

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

REAL ESTATE COMMISSION

Referral Agents; Broker Licensee E-mail Address

Proposed 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

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

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

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

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

Proposal Number: PRN 2011-159.

Submit comments by September 30, 2011 to:

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The agency proposal follows:

Summary

Effective July 1, 2011, individuals may be licensed as real estate referral agents in New Jersey pursuant to amendments to N.J.S.A. 45:15-1 et seq., (Real Estate Licensing Law) enacted by P.L. 2009, c. 238. The statement of the Legislature accompanying the amendments states that referral agents are required to be employed by and to operate under the supervision of a licensed real estate broker. A licensed referral agent's real estate brokerage-related activities are limited to referring prospects for the sale, purchase, exchange, leasing or rental of real estate or an interest in real estate, to the broker through whom they are licensed. Pursuant to N.J.S.A. 45:15-9, 10 and 10.1 as amended, applicants for licensure as a referral agent shall meet the same character-based qualifications and education and examination requirements as applicants for licensure as a real estate salesperson. Licensed referral agents will not, however, be required to obtain real estate continuing education credits in order to qualify for the renewal of their licenses.

The Real Estate Commission is proposing the following amendments and new rules to implement the amendments to the Real Estate Licensing Law regarding real estate referral agents.

References to referral agents are proposed to be added throughout N.J.A.C. 11:5. Amendments are proposed to N.J.A.C. 11:5-1 to include referral agents in the Commission's responsibilities for supervision and regulation, investigation and to add referral agent licenses to those licenses maintained pursuant to the Real Estate Licensing Law.

Amendments to N.J.A.C. 11:5-2 implement the prelicensure educational requirements for referral agents. Specifically, N.J.A.C. 11:5-2.1(a) and (b) are amended to require referral agents to complete a course of study at a school licensed by the Commission consisting of a minimum of 75 hours of instruction prior to sitting for the examination for that license. N.J.A.C. 11:5-2.1(e) is amended to state the exceptions to prelicensure educational requirements with amendments for referral agents. N.J.A.C. 11:5-2.1(f) is amended to require referral agents to complete the 75-hour salesperson prelicensure course. N.J.A.C. 11:5-2.1(g)1xvi(5) is amended to include community involvement by referral agents as part of the business and management practices topic in the 90-hour general broker's prelicensure course.

N.J.A.C. 11:5-2.2(x) is amended to extend the prohibitions in the rule upon the solicitation of students at licensed real estate schools to also bar the solicitation of referral agents. N.J.A.C. 11:5-2.2(x)3 sets forth an exception to allow a school director, instructor, guest lecturer or staff member, prior to, or within seven days following a student's successful completion of a course, to solicit a student to become a salesperson or referral agent for any particular real estate broker, or allowing any such person at any time to accept any fee or other compensation for soliciting or recruiting students attending their school to apply for employment with a particular real estate broker, but only as provided in N.J.A.C. 11:5-2.2(x)5. As N.J.A.C. 11:5-2.2(x)5 refers to "posting, distributing or displaying written materials," N.J.A.C. 11:5-2.2(x)3 is amended to add the word "displaying" to render the two provisions consistent.

An amendment to N.J.A.C. 11:5-2.3(b) states that applications for waivers of referral agent prelicensure education requirements will be processed by the Education

Bureau of the Real Estate Commission, which will issue a certificate of examination eligibility in accordance with the proposed amendment to N.J.A.C. 11:5-2.4(a). The application for the prelicensure education requirement waiver will be on a form referenced in the proposed amendment to N.J.A.C. 11:5-2.5(a)8.

N.J.A.C. 11:5-2.6 is amended to add referral agents to the list of those who must pay a \$25.00 fee to apply for an educational waiver.

A proposed amendment to N.J.A.C. 11:5-3.1 adds referral agents to the list of real estate licensees with biennial license terms.

N.J.A.C. 11:5-3.3(c) is amended to state that all license applicants shall submit evidence of completion of the required fingerprint scanning process.

N.J.A.C. 11:5-3.4(a) is amended to add referral agents to the list of real estate licensees required to complete prelicensure examinations.

A new N.J.A.C. 11:5-3.5(b) is added requiring business entity and sole proprietor broker licensees to establish an official e-mail address and to supply their current e-mail address to the Commission when they renew their licenses through the on-line renewal system. Within 30 days of the Commission establishing an Internet-based system for updating their official e-mail addresses, business entity brokers will be required to enter their current e-mail addresses on the new system. After the establishment of an on-line update system, the Commission may thereafter transmit general orders, bulletins and public notices to brokers through e-mail or regular mail.

