

**INSURANCE**

**DEPARTMENT OF BANKING AND INSURANCE**

**DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION**

**Procedures on Disciplinary Actions, Contested Applications, Declaratory Ruling Requests**

**Procedures Applicable to Appeals of Initial Denials of Licensing Applications**

**Proposed Amendment: N.J.A.C. 11:5-11.10**

Authorized By: New Jersey Real Estate Commission, Robert L. Kinniebrew, Executive Director.

Authority: N.J.S.A. 45:15-9 and 45:15-17.4.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2010-192.

Submit comments by November 6, 2010 to:

Robert J. Melillo, Chief  
Legislative and Regulatory Affairs  
Department of Banking and Insurance  
20 West State Street  
P.O. Box 325  
Trenton, NJ 08625-0325  
Fax: (609) 292-0896  
E-mail: [legsregs@dobi.state.nj.us](mailto:legsregs@dobi.state.nj.us)

The agency proposal follows:

**Summary**

The Real Estate Commission (Commission) is proposing amendments to its rules in order to modify the procedures for appeals of the Commission's initial staff denials of license reinstatement applications that are submitted beyond the maximum time period established for such reinstatements in N.J.S.A. 45:15-9. The Commission's current procedure provides for appeal of such a denial directly to the Appellate Division of the Superior Court. The proposed amendments will require applicants to first appeal reinstatement denials to the Real Estate Commission. After a final determination is issued by the Commission under this new appeal process, any denied reinstatements could then be appealed to the Appellate Division of the Superior Court pursuant to N.J.S.A. 45:15-18. This amendment conforms the appeal process for reinstatement denials with all other appeals of denied license applications. The proposed amendments also modify the number of copies required to be filed for all appeals of initial denials of licensure and related applications. The amendment reduces the number of required copies from 15 to two.

The proposed amendments will also make the procedure for appeals of denials of reinstatement applications consistent with the procedure applicable to appeals of denials of all other licensing applications.

A 60-day comment period is provided for this notice of proposal and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

### **Social Impact**

The proposed amendments are environmentally friendly, as the number of copies to be submitted with an appeal of an initial Commission staff decision will be reduced from 15 to two.

The proposed amendments will also enable applicants initially denied reinstatement by the Commission staff to have such decisions reviewed and possibly approved by the agency head in a more timely manner than occurs when such decisions are appealed to the Appellate Division, as is currently required under N.J.A.C. 11:5-11.10(a)1. Thus, the proposed amendments will have a positive social impact.

### **Economic Impact**

The Commission believes that proposed amendments should have a positive economic impact on applicants. The initial costs of appeals will be reduced because it is less costly for applicants to file an appeal with the Real Estate Commission than with the Appellate Division that requires payment of filing fees. Although more appeals will need to be processed by the Hearings and Regulatory Affairs Section of the Real Estate Commission and considered by the Real Estate Commissioners, this is not anticipated to significantly increase the Commission's costs of operations.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed amendments relate to procedures for appeals of the Commission's initial denials of licensure reinstatement applications and are not subject to any Federal requirements or standards.

### **Jobs Impact**

The Commission does not believe that the proposed amendments will cause any jobs to be generated or lost.

### **Agriculture Industry Impact**

The Commission does not expect any agriculture industry impact from the proposed amendments.

### **Regulatory Flexibility Analysis**

The proposed amendments apply to “small businesses” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Included among these small businesses are real estate brokerage firms. The proposed amendments do not impose any new reporting, recording or other compliance requirements on small businesses, other than modifying procedures for appeals of the Commission’s initial staff denials of license reinstatement applications.

Compliance with the requirements referred to above may continue to be accomplished by existing staff. No new professional services are required by the amendments being proposed. The cost of compliance should be reduced as a result of these amendments. Most real estate licensees are small businesses. The proposed amendments appropriately do not provide for different compliance requirements based on business size because the license application and reinstatement procedures are the same despite the size of the brokerage licensee.

### **Smart Growth Impact**

The proposed amendments will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

### **Housing Affordability Impact**

The proposed amendments will not have an impact on affordability of housing because the proposed amendments relate to procedures applicable to appeals of initial denials of licensing applications.

### **Smart Growth Development Impact**

The Commission believes that there is an extreme unlikelihood that these proposed amendments would evoke a change in housing production in Planning Areas 1 and 2 or with the

designated centers under the State Development and Redevelopment Plan in New Jersey because the proposed amendments address procedures applicable to appeals of initial denials of licensing applications.

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

11:5-11.10 Procedures applicable to appeals of initial denials of licensing applications

(a) Initial denials of the following applications may be appealed to the [full] Real Estate Commission through compliance with all of the requirements established in (b) below:

1. License applications[, with the exception of reinstatement applications submitted beyond the statutory established time limitations upon such reinstatements];

2. - 5. (No change.)

(b) All appeals to the [full] Real Estate Commission provided for in (a) above shall be filed by the appealing applicant submitting to the Commission within 45 days of the date of the notice of denial an original and [15] **two** copies of all of the documentation noted below:

1. - 5. (No change.)

(c) Upon the proper filing of an appeal as described in (b) above, the appeal package shall be reviewed and the applicant advised of the following:

1. The date, time and place at which the appeal will be considered by the [full] Real Estate Commission; or

2. - 3. (No change.)

(d) - (e) (No change.)