known assessments or additional charges must also be specified.
- "Discount certificates" are prohibited however discounts are allowed if based on reasonable criteria.
- Future price increases may not be referred to unless a specific date and amount is included.
- If any reimbursement of travel expenses is offered, whether in cash or merchandise, the ad must state the retail value as well as any requirement for attendance at a sales presentation including the minimum amount of time required.
- If a registrant advertises in a language other than English they must make available to prospective purchasers all disclosure documents, including, but not limited to, the Public Offering Statement, and the sales contract written in the same language as that used in the registrant's advertisements.

Any subdivision as defined above, if located outside the state of New Jersey, must be registered and comply with the law if it is advertised in any way in New Jersey. This would apply even if only a single parcel or unit is promoted. It applies if the subdivision is merely mentioned in an ad for another property. If a subdivision is not registered, ads intended for circulation in another state but contained in a publication that has distribution in New Jersey, the ad must contain a disclaimer, such as the following:

*This advertisement is not an offering to New Jersey residents and the property is not registered with the New Jersey Real Estate Commission*

Any advertisement for a subdivision registered with the Commission must contain a statement of registration including the registration number. The registration number must be preceded by: "N.J. Reg. No."

### Penalties

For violating the provisions of the Real Estate Sales Full Disclosure Act or for making an untrue statement or omitting a material fact in a filing, a person may be fined a minimum of \$250 and a maximum of \$50,000. In addition, the violator is subject to the normal disciplinary actions of the Commission.