New N.J.A.C. 11:5-3.5(c) requires brokers to update the information on the on-line broker e-mail notification system within 10 days of making a change to their official e-mail address.

N.J.A.C. 11:5-3.6(a) is amended to require referral agents to be at least 18 years of age. N.J.A.C. 11:5-3.6(b) is amended to require satisfactory completion of the prelicensure course of education and N.J.A.C. 11:5-3.6(c) is amended to require the referral agent to pass the referral agent examination and apply for a license within a year of completing that education. N.J.A.C. 11:5-3.6(d) is amended to require all applicants for licensure as a referral agent to certify that they possess a high school education of equivalency.

N.J.A.C. 11:5-3.7(a) is amended to provide that no broker shall knowingly sponsor a referral agent who does not bear a good reputation for honesty and fair dealing.

New N.J.A.C. 11:5-3.7(b) is proposed to implement the statutory requirement that an application for licensure or renewal 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 that the broker and the applicant have reviewed the restrictions imposed by law upon the activities of a referral agent; and that 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 their employing licensed real estate broker. New N.J.A.C. 11:5-3.7(c) requires that except for renewal applications, in addition to their broker, the applicant shall also sign such a certification.

Amendments are proposed to N.J.A.C. 11:5-3.9 to add referral agents to the list of real estate licensees whose license must be returned if a broker ceases to be active and who must be compensated before such a broker is relicensed.

Proposed amendments to N.J.A.C. 11:5-3.10 add referral agents to the licensees for which employing brokers or brokers of record may designate one other person to authorize license applications.

Amendments to N.J.A.C. 11:5-3.11 add referral agents to the licensees for which on-line transfers may be effectuated and written notice of termination or resignation is required.

Proposed amendments to N.J.A.C. 11:5-3.12 state that applications for real estate referral agent licenses are processed by the Department of Banking and Insurance, Licensing Services Bureau, Real Estate Section. The forms utilized by that Section are referenced in N.J.A.C. 11:5-3.13, which is amended to include referral agent forms. A further amendment at N.J.A.C. 11:5-3.13(a)33 adds the form for change of license type to the list of forms utilized by the Real Estate Section of the Licensing Services Bureau. Proposed amendments to N.J.A.C. 11:5-3.13(d) add referral agents to this provision setting forth the deadlines for submission of license applications and reinstatement applications for all license types.

Proposed amendments to N.J.A.C. 11:5-3.14 sets forth the statutorily prescribed licensing fees for referral agents. An amendment to N.J.A.C. 11:5-3.14 adds “salesperson or referral agent” to the list of real estate licensees who would be required to pay a \$50.00 fee for a change of status to a different license type.

A new section at N.J.A.C. 11:5-3.15 sets forth the education and examination requirements for a change of status from a referral agent to a salesperson or broker-salesperson. The requirements vary depending upon a number of factors, including

whether the applicant has previously been licensed as a broker, broker-salesperson or salesperson and how long they have been licensed as a referral agent.

Proposed amendments to N.J.A.C. 11:5-4.1 extend existing requirements regarding employment agreements and related subjects to agreements between referral agents and their brokers. These include mandatory provisions on the rate of compensation to be paid and when payments shall be made, and the requirement that the broker provide an accounting of compensation due to a referral agent upon termination.

Proposed amendments to N.J.A.C. 11:5-4.4 and 4.5 state that a broker's office or branch offices may not be maintained in a referral agent's dwelling place.

An amendment proposed for N.J.A.C. 11:5-5.5 states that referral agents may not remove or cause to be removed certain files maintained at the office of their employing brokers upon the referral agent's termination or transfer to another broker.

Proposed amendments to N.J.A.C. 11:5-6.1 require that all advertising by a referral agent shall include the name in which they are licensed and the regular business name of the broker through which they are licensed. The amendments also make the other rules regarding what must be included in licensees' advertising applicable to referral agents. A proposed amendment to N.J.A.C. 11:5-6.1(e) requires the business card of a referral agent to indicate that the licensee is a referral agent by the use of the words referral agent or referral associate. New N.J.A.C. 11:5-6.1(s) is proposed to state that no person licensed as a referral agent shall include in any advertisement any content stating or implying that he or she is authorized to engage in any real estate brokerage activity beyond that in which a referral agent is permitted to engage. New N.J.A.C. 11:5-6.1(t) is proposed to state that on all advertisements, except business cards, referral agents

shall include in a clear and conspicuous manner the statement: “Services limited to referring prospects to broker.”

