

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

NEW JERSEY REAL ESTATE COMMISSION

Continuing Education

Adopted Amendments: N.J.A.C. 11:5-2.2, 2.3, 2.5 and 2.6

Adopted New Rules: N.J.A.C. 11:5-12

Proposed: February 22, 2011 at 43 N.J.R. 369(a).

Adopted: June 6, 2011 by the New Jersey Real Estate Commission, Robert L. Kinniebrew,
Executive Director.

Filed: June 7, 2011 as R. 2011 d. 184, **with substantive changes** not requiring additional
public notice or comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 45:15-6 and P.L. 2009, c. 238.

Effective Date: July 18, 2011.

Expiration Date: August 27, 2016.

Summary of Public Comments and Agency Responses:

The New Jersey Real Estate Commission (Commission) timely received written comments from Douglas M. Tomson, Director of Government Affairs, New Jersey Association of Realtors®; Michael G. McGuinness, CEO, The Commercial Real Estate Development Association, NAIOP - New Jersey; Timothy M. Wyman, Director, The Professional School of Business; Elliott E. Caplan, Director, Caplan School of Real Estate; and Kenneth Baldwin.

COMMENT: The New Jersey Association of Realtors (NJAR®) commented that the number of required continuing education (CE) credits should be 16 hours, rather than 12 as proposed.

RESPONSE: The Commission has concluded that, for at least the first license term during which completion of continuing education will be required as a condition of license renewal, 12 credit hours is an appropriate requirement. Continuing education is a new requirement for New Jersey real estate licensees and its implementation will involve the creation and implementation by the Commission of new processes for the approval of CE providers, instructors and courses and the tracking of CE credits acquired by licensees. Requiring the acquisition of 12 CE credit hours during this initial period will facilitate a smooth transition by both the Commission and the licensee community. Moreover, to require a higher number of credits would require a reproposal. If it determines that an increase is desirable, the Commission will propose an amendment modifying the number of credits required for renewal in future license terms and, by doing so, afford to all licensees the opportunity to comment on such an increase before adopting such an amendment.

COMMENT: NJAR[®] commented that the Association of Real Estate License Law Officials (ARELLO) should not be deemed approved as a CE course provider under proposed N.J.A.C. 11:5-12.6(b)3, and that ARELLO-approved instructors and courses should not be automatically approved as CE instructors and courses for elective topics as proposed in N.J.A.C. 11:5-12.10(c), 12.11(b) and 12.13(b)1. The NJAR[®] also noted that instructors who are deemed approved based upon their being ARELLO-approved instructors should not, by virtue of their being approved by ARELLO, be able to teach CE courses if they are found to have committed violations of the real estate licensing law, N.J.S.A. 45:15-1, et seq. or the Commission's administrative rules.

RESPONSE: Upon adoption, the Commission has determined to delete the Association of Real Estate License Law Officials (ARELLO) as a deemed-approved provider of CE courses from

N.J.A.C. 11:5-12.6(b) as proposed. Upon further review of information on ARELLO's CE program, the Commission has confirmed that ARELLO does not operate as a CE provider, but only certifies distance learning courses designed by, and to be provided by, other parties. It has also confirmed that ARELLO assesses the adequacy of a course's delivery methodology, including the number of hours required to complete the course and the security measures utilized, but does not review course content when certifying a distance learning course. Consequently, the Commission is also amending upon adoption N.J.A.C. 11:5-12.11(b) to revise the proposed text that had provided that all ARELLO-certified distance learning courses in elective topics would be deemed to be approved by the Commission and is similarly amending N.J.A.C. 11:5-12.13(b)1. The amendments clarify that, consistent with N.J.A.C. 11:5-12.12(e), such courses must be of a duration of at least one hour, and that such courses shall only be deemed to have fulfilled the criteria for course approval that relate to course security and administration. The sponsors of such courses will have to apply for approval and the course content will need to be approved by the Voluntary Advisory Committee (VAC) and the Commission in order for the course to be approved for credit toward the New Jersey CE requirement.

