

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

REAL ESTATE COMMISSION

Referral Agents; Broker Licensee E-mail Address

Adopted Amendments: N.J.A.C. 11:5-1.1, 1.3, 1.5, 2, 3, 4.1, 4.4, 4.5, 5.5, 6.1, 6.8, 7.1, 7.2, 7.4, 8.2, and 9.6

Adopted New Rules: N.J.A.C. 11:5-3.15 and 6.10

Proposed: August 1, 2011 at 43 N.J.R. 1791(a).

Adopted : December 7, 2011 by the New Jersey Real Estate Commission, Robert L. Kinniebrew, Executive Director.

Filed: December 7, 2011 as R.2012 d.006, **with substantial changes** not requiring additional public notice and opportunity to comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 45:15-16.2g.

Effective Date: January 3, 2012.

Expiration Date: August 27, 2016.

Summary of Public Comments and Agency Responses:

The New Jersey Real Estate Commission (Commission) timely received comments from the New Jersey Association of Realtors (NJAR), Janet Iveson of Weichert Referral Associates, Susan Richman of the Referral Group, and James Donnelly.

COMMENT: One commenter thanked the Commission for the rule proposal, stating that it believes the proposal will provide the guidance necessary for real estate licensees

changing their license status to that of a referral agent or for referral agents changing their status back to that of a salesperson, broker-salesperson or a broker. The commenter also commended the Commission for the proposed rule on e-mail addresses, as NJAR believes that it is appropriate that only brokers be required to provide an official e-mail address rather than all real estate licensees.

RESPONSE: The Commission thanks the commenter for the expression of support.

COMMENT: Several commenters stated that referral agents should have the ability to make referrals to other real estate licensees with the knowledge of the broker with whom they are licensed.

RESPONSE: The Commission agrees. If the broker through which the referral agent is licensed authorizes the referral agent to refer prospects to another real estate licensee and the referral agent provides notice of such a referral to the broker or that broker's designee, such a referral should be permissible. However, in accordance with applicable law, any compensation payable to the referral agent for any referral must be paid by the broker with which the referral agent is licensed.

Upon adoption, the Commission is amending the language of N.J.A.C._11:5-6.10(a)2 and 3.7(b)2 to clarify that such broker-authorized referrals are allowed. These amendments may be made upon adoption pursuant to N.J.A.C. 1:30-6.3 because they afford to the referral agent's broker the option of authorizing such referrals and require that the broker or his or her designee be notified when such referrals are made. As such, they are consistent with the intent and purport of the original proposal that required that all referrals be made to the referral agent's broker.

COMMENT: One commenter requested clarification of N.J.A.C. 11:5-3.7 in regard to the required certifications. She wished to confirm her understanding that for new hires, brokers will attest to the fact that the referral associate has reviewed and acknowledged the restrictions placed upon the brokerage activity of referral agents and asked to what the broker is attesting during the renewal process. She further asked whether it would be sufficient to include a reminder on the renewal invoices (apparently sent by her firm to its licensees) that they are restricted in their activities due to their status as referral agents.

RESPONSE: N.J.S.A. 45:15-9 provides that “an application for licensure as a referral agent and for any renewal thereof shall include a certification signed by the licensed real estate broker by whom the applicant is or will be employed, [confirming] that: the broker and the applicant or renewing referral agent have reviewed the restrictions imposed by law upon the activities of a referral agent; and the applicant or referral agent has acknowledged that he is aware that such activity is limited to referring prospective consumers of real estate brokerage services to that broker.”

N.J.A.C. 11:5-3.7(b) requires such certification to be included on both applications for new hires and for renewals. N.J.A.C. 11:5-3.7(c) requires that any license application other than a renewal must include a similar certification by the applicant. Consequently, a reminder included in a renewal invoice could satisfy the requirement if such a reminder detailed the legal restrictions on the referral agent’s activities and included a statement signed by the renewing referral agent acknowledging his or her having reviewed those restrictions, and the renewing broker certifies on the

referral agent's renewal application that the renewing referral agent has confirmed that they performed such a review.