An amendment is proposed to N.J.A.C. 11:5-6.8(c) requiring referral agents to disclose any affiliations with a lender or mortgage broker.

A new section is proposed at N.J.A.C. 11:5-6.10 setting forth rules specific to referral agent licensees. N.J.A.C. 11:5-6.10(a) sets forth the limitations on referral agents’ real estate brokerage-related activities, stating that they are limited to directing prospects to websites and other sources of information on real estate matters available to the general public and referring prospects for sale, purchase, exchange, leasing or rental of real estate to the real estate broker through whom they are licensed as a referral agent. Proposed N.J.A.C. 11:5-6.10(b) states that a referral agent shall not be employed by or licensed by more than one real estate broker at the same time. N.J.A.C. 11:5-6.1(c) states that no person shall be simultaneously licensed as a referral agent and as a real estate broker, broker-salesperson or salesperson in this State. Proposed N.J.A.C. 11:5-6.10(d) states that, other than referring prospects to their broker, referral agents shall not engage in any other brokerage-related activity for their broker or others and lists examples of prohibited activities.

A proposed amendment to N.J.A.C. 11:5-7.1(f) prohibits referral agents from soliciting or receiving compensation from any person other than his or her employing broker. N.J.A.C. 11:5-7.1(f)2 is amended to remove the reference to the Licensed Lenders Act, which is no longer applicable, replacing it with a reference to the Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 et seq.

N.J.A.C. 11:5-7.2(b) is proposed for amendment to limit the compensation paid by a real estate broker to a referral agent to compensation only for referring prospective consumers of real estate brokerage services to the broker.

Amendments are proposed to N.J.A.C. 11:5-7.4 to state that all licensees, including referral agents, shall not engage in “blockbusting” with respect to any persons of any race, religion or ethnic origin.

N.J.A.C. 11:5-8.2 is proposed for amendment to include referral agents in the list of licensees required to pay an additional amount, specified in N.J.S.A. 45:15-35 as amended, to the Real Estate Guaranty Fund.

N.J.A.C. 11:5-9.6 is proposed for amendment to state that only brokers and individuals licensed under authorized brokers as broker-salespersons or salespersons may offer or attempt to negotiate the sale or rental of an interest in a property registered with the New Jersey Bureau of Subdivided Land or provide or prepare contracts in New Jersey pertaining to such properties, and that only such broker-salespersons and salespersons may man promotional booths maintained by the registrants of such properties, or their agents, at trade shows and similar exhibitions in New Jersey.

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 provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendments and new rules assure that individuals licensed as referral agents have a basic knowledge of brokerage practices and applicable laws and

rules, and are subject to the regulatory oversight of the Commission with respect to their advertising and referral activity.

The interests of New Jersey consumers will be protected by the provisions limiting the business activity of referral agents to making referrals. Thus, the proposed new rules and amendments will have a positive social impact.

Economic Impact

The real estate brokers for whom referral agents work will incur increased costs related to maintaining records of referral agents' activities. The Commission expects such costs to be minimal and will be limited to those brokers who decide to employ referral agents. New applicants for referral agent licenses will incur application and licensing fees in amounts specified in N.J.S.A. 45:15-9 and 45:15-15, respectively, as well as the cost of obtaining their prelicensure education. These costs are the same as those applicable to new applicants for salesperson licenses. The Commission will incur system modification costs related to the licensing of referral agents, and some additional costs related to the enforcement of these amendments and new rules over time. Referral agents will not have to incur the expense of obtaining continuing education credits in order to renew their licenses. The costs for licensing and maintaining records that will be incurred by applicants and brokers are currently incurred in the normal course of business with respect to salesperson licenses and are offset by the benefits afforded to referral agents in their not being subject to the continuing education requirement and to consumers by the effective oversight of new referral agent licensees.

Federal Standards Statement

A Federal standards analysis is not required because the proposed 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.

Jobs Impact

The Commission does not believe that these proposed amendments and new rules will cause any jobs to be generated or lost.