With respect to instructors, ARELLO requires, as a condition of conferring its certification on a distance learning CE course, that the course be administered by a qualified instructor. As part of the course certification process, ARELLO reviews the qualifications of the designated instructor, including his or her experience and expertise in the subject matter of the course. For these reasons, the Commission has concluded that no change is needed to N.J.A.C. 11:5-12.10(c), which provides that ARELLO-approved instructors will be deemed to be approved instructors of ARELLO-certified distance learning courses in elective topics. An

ARELLO-approved instructor who desires to teach other courses is required to make application, pay the required fee and demonstrate their qualifications to the VAC in order to be approved to teach core courses or courses in elective topics other than ARELLO-certified distance learning courses. To address the concern regarding ARELLO-approved instructors being subject to disciplinary actions for regulatory violations, N.J.A.C. 11:5-12.15(a) is being amended upon adoption to clarify that all instructors, including those deemed approved pursuant to N.J.A.C. 11:5-12.10, are subject to such actions.

COMMENT: NJAR[®] requested clarification that no additional fees will be charged to approved providers for changing the locations where approved courses are offered.

RESPONSE: The rules do not impose any additional fees for such changes of location.

COMMENT: NJAR[®] commented that the language of proposed N.J.A.C. 11:5-12.12(b), which permits courses to compel a licensee to pass a comprehensive examination as a condition of receipt of credit, is contrary to the intent of the Act which states, “The commission shall not require, as a condition of the receipt of credit...that the licensee pass a comprehensive examination testing the licensee’s knowledge of the entire course content.”

RESPONSE: The rules do not require, but provide to course approval applicants, providers and ultimately to licensees, the option to offer and take courses where passing an examination is required to receive credit. The market will dictate whether candidates choose to take such courses.

COMMENT: NJAR[®] requests an amendment to allow for courses in half hour increments.

RESPONSE: The Commission is implementing an entirely new system to track the CE credits. It will be simpler to do so in whole hour increments for the initial license term where CE is required for renewal. The Commission may consider amending the rule in the future to allow for greater flexibility if a significant number of courses are designed in other than full hour increments.

COMMENT: NJAR[®] requested a clarification as to whether CE courses that are pending approval and are offered at no cost to licensees must be advertised as “pending.”

RESPONSE: Pursuant to N.J.A.C. 11:5-12.13(c)2, all courses awaiting Commission approval should be advertised as pending, regardless of whether a fee is collected from course participants. By doing so, the rules better assure that full disclosure is provided to prospective attendees that they may not receive credit for attending the course.

COMMENT: Timothy Wyman, Director of the Professional School of Business, commented that licensed pre-licensure education instructors should receive full CE credit for teaching pre-licensure education courses and for attendance at the seminars required for instructor license renewal.

RESPONSE: Pursuant to N.J.S.A. 45:15-16.2a.b(7), CE credit is conferred upon approved instructors for teaching approved CE courses offered by approved providers. However, the statute is silent with respect to the instructors of pre-licensure education courses receiving CE credit for teaching those courses. There is also no provision in the statute that addresses instructors obtaining CE credit for attending the seminars referenced in the comment, attendance at which is required to renew a pre-licensure education instructor license pursuant to N.J.A.C.

11:5-2.2(1)2. Such seminars focus mainly on instruction techniques with some updates on regulatory topics, but are not a substitute for the CE required to renew a broker, broker-salesperson or salesperson license. The Commission feels that the contention that licensed instructors who are also real estate licensees should get some, but not necessarily full, credit for teaching pre-licensure courses may have some merit. The Commission will further consider the issues of statutory authority and whether, and to what extent, CE credits might be conferred upon individuals for the teaching of pre-licensure education courses and, depending upon the outcome of those deliberations, may propose amendments in the future specifying the circumstances under which such credits might be conferred.

COMMENT: Wyman commented that the \$200.00 processing fee for licensees who complete the CE requirements between May 1 and June 30 of the second year in a biennial licensing term is excessive.

RESPONSE: The fee amount is authorized by N.J.S.A. 45:15-16.2(c), is reasonable, and was intended to cover the cost of processing the required information in an expedited manner at the end of a license term. The fee is also intended to serve as a disincentive to licensees who may wait until the end of the license term to complete the required CE, as credits earned very late in the licensing term may involve manual processing, resulting in increased costs for the Commission that will be offset by the payment of this fee.

