

PUBLIC NOTICE

BANKING AND INSURANCE

DIVISION OF BANKING

REAL ESTATE COMMISSION

Notice of Action on Petition for Rulemaking

Continuing Education Requirements

N.J.A.C. 11:5-12.3

Petitioner: Timothy M. Wyman.

Take notice that on July 23, 2015, the Real Estate Commission (Commission) within the Department of Banking and Insurance (Department) received a petition for rulemaking from the above petitioner via e-mail requesting that the Commission amend its rules regarding continuing education requirements. On September 8, 2015, a notice of receipt for rulemaking was published in the New Jersey Register at 47 N.J.R. 2312(c). Specifically, the petitioner requested that the Commission amend N.J.A.C. 11:5-12.3 to allow licensed instructors to receive continuing education credit when teaching pre-licensure courses.

N.J.A.C. 11:5-12.3 sets forth the continuing education requirements for real estate brokers, real estate broker-salespersons, and real estate salespersons for license renewal. Pursuant to N.J.A.C. 11:5-12.3, in order to qualify for license renewal, every individual licensed as a real estate broker and every licensed broker-salesperson or salesperson shall, during the 24-month period prior to that renewal, complete 12 hours of approved continuing education including two hours of ethics. N.J.A.C. 11:5-12.3 also outlines certain exceptions to this requirement. For example, N.J.A.C. 11:5-12.3(a)1 provides that a Commission-licensed real estate instructor or Commission-approved continuing education course instructor shall earn

credit for teaching an approved continuing education course offered by an approved provider. The petitioner requested that this rule be amended to permit New Jersey licensed real estate instructors to receive continuing education credit for teaching pre-licensure courses in the following manner:

1. For a New Jersey licensed real estate instructor who teaches a real estate salesperson pre-licensure course, one core credit is earned for each hour of course instruction including two credits in ethics except that no credit is earned for ethics unless the entire 75-hour course is taught;

2. For a New Jersey licensed real estate instructor who teaches a real estate broker 90-hour pre-licensure course, one core credit is earned for each hour of course instruction including two credits in ethics except that no credit for ethics is earned unless the entire 90-hour course is taught;

3. For a New Jersey licensed real estate instructor who teaches the 30-hour real estate broker pre-licensure course for Ethics and Agency, 12 core continuing education credits are earned including two ethics credits for teaching the entire course; and

4. For a New Jersey licensed real estate instructor who teaches the 30-hour real estate broker pre-licensure course for Office Management, 12 core continuing education credits are earned for teaching the entire course including two ethics credits.

The petitioner requested these amendments because, according to the petition, he recognizes the value of preparing for and teaching pre-licensure courses for continuing education credit. The petitioner averred that instructors must keep up-to-date on laws, rules, regulations, and other issues that licensees are faced with daily. The petitioner further averred that failing to

recognize the work of pre-licensure instructors while rewarding non-licensed instructors of continuing education courses is unfair and inconsistent with present regulations.

In accordance with N.J.A.C. 11:1-15.3(b) and 10.7(b), the Commission mailed to the petitioner, and filed with the Office of Administrative Law, a notice of action on the petition which referred the matter for further deliberations. The Commission published this notice of action on the petition in the October 19, 2015, issue of the New Jersey Register at 47 N.J.R. 2643(b) indicating that the Commission was still reviewing the merits of the petitioner's suggested amendments.

Take further notice that the Commission has conducted a review of the petitioner's suggested amendments pursuant to N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-4.2. Based upon its review, the Commission determined to deny the petition. The continuing education requirements for real estate licensees set forth in N.J.A.C. 11:5-12.3 are governed by statute. N.J.S.A. 45:15-16.2a specifically provides that the Commission shall require each natural person licensed as a real estate broker, broker-salesperson, or salesperson, to complete continuing education requirements as a condition of biennial license renewal. Pursuant to N.J.S.A. 45:15-16.2a, as a part of this biennial requirement, real estate brokers, broker-salespersons, and salespersons shall complete "not more than 16 hours of continuing education requirements imposed by the commission." Moreover, the statute clearly sets forth the instances wherein continuing education credits are conferred upon a person. For example, N.J.S.A. 45:15-16.2a.b(7) requires the Commission to "[c]onfer continuing education credits upon a person who is licensed by the commission as a real estate instructor or as a broker, broker-salesperson or salesperson for teaching an approved continuing education course offered by an approved provider. Regardless of the number of times during a biennial license term that the same approved course is taught by

that person, the person shall receive credit toward the continuing education requirement for the renewal of the person's broker, broker-salesperson or salesperson license, as applicable, only in the number of credit hours conferred upon licensees who attend and complete that course one time during that biennial license term.” Moreover, pursuant to N.J.S.A. 45:15-16.2d, “A person who, during a biennial licensing term, successfully completes one or more broker pre-licensure education courses as prescribed by the [Commission] shall be deemed to have fulfilled the continuing education requirement applicable to the license that such a person may seek to renew upon the conclusion of that license term” and “A person who is initially licensed as a salesperson in the second year of the two-year license term shall not be required to fulfill any continuing education requirements in order to renew that license at the conclusion of that license term.” N.J.S.A. 45:15-16.2a, however, does not confer such an accommodation upon instructors of pre-licensure courses.

The provisions of N.J.A.C. 11:5-12.3 mirror the requirements imposed by N.J.S.A. 45:15-16.2a and 16.2d. Petitioner requested that the Commission amend N.J.A.C. 11:5-12.3 to allow licensed instructors to receive continuing education credit when teaching pre-licensure courses because he recognizes the value of preparing for and teaching pre-licensure courses for continuing education credit and he argued that failing to recognize the work of pre-licensure instructors while rewarding non-licensed instructors of continuing education courses is unfair and inconsistent with present regulations. However, the statute clearly outlines the requirements for continuing education for real estate licensees and also clearly sets forth the instances where an individual may be awarded credits. Here, the change to the regulation requested by the petitioner in this instance is not authorized by statute and cannot be made without a statutory change.

A copy of this public notice has been mailed to the petitioner.