Agriculture Industry Impact

The Commission does not expect any impact on the agriculture industry as a result of the proposed amendments and new rules.

Regulatory Flexibility Analysis

Pursuant to N.J.S.A. 52:14B-17, a “small business” means any business resident in this State, which employs fewer than 100 full-time employees; is independently owned and operated; and is not dominant in its field. Most individuals who will be licensed as referral agents and most brokers meet this definition. The proposed new rules and amendments will impose recordkeeping and other compliance requirements on brokers, who will be required to maintain records relating to the activity of and compensation paid to referral agents. No professional services should be required in order to comply with the new requirements. Referral agent licensees will be required to abide by the limitations on their brokerage activity specified in the new rules, which implement the

provisions of P.L. 2009, c. 238. There is no statutory or regulatory requirement that brokers must retain or employ referral agents. Consequently, only by hiring referral agents will brokers affirmatively accept these responsibilities and need to comply with the applicable recordkeeping and compliance requirements. Moreover, the policies underlying the need for the Commission's adequate oversight of the industry and for sufficient protection of the interests of New Jersey consumers are paramount and do not vary with the size of the business. Therefore, no exemptions or different compliance requirements are provided based upon business size.

Smart Growth Impact

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

Housing Affordability Impact Analysis

The proposed amendments and new rules will not have an impact on housing affordability because the proposed amendments and new rules relate to licensing and educational requirements for real estate referral agents.

Smart Growth Development Impact Analysis

The Commission believes that there is an extreme unlikelihood that these proposed amendments and new rules would evoke change in housing production Planning Areas 1 and 2 or within the designated centers under the State Development and

Redevelopment Plan in New Jersey because the proposed amendments and new rules address the licensing and educational requirements for real estate referral agents.

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

11:5-1.1 Commission responsibilities

The Real Estate Commission is responsible for the supervision and regulation of the education, examination and licensing of real estate brokers, [and] **broker-salespersons**, salespersons, **and referral agents**; the regulation of the sale or lease of out-of-[state]**State** properties to New Jersey residents through promotional activities in New Jersey[.]; the investigation and adjudication of disciplinary actions against licensees[.]; and the administration of the Real Estate Guaranty Fund.

11:5-1.3 Functions of the Commission

(a) The Commission is comprised of four sections whose functions are as follows:

1. The Investigations Section is responsible for investigating the qualifications of applicants for licensure, and for investigating complaints against licensed brokers, **broker-salespersons**, [or] salespersons or **referral agents** or individuals who have allegedly engaged in the business of a real estate broker, [or a] salesperson **or referral agent** without being licensed to do so.
2. - 4. (No change.)

11:5-1.5 Commission records open to public inspection; investigative files not open to the public

(a) - (c) (No change.)

(d) The following records are maintained pursuant to the Real Estate Licensing Act:

1. (No change.)

2. Real estate broker, broker-salesperson, salesperson, **referral agent**, school and instructor license applications, and materials submitted therewith to obtain, transfer, reinstate or renew such licenses, and the final disposition of such applications. However, criminal history information obtained by the Commission pursuant to N.J.A.C. 11:5-3.3 and personal data on a licensee such as home address, home telephone number and date of birth are considered confidential;

3. – 5. (No change.)

(e) – (g) (No change.)

11:5-2.1 Educational requirements for salespersons, **referral agents** and brokers in making application for licensure examination

(a) All applicants for a salesperson's, **referral agent's** or broker's license shall present with their license application evidence of their satisfactory completion of a course of education in real estate subjects taught in accordance with N.J.S.A. 45:15-10.1 and as required by this section.

1. This requirement shall also apply to disabled veterans making application for licensure pursuant to N.J.S.A. 45:15-11. However, the Commission shall approve a program of studies in real estate completed by such a veteran offered by a provider other than a licensed school if the program consisted of at least 75 hours in the case of an applicant for a salesperson's **or referral agent's** license, or 225 hours in the case of an applicant for a broker's license and the program was offered by an accredited college or university for credit.

2. No person shall receive credit toward the fulfillment of the salesperson **or referral agent** prelicensure education requirement for attendance at a broker's prelicensure course and no person shall receive credit toward the fulfillment of the broker's prelicensure education requirements for attendance at a salesperson's **or referral agent's** prelicensure course.