COMMENT: Wyman commented that N.J.A.C. 11:5-12.4(c), which requires that all core courses include instruction on how ethics relates to their subject matter, is vague and should be clarified.

RESPONSE: The Commission disagrees that the rule in question is vague and requires clarification and, therefore, no change is being made. No information was provided in the comment explaining why the commenter feels the rule is vague or how it might be clarified. The Commission considers ethics an important aspect of real estate education generally and feels that it should be a component of all core topic CE courses. The rule is intended to ensure that all courses on core topics include instruction on ways in which opportunities to engage in unethical, self-serving conduct arise when licensees deal with such matters as agency relationships, disclosure obligations and escrow requirements.

COMMENT: Wyman commented that under N.J.A.C. 11:5-12.6(a)4, a CE coordinator should be a licensed New Jersey Real Estate instructor.

RESPONSE: The CE coordinator is the provider's primary point of contact with the Commission for administrative matters. Therefore, it is not necessary that the coordinator possess the qualifications needed to obtain a license as an instructor in order to discharge the responsibilities of this position. An approved provider is always free to utilize a licensed instructor as their coordinator.

COMMENT: Wyman commented that N.J.A.C. 11:5-2.2(x) requires total separation between instructional activity conducted by a licensed school and any solicitation of students, and that the same prohibition should apply to CE providers.

RESPONSE: Upon adoption, the Commission is amending N.J.A.C. 11:5-12.7(c), to add text clarifying that the requirement to segregate CE course instruction from non-course related activity includes a prohibition upon any solicitation activity directed to course attendees. The

Commission had intended to proscribe solicitation activity in all CE courses and had included in the proposal an amendment to N.J.A.C. 11:5-2.2(x) to so provide with respect to CE courses offered by pre-licensure education schools. The change upon adoption will more clearly reflect the Commission's intent that such activity is barred in all cases, regardless of the nature of the provider offering the CE course.

COMMENT: Wyman commented that N.J.A.C. 11:5-2.2(r) requires licensed real estate schools to maintain student records for a period of time of not less than three years, but new N.J.A.C. 11:5-12.8(b) requires CE providers to maintain course records and instructor evaluations for a period of six years, which is unnecessary and burdensome.

RESPONSE: Pursuant to N.J.A.C. 11:5-3.6(c) and 3.8(e), applicants for licensure as a real estate salesperson or broker, respectively, have one year from successful completion of the pre-licensure education requirements to apply for a license. The requirement that licensed real estate schools maintain student records for not less than three years is rationally related to this timeframe. However, under the Act and these rules, a longer look-back period is necessary for records on the completion of CE credits. Licensees who let their licenses go inactive and then seek to reinstate may need to obtain records related to their completion of CE credits during the previous license term and records on instructor evaluations may be needed when instructors apply to renew their approved status on four-year intervals. Consequently, it is necessary that providers retain these records for a minimum of six years. Moreover, subject to the requirement that they be capable of being produced in written form as specified in the rule, the records may be maintained electronically, which should facilitate providers' compliance.

COMMENT: Wyman noted that the requirement imposed by N.J.A.C. 11:5-12.8(d) to submit data regarding completed courses on a weekly basis is too frequent.

RESPONSE: The frequent downloading of information on the acquisition of credits is needed to enable licensees to confirm how many credits the tracking system indicates they have obtained, in particular as they approach the end of a license term. The reporting of the data should be simple for providers, given the computerized processes that will be in place. For these reasons, a one week reporting requirement is appropriate and reasonable.

COMMENT: Wyman commented that the \$150.00 fee for approval as a CE instructor is unreasonable, as it discourages quality instructors and discourages classroom CE. Further, he is unclear as to whether an instructor would have to pay the fee for each course he or she intends to teach.

RESPONSE: The fee is appropriate given the Commission resources that will be expended to review and process instructor applications and is reasonable as compared to similar approval fees imposed by other states. The fee represents 50 percent of the fee to acquire a prelicensure education instructor license, which has a term of only two years, while the CE instructor approval term is four years and slightly longer for the first term. CE instructors will not have to pay the fee for each course they teach. Upon making a single payment and qualifying for approval, an instructor may teach an unlimited number of courses.

