

ADOPTION SECTION

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

REAL ESTATE COMMISSION

Notice of Readoption

Real Estate Commission

Readoption: N.J.A.C. 11:5

Authority: N.J.S.A. 45:15-6, 45:15-10.4, 45:15-16.2g, 45:15-16.49, 45:15-16.82, 45:15-17.t, 45:15-17.4, and 45:15-42.

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

Effective Date: February 24, 2016.

New Expiration Date: February 24, 2023.

Take notice that, pursuant to the provisions of Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 11:5 will expire on August 27, 2016. The rules set forth in this chapter implement the Real Estate Brokers and Salesmen Act, N.J.S.A. 45:15-1 et seq., the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq., and the Real Estate Timeshare Act, N.J.S.A. 45:15-16.50 et seq.

Subchapter 1 sets forth the responsibilities, organization, and functions of the Real Estate Commission (Commission). It also sets forth Commission information available to the public, and those Commission records which are not open to public inspection.

Subchapter 2 provides the educational requirements for licensure as a real estate broker, salesperson, or referral agent, and the criteria for the issuance of waivers of the educational

requirement. It also sets forth the license qualifications and procedures, license renewal procedures, and operating standards for real estate brokerage schools and instructors. The rules summarize the types of applications and forms processed by the Commission Education Bureau, and the fees and processing times for such transactions.

Subchapter 3 sets forth the terms of real estate licenses, the application procedures and qualifications for licensure as a real estate broker, broker-salesperson, salesperson, referral agent, and branch office. It also sets forth the method of payment of fees as prescribed by statute. Rules governing criminal history record checks and the broker, salesperson, and referral agent licensing examinations are included. Subchapter 3 also sets forth a rule governing Commission requests for disclosure of social security numbers and electronic mailing addresses. The rules also set forth requirements when a broker ceases to be active, closes an office, or changes the broker of record. The rules further provide who may sponsor license applications or the transfer of a license as well as the license transfer and termination procedures. Subchapter 3 also contains rules summarizing the types of applications and forms processed by the Real Estate Section of the Department of Banking and Insurance (Department) Licensing Services Bureau as well as instructions, processing times, licensing fees and deadlines. Finally, Subchapter 3 sets forth the requirements to change license types from referral agent to salesperson or broker-salesperson.

Subchapter 4 contains rules governing employment practices and requirements concerning office and licensee supervision. It sets forth requirements for employment agreements, issues related to payment of commissions and accounting, and actions for collection of compensation. Subchapter 4 also sets forth broker supervision, office operations, and escrow

money requirements. It further sets forth a prohibition on the use of a license for the benefit of others. Finally, it provides main office and branch office requirements.

Subchapter 5 provides rules governing trust accounts and records of brokerage activity. Its sets forth requirements related to special accounts, safeguarding the funds of others, and a prohibition against commingling funds. The rules also provide requirements related to advance fees. Finally, the rules prescribe the records licensees must maintain and make available for Commission inspection.

Subchapter 6 provides rules governing the conduct of brokerage business. The rules set forth the standards concerning advertising, contracts of sale or lease, brokerage agreements, and disclosure requirements applicable to licensees. Subchapter 6 also sets forth requirements regarding residential rental referral agencies as well as participation in trade associations or listing services. The rules further set forth disclosures by licensees: (1) providing mortgage financing services to buyers for a fee; or (2) affiliated with a mortgage lender or mortgage broker to whom the licensee refers buyers. Subchapter 6 also sets forth requirements for the Consumer Information Statement. Finally, it sets forth requirements applicable to the brokerage activity of referral agents.

Subchapter 7 governs prohibited activities. The rules set forth certain prohibited activities and conduct by licensee such as receiving compensation for dual representation, receiving kickbacks for related business referrals, excluding all outside mortgage providers in favor of an in-house service, price-fixing with another licensee, blockbusting, discriminatory commission splits, and pressuring the media.

Subchapter 8 contains rules concerning disciplinary actions for violations of the rules in the chapter as well as rules implementing the real estate guaranty fund.

Subchapter 9 contains the rules implementing the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq.

Subchapter 9A contains the rules implementing the New Jersey Real Estate Timeshare Act, N.J.S.A. 45:15-16.50 et seq.

Subchapter 10 contains the rules governing rulemaking and petitions for rulemaking.

Subchapter 11 contains the rules concerning procedures applicable to disciplinary actions, contested applications, and declaratory ruling requests. The subchapter defines pleadings before the Commission and answers. It also sets forth standards regarding adversary hearing determinations by the Commission, motions, hearing procedures, sanctions, failure to answer or appear, and settlements. The subchapter further sets forth rules regarding decisions in enforcement actions, motions for reconsideration, and applications for temporary suspension of a license. Finally, it sets forth the procedures applicable to license application appeals to the Commission.

Subchapter 12 contains the rules concerning continuing education. The subchapter sets forth its purpose and scope and provides definitions for terms. It states the continuing education requirements, the required curricula, and the standards for the waiver of continuing education requirements. It further provides the standards, application process, and fees for approval as a continuing education provider, instructor, or course. The subchapter also sets forth the responsibilities of continuing education providers, including reporting and recordkeeping requirements and advertising rules. It sets forth topics for elective courses as well as specific requirements applicable to distance learning courses. Furthermore, the subchapter sets forth standards for the denial, suspension, or revocation of approval as a continuing education provider, instructor or course. It also provides the appeal procedures for the denial of an

application for approval of a continuing education course, instructor, and provider, and continuing education waiver applications. Finally, the subchapter provides rules governing the Volunteer Advisory Committee.

The rules set forth within N.J.A.C. 11:5 continue to be necessary, reasonable, and proper for the purposes for which they were originally promulgated. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1), these rules are readopted and shall continue in effect for a seven-year period.