(b) To qualify to challenge the **examination for licensure as a** real estate salesperson **or referral agent** [license examination], a candidate must first successfully complete a course of study in real estate at a school licensed by the Commission pursuant to N.J.S.A. 45:15-10.4 consisting of a minimum of 75 hours as specified in (f) below. To qualify to challenge the real estate broker's license exam, a candidate must first successfully complete courses of study in real estate consisting of a minimum of 150 hours as

specified in (g) below, offered by a licensed school or, with respect to those certain courses specified in (g)5 below, offered by some other Commission-approved provider.

(c) (No change.)

(d) The time allotted by any school for a final examination covering real estate subjects shall be applicable toward the minimum hours of course study. No more than five minutes of each course hour may be utilized for breaks in the actual classroom instruction being conducted at any given session of a pre-licensure course. During the time in which actual classroom instruction is conducted, in addition to covering the substantive material mandated by (f) and (g) below, instructors are to provide thorough instruction on the State license examination and license issuance procedures for salesperson, **referral agent** and broker license candidates, as applicable, and to perform all reasonably required administrative functions such as taking attendance and making announcements of general interest.

(e) The requirements that broker license candidates complete the general 90 hour broker prelicensure education course and that salesperson **or referral agent** license candidates complete the 75 hour salesperson prelicensure education course shall not apply to:

1. Applicants for licensure as a broker, [or] salesperson **or referral agent** who have held a real estate broker's license issued by another state and who were actively engaged in the real estate brokerage business for three years or more immediately preceding the date of application;

2. Applicants for licensure as a broker who are attorneys at law admitted to the practice in the State of New Jersey and applicants for licensure as a salesperson **or referral agent** who are attorneys at law admitted to practice in New Jersey or in any other state at the time of making application;

3. Applicants for licensure as a salesperson **or referral agent** who have earned a college degree from any accredited institution of higher education, provided that:

i. – iii. (No change.)

4. Applicants for licensure as a salesperson **or referral agent** who hold or held a real estate license issued by another state, provided that:

i. The applicant has satisfactorily completed a prelicensure course of real estate education at a [proprietary] **proprietary** school, college or university in that other state;

ii. – v. (No change.)

5. Applicants for licensure as a salesperson **or referral agent** who previously held a license as a New Jersey real estate broker and whose last license expired more than two but less than five years prior to making application.

(f) The salesperson's **prelicensure** course **shall consist** of 75 hours of education. **Subject to (e) above, applicants for licensure as a salesperson or referral agent shall complete the 75 hour salesperson prelicensure course that shall include:**

1. – 11. (No change.)

(g) The 150 hours of prelicensure education required of candidates for licensure as a broker or broker-salesperson by N.J.S.A. 45:15-10 shall be acquired as provided in this subsection. A 90 hour general broker's prelicensure course shall first be completed in accordance with the following syllabus and directives. Thereafter, two 30 hour broker courses as described in (g)5, 6 and 7 below shall be completed. All three courses, totaling 150 hours of instruction, must be successfully completed within a period of two years. Where the three courses are not so completed, a candidate must again successfully complete any previously taken course and all courses not previously taken within the two year time frame, and again fulfill the experience requirement established at N.J.S.A. 45:15-9 and N.J.A.C. 11:5-3.8 in order to qualify to challenge the broker license examination.

1. The 90 hour general broker's prelicensure course may be taught in blocks or modules of material. The maximum number of modules into which the course may be divided is 23, with their content corresponding to the 23 subject matter areas identified in the syllabus below. Schools offering courses in modules may include more than one subject matter in a given module. No student may commence a course which is offered in modules on a date other than the starting date of any module. No student shall be given credit for the successful completion of a 90 hour general broker's prelicensure course unless and until they have received instruction in all of the subject matter areas identified below for approximately the number of hours indicated, and passed a comprehensive final examination. The 90 hour general broker's prelicensure course shall be conducted in

accordance with the following syllabus and directives. Substantive instruction shall be provided on the following topics for approximately the number of hours indicated:

i. – xv. (No change.)

xvi. Business and management practices (total of six hours for (g)1xvi(1)

through (6) below), including:

(1) – (4) (No change.)

(5) Community involvement by the company, broker, [and] salespersons **and referral agents**; and

xvii. - xxiii. (No change.)

2.-7. (No change.)

(h) – (i) (No change.)

11:5-2.2 Licensed schools and instructors; requirements

(a) – (w) (No change.)