COMMENT: Wyman inquires as to whether licensed real estate prelicensure education instructors will have to pay the \$150.00 fee to teach elective courses.

RESPONSE: Pursuant to N.J.S.A. 45:15-16.2ab.(1)(a), licensed real estate instructors are deemed approved as instructors in core topics. Such individuals will have to make application and pay the required fee to become approved instructors in elective topics. Elective courses focus on more specialized areas than those covered in the core topic courses, which topics comprise the bulk of the curriculum of the prelicensure education courses. To qualify for approval to teach elective courses, licensed instructors will be required to establish to the satisfaction of the Volunteer Advisory Committee (VAC) that they possess sufficient expertise in one or more such areas.

COMMENT: Wyman comments that under N.J.A.C. 11:5-12.10(g), re-approval of instructors every four years is unnecessary, onerous and discourages classroom based courses.

RESPONSE: The Commission disagrees and believes that the instructor re-approval requirements are reasonable, not burdensome, and necessary to foster quality, meaningful CE. The Commission/VAC will consider data obtained through instructor evaluations when processing applications for the re-approval of instructors.

COMMENT: Wyman comments that the \$200.00 course approval fee under N.J.A.C. 11:5-12.11(a)1 is excessive, and discourages a variety of course options, and that the course re-approval process under N.J.A.C. 11:5-12.11(d) is onerous and too expensive.

RESPONSE: The course approval fee is reasonable given the staff resources that will be expended to review and process applications for course approval, and is lower than that charged in many other states. The standard course approval term is five years, with the first approval

period slightly longer. The re-approval process is needed to ensure that the course content remains relevant and addresses recent developments in the course topic area.

COMMENT: Wyman feels that it is impossible for providers of distance learning courses to use procedures that provide reasonable assurance of student identity and verification that the student receiving the credit is the individual who performed the work, as required in N.J.A.C. 11:5-12.14(b)6.

RESPONSE: Measures to meet these standards are required to be in place to a reasonable extent. Technologies currently exist and new enhancements are constantly emerging in regard to computer security and verification of a remote user's identity. A provider of distance learning courses must bear some responsibility to ensure that adequate mechanisms to address these issues are in place. Accredited colleges and universities routinely confer college credits based upon the completion of online courses. Providers of CE distance learning courses can use the same or comparable security measures. Application of such an industry standard will fulfill the requirement to utilize means to provide the "reasonable assurance" that is referenced in the rule, which the Commission believes is not an overly burdensome standard.

COMMENT: The NAIOP-New Jersey commented that their organization should be classified as a "pre-approved course provider" and exempt from any fees as a CE provider and for having its instructors and courses approved. NAIOP is a non-profit and is the leading organization for developers, owners, and brokers in office, industrial and mixed use real estate.

RESPONSE: Pursuant to N.J.A.C. 11:5-12.6(b) as revised upon adoption, the only deemed approved CE providers who are not required to submit an application or pay the provider

application fee are licensed pre-licensure education schools and the Commission. Public adult education programs and all accredited colleges and universities are deemed approved providers upon application, without being required to pay the application fee. The mere fact that the commenter is a non-profit organization does not constitute a basis for exempting it from the fees applicable to CE provider, instructor and course approval applications, particularly since its membership includes licensees upon whom the CE requirement is imposed. If the Legislature had intended to exempt such organizations from those fees it could have so directed in N.J.S.A. 45:15-16.2b, which authorizes the Commission to approve such fees and specifies that real estate trade associations that qualify under the standards for approval prescribed by rule may offer CE courses.

COMMENT: Kenneth Baldwin submitted a comment that distance education should not be approved as an instructional modality.

RESPONSE: N.J.S.A. 45:15-16.2b specifically provides for the delivery of CE courses in a classroom setting, via the Internet, distance learning, correspondence or video modalities. Many accredited colleges and universities confer credits based upon the completion of distance learning courses and allowing for distance education makes it easier for licensees to fulfill the CE requirements.

COMMENT: Baldwin commented that if certain courses are required, then only licensed instructors should be permitted to teach them, with elective courses open to instruction by others.