COMMENT: One commenter questioned the reference to the "rear of the license document" in N.J.A.C. 11:15-3.13(a)5, given that the Commission no longer issues paper licenses.

RESPONSE: The Commission will address this issue through amendments to all of its rules that reference paper licenses in a future proposal. In the interim, licensees should be guided by Bulletins Nos. 11-07 and 11-09.

COMMENT: One commenter asked whether there was to be a "grace period" during which the \$50.00 change in status fee referenced in N.J.A.C. 11:5-3.14 might be waived.

RESPONSE: As previously stated by the Department in Bulletins Nos. 11-07, 11-09, and 11-26, available on-line at <http://www.state.nj.us/dobi/bulletin.shtml>, during the latter part of 2011, the Department had been upgrading the on-line real estate licensing system and, upon the new system becoming operational, would offer a grace period during which the change of status fee referenced in the rule would be waived. As was stated in Bulletin 11-26, the enhanced on-line system became operational on or about November 22, 2011 and a grace period as referenced in the Comment was provided for on-line transactions changing an actively licensed salesperson's or broker-salesperson's license type to that of a referral agent through December 31, 2011.

COMMENT: Also in regard to N.J.A.C. 11:5-3.14, the same commenter requested clarification of when the late renewal fee as opposed to a reinstatement fee applied.

RESPONSE: N.J.S.A. 45:15-15 provides that the Commission may impose a late renewal fee if a licensee fails to renew his or her license prior to the date of expiration of such a license. Due to the transition to an on-line renewal process which commenced with 2009-2011 renewal, the Commission did not impose a late renewal fee for the 2011-2013 renewal.

If the Commission exercises its discretion to impose a late renewal fee, that fee would be in effect during the late renewal period specified by the Commission. After the expiration of the designated late renewal period, any applicant whose license had expired and was not renewed would have to apply for reinstatement and pay the reinstatement fee.

COMMENT: One commenter asked whether there would be a “grace period” for those associates who have already obtained business cards in the past with the term “salesperson” to order new business cards or would it be acceptable to cross out “salesperson” and write in “referral associate.”

RESPONSE: As it is important to distinguish between “salespersons” and “referral agents,” there is no “grace period” during which referral agents may continue to use business cards that state they are “salespersons.” However, licensees may alter their business cards to correct their content.

Federal Standards Statement

A Federal standards analysis is not required because these amendments and new rules regulate the licensing and educational requirements for real estate referral agents and are not subject to any Federal requirements or standards.

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

11:5-3.7 Employment of salesperson or referral agent sponsored by broker

(a) (No change from proposal.)

(b) An application for licensure or renewal of licensure as a referral agent shall include a certification signed by the licensed real estate broker by whom the applicant is or will be employed confirming:

1. (No change from proposal.)

2. The applicant or referral agent has acknowledged that he or she is aware that the activities of a referral agent are limited to referring prospective consumers of real estate brokerage services only ***[to the aforementioned employing licensed real estate broker]*** ***as set forth in N.J.A.C. 11:5-6.10(a)2***.

(c) (No change from proposal.)

11:5-6.10 Referral agents

(a) A licensed referral agent's real estate brokerage-related activities shall be limited to:

1. (No change from proposal.)

2. Referring prospects for the sale, purchase, exchange, leasing or rental of real estate to the real estate broker through whom they are licensed as a referral agent ***or, should that broker authorize the referral agent to do so, to another real estate licensee. In all cases where referrals are made pursuant to such an authorization, the referral agent shall provide written or electronic notice to his or her broker or to that broker's designee, who shall be a broker-salesperson or salesperson licensee, at the time the referral is made. In accordance with N.J.S.A. 45:15-16, all compensation payable to a referral agent for any referral shall be paid by the broker through whom the referral agent is licensed*.**

(b) – (d) (No change from proposal.)