(x) The purpose of this subsection is to assure that there is a total separation between instructional activity conducted by licensed schools and any solicitation of students, which, as defined in (x)2ii below, means any recruiting efforts or brokerage activity directed at students. These provisions will be construed in a manner consistent with that regulatory objective. A violation of any of these provisions will be considered by the Commission as conduct demonstrating unworthiness for licensure, thereby subjecting the

offending licensee to sanctions pursuant to N.J.S.A. 45:15-17(e) and (t). The Commission may also impose sanctions for a violation of these provisions pursuant to N.J.S.A. 45:15-10.11 and N.J.A.C. 11:5-12.15. Requirements regulating the involvement of licensed schools in soliciting students to become salespersons or referral agents for particular real estate brokers are as follows:

1. At the beginning of the first class session of all salesperson **or referral agent** prelicensure courses, all licensed schools shall distribute to all students in writing the following:

NOTICE

TO: ALL SALESPERSON/**REFERRAL AGENT** COURSE
STUDENTS

FROM: NEW JERSEY REAL ESTATE COMMISSION

RE: SOLICITATION OF SALESPERSON **OR REFERRAL**
AGENT LICENSE CANDIDATES AT PRELICENSURE
SCHOOLS

It is the policy of the New Jersey Real Estate Commission that there be a complete and total separation between the instruction you receive in your prelicensure education course and any efforts by brokers to recruit you to join [the] **their** firm and/or to secure listings or offers on listed properties from you. This policy is reflected in Commission rule N.J.A.C. 11:5-2.2(x), which is reproduced in its entirety below.

If you are subjected to any recruitment efforts or are solicited for listings or offers during class time you should immediately notify your instructor, the Director of your school, and the New Jersey Real Estate Commission by writing to:

New Jersey Real Estate Commission

20 West State Street

PO Box 328

Trenton, New Jersey 08625-0328

Attn: Director, Real Estate Education

You are free to negotiate the terms of your employment with any broker. It is in your own best interest to talk to several prospective employing brokers before deciding which offers the best compensation plan, including post-termination payment provisions, and support package for you. You should also consider a prospective employer's professionalism and reputation for honesty and integrity when deciding which broker to work for.

In the event an enrolled student does not attend the first session of a salespersons/**referral agents** course, a copy of the foregoing notice shall be delivered to that student at the commencement of the first class session which that student does attend.

2. For the purposes of this subsection, the following definitions shall apply:

- i. The phrase "brokerage activity" means any activity which, pursuant to N.J.S.A. 45:15-1 and **45:15-3** would require the person engaging in such

activity to hold a license as a real estate broker, [or] real estate salesperson
or referral agent;

ii. – iii. (No change.)

3. With the exception of posting, distributing **or displaying** written materials as provided in (x)5 below, no school director, instructor, guest lecturer or staff member shall, prior to, nor within seven days following, a student's successful completion of a course, solicit a student to become a salesperson **or referral agent** for any particular real estate broker, nor shall any such person at any time accept any fee or other compensation for soliciting or recruiting students attending their school to apply for employment with a particular real estate broker.

4. No in-person or electronic solicitation of students to apply for employment as salespersons **or referral agents** with a particular real estate broker [or any referral program] shall be permitted at a licensed school location during the prescribed class hours, nor in the breaks between such class hours. Such soliciting may be scheduled and held at licensed schools before, after or separate from the prescribed class hours, for example as a "career night" for students, provided that students are notified in writing in advance that their attendance at such recruitment functions is completely voluntary. However, no school director, instructor, guest lecturer or staff member shall engage in such activity at any time prior to, nor within seven days following, a student's successful completion of a course. Licensed instructors who are also licensed brokers, [or] salespersons **or referral agents** may conduct prelicensure courses, and licensees who are not

licensed instructors may appear as guest lecturers in such courses, so long as their presentations do not include the solicitation of students.

5. Any licensed school which posts, distributes or displays written material which solicits students to inquire about employment as a salesperson **or referral agent** with a particular broker must similarly post, distribute or display comparable written material from any real estate broker who requests the school to do so. However, no written material soliciting students to apply for employment with a particular real estate broker or any referral program shall be distributed during the prescribed class hours.

6. – 9. (No change.)

(y) (No change.)

11:5-2.3 Applications processed by the Education Bureau of the Real Estate Commission

(a) (No change.)

(b) Applications for the following waivers are processed by the Education Bureau of the Real Estate Commission:

1. Waiver of salesperson **or referral agent** prelicensure education requirement;

2. – 3. (No change.)