RESPONSE: Pursuant to N.J.S.A. 45:15-16.2ab.(1)(a), if someone is found to be qualified and is recommended to the Commission by the VAC for approval as a CE instructor, they shall be so

approved. While licensed instructors are deemed approved to teach courses in core topics, many individuals who are not New Jersey real estate instructor licensees may possess the qualifications for instructor approval to teach one or more core courses established by N.J.A.C. 11:5-12.10(d). Such individuals should not be barred from being approved to teach such courses and there is no basis in the statute to do so.

COMMENT: Baldwin commented that there should be severe penalties for individuals who fail to complete CE requirements, especially if misrepresentation is a factor.

RESPONSE: Under N.J.S.A. 45:15-16.2a.a, unless waived by the Commission, completion of CE is a condition of license renewal. In addition, pursuant to N.J.S.A. 45:15-17, the Commission may take disciplinary action against a licensee for certain actions, including making misrepresentations. The Commission may consider misrepresentations by licensees with respect to the CE requirement to be substantial misrepresentations under N.J.S.A. 45:15-17(a) and conduct demonstrating unworthiness, incompetency, bad faith or dishonesty under N.J.S.A. 45:15-17(e), thereby subjecting such licensees to fines and/or license suspension or revocation.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments and new rules 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*]):

11:5-12.6 Continuing education providers; standards and application process

(a) (No change from proposal.)

(b) Upon the assignment to them of a New Jersey continuing education provider identification number, the following shall be deemed to be approved providers of real estate continuing education courses without being required to file an application for approval as a continuing education provider or pay the provider approval application fee specified at N.J.A.C. 11:5-12.17:

1. Real estate prelicensure schools licensed by the Commission pursuant to N.J.S.A. 45:15-10.4 and N.J.A.C. 11:5-2.2; ***and***

2. The New Jersey Real Estate Commission*[*; and]* *.*

[3. The Association of Real Estate License Law Officials (ARELLO).]

(c) - (e) (No change from proposal.)

11:5-12.7 Continuing education providers; responsibilities

(a) - (b) (No change from proposal.)

(c) Each non-distance learning course shall be conducted at a location and in such facilities as shall be appropriate to properly present the course. The providers of such courses shall ensure that they are conducted at times and in locations that are conducive to learning, free of excessive distractions and segregated from non-course related activity*, **including any solicitation activity directed to attendees of the course***. The facilities at which such courses are offered shall comply with all local, state and Federal laws and regulations.

(d) - (f) (No change from proposal.)

11:5-12.11 Continuing education courses; application process

(a) (No change from proposal.)

(b) All distance learning courses certified by the ARELLO that ***are of a duration of at least one hour and that*** provide instruction on one of the elective topic areas listed in N.J.A.C. 11:5-12.13 shall, upon ***[request, be assigned a course identification number and be deemed approved by the Commission without review]*** ***payment of the required fee, submission of an application as set forth in (a) above, and approval of their content*** by the Voluntary Advisory Committee*, **be approved by the Commission***. ***All distance learning courses certified by the ARELLO shall be deemed to have fulfilled the criteria applicable to such courses set forth in N.J.A.C. 11:5-12.14(b)1, 3, 4 and 7.***

(c) - (d) (No change from proposal.)

11:5-12.13 Continuing education courses; elective courses

(a) (No change from proposal.)

(b) Continuing education courses offered in the elective topics set forth in (a) above shall be deemed approved by the Commission upon application if they are:

1. Offered ***[and/or approved by the Association of Real Estate License Law Officials (ARELLO) or]*** by a public adult education program or an accredited college or university that has obtained from the Commission a New Jersey real estate continuing education provider identification number;

2. – 3. (No change from proposal.)

(c) (No change from proposal.)

11:5-12.15 Denials, suspension or revocation of approvals

(a) The Commission may conduct investigations as may be necessary to enforce the provisions of N.J.S.A. 45:15-16.2a et seq. and this subchapter and may deny an application for

approval and issue a reprimand to or suspend or revoke the approval of a real estate continuing education provider, instructor*, **including an instructor otherwise deemed approved pursuant to N.J.A.C. 11:5-12.10,*** or course, as applicable, if it is determined that:

1. - 10. (No change from proposal.)

(b) – (c) (No change from proposal.)