11:5-2.4 Examination eligibility certificates

(a) The Education Bureau issues Certificates of Examination Eligibility to:

1. – 2. (No change.)
3. Salesperson **or referral agent** license candidates who, as provided in N.J.A.C. 11:5-2.1(e), have had the salesperson's **or referral agent's** license education requirement waived.

11:5-2.5 Education Bureau forms and processing times

(a) The following forms are utilized by the Education Bureau of the Real Estate Commission:

1. – 7. (No change.)
8. Application for waiver of salesperson **or referral agent** prelicensure education requirement;
9. – 14. (No change.)

(b) (No change.)

11:5-2.6 Education Bureau transaction fees

The fees applicable to transactions processed by the Education Bureau of the Real Estate Commission that are unrelated to real estate continuing education are listed in the table

below. Fees applicable to applications for approval of real estate continuing education providers, instructors and courses are listed in N.J.A.C. 11:5-12.17.

EDUCATION BUREAU TRANSACTION FEES

<u>Description</u>	<u>Amount</u>
...	
Application fee, waiver of salesperson or referral agent education	\$ 25.00
...	

SUBCHAPTER 3. LICENSING

11:5-3.1 Terms of real estate licenses

Commencing July 1, 1997, broker, broker-salesperson, salesperson, **referral agent** and branch office licenses shall be issued on the basis of two year license terms. All licenses issued during each biennial term shall run from the date of issuance to the end of the biennial term. All licenses shall expire on June 30 of the second year following the year in which the license term commenced.

11:5-3.3 Criminal history record check

(a) – (b) (No change.)

(c) The applicant, if a natural person, shall submit with his or her **license** application [for a salesperson's, broker-salesperson's or broker's license] the evidence of completion of the fingerprint scanning process set forth in (b) above.

(d) (No change.)

11:5-3.4 Examination rules

(a) In the administration of examinations for licensure as a real estate broker, broker-salesperson, [or] salesperson **or referral agent**, the following examination rules shall apply:

1. – 3. (No change.)

4. The real estate broker license, [and] salesperson **and referral agent** license examinations, required by N.J.S.A. 45:15-10 to be taken and successfully passed by all applicants for a real estate broker, broker-salesperson, [or] salesperson **or referral agent** license before said license may be issued, shall be in the form of a multiple choice examination prepared by a testing service as designated by the Commission. Fees charged applicants to take the real estate examinations and for fingerprinting scanning shall be considered service fees to be paid directly to the testing service and fingerprint scanning vendor separate and apart from any fee required by N.J.S.A. 45:15-9 to be paid to the Commission at the time of the license application.

(b) (No change.)

11:5-3.5 Requests for disclosure of social security numbers **and electronic mailing addresses**

(a) (No change.)

(b) Business entity and sole proprietor broker licensees ("brokers") shall establish an official e-mail address. Brokers shall provide to the Commission their current official e-mail address at the time of applying for license renewal through the on-line renewal system. Upon the establishment by the Commission of an Internet-based system for updating brokers' official e-mail addresses, brokers shall, within 30 days of being advised of the availability of that system, enter their current official e-mail address on that system. Subsequent to the implementation of the Internet-based system for updating the official e-mail addresses of brokers, the Commission shall, at its discretion, transmit all general orders, bulletins and public notices to brokers either through e-mail or regular mail.

(c) Upon making any subsequent change to their official e-mail address, the broker shall update the information on the on-line broker e-mail address notification system within 10 days of making such a change.

11:5-3.6 Salesperson's **and referral agent's** licenses; age requirement

(a) No salesperson's **or referral agent's** license shall be issued to any person who has not attained the age of 18 years.

(b) Every applicant for licensure as a salesperson **or referral agent** shall present with [his/her] **his or her** application for licensure a certificate of satisfactory completion of a course of education in real estate subjects at a school licensed by the Commission pursuant to N.J.S.A. 45:15-10.1(a) and 10.4 and N.J.A.C. 11:5-2.2, unless waived by the Commission in accordance with the provisions of N.J.S.A. 45:15-10.2.

(c) An applicant must pass the State salesperson **or referral agent** examination and apply for and request the issuance of a salesperson's **or referral agent's** license not later than one year after the date of successful completion of the course prescribed at N.J.A.C. 11:5-2.1. Any person who fails to apply for the issuance of a salesperson's **or referral agent's** license within the one year period shall be required to retake and successfully complete the prescribed course in real estate and the examination.

(d) All applicants for licensure as a salesperson **or referral agent** shall certify that they possess a high school education or equivalency. The Commission may require the production of evidence of such education or equivalency as a condition to issuing a license to any applicant.

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

(a) No broker shall knowingly sponsor an applicant for licensure as a real estate salesperson **or referral agent** who does not bear a good reputation for honesty and fair dealings.

(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.** The broker and the applicant have reviewed the restrictions imposed by law upon the activities of a referral agent; and
- 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.

(c) Applications for licensure as a referral agent other than renewal applications shall also contain a certification signed by the applicant confirming the statements in **(b)1** and **2** above.

11:5-3.9 Return of license when broker ceases to be active; office closing; change of broker of record

(a) Each broker who ceases to be active shall within five business days of the cessation of business return to the Commission his license, and the licenses of all salespersons, [and] broker-salespersons **and referral agents** for cancellation.

(b) (No change.)

(c) No broker engaging in the real estate brokerage business as a sole proprietor, as a broker of record of a partnership or as a broker of record of a corporation shall be relicensed [as broker or salesperson] **by the Commission** unless within 30 days of the date of which the broker ceases engaging in the real estate brokerage business he or she shall complete and submit an affidavit to the Commission certifying that:

1. The broker's license, the corporate or partnership license, and the licenses of all **referral agents**, salespersons and broker-salespersons have been returned to the Commission for cancellation;

2. (No change.)

3. All commissions **and other compensation** owed to salespersons, **referral agents** and broker-salespersons have been paid, or, if not yet received by the broker, will be paid upon receipt;

4. – 10. (No change.)

(d) (No change.)

(e) No new broker of record of a corporation or partnership shall be substituted unless the new broker of record and the former broker of record prepare and submit a joint affidavit to the Commission[er] certifying that:

1. – 2. (No change.)

3. All salespersons', **broker-salespersons' and referral agents'** commissions **and other compensation** are paid to date;

4. The new broker acknowledges responsibility to pay salespersons', **broker-salespersons' and referral agents'** commissions in accordance with the policy for payment existing on the date of substitution;

5. – 8. (No change.)

11:5-3.10 Sponsoring of license applications or transfers of license

(a) The New Jersey Real Estate Commission, Department of **Banking and Insurance**, hereby grants to brokers of record or employing brokers the right to have initial applications for licenses of **referral agents**, salespersons or broker-salespersons who will be in their employ [sponsored] **authorized** by one other person, other than the [authorized] broker of record or employing broker. This other person must be the holder of a broker's license and an officer of the broker of record's corporation or a member of his or her partnership, as the case may be. In the event the employing broker is a sole proprietor, such a designee shall be licensed as a broker-salesperson in the employ of the

employing broker. The broker of record or employing broker, as applicable, shall file with the New Jersey Real Estate Commission a power of attorney granting this authority to the designated person at least 10 days prior to delegating performance of the function of that person.

(b) Any employing broker or broker of record may authorize one individual in their employ to sign and surrender to the Real Estate Commission, in accordance with the requirements of N.J.S.A. 45:15-14, the real estate **referral agent**, salesperson or broker-salesperson license of any licensee whose employment relationship with that employing broker or broker of record is terminated. The employing broker or broker of record shall, on a form to be provided by the Commission, notify the Commission in writing of the designation of the employee so authorized, which person need not be the holder of a real estate license. The form designating the authorized person shall be filed with the Real Estate Commission at least 10 days prior to delegating performance of the function of that person. The employing broker or broker of record shall immediately notify the Real Estate Commission in writing in the event that, for any reason, the authority of the person so designated to perform that function is revoked, and shall indicate whether a new designee is to be named. Only the employing broker or broker of record and one other person duly designated and identified to the Real Estate Commission as provided in this section may perform the said license transfer functions at any one time.

11:5-3.11 License transfer and termination procedures

(a) – (c) (No change.)

(d) In cases where a broker terminates the employment of a broker-salesperson, [or] salesperson **or referral agent** with his or her firm or where a broker-salesperson, [or] salesperson **or referral agent** resigns such employment, written notice specifying the effective date of the termination or resignation shall be provided by the terminating broker or by the resigning licensee, as applicable. Within five business days of the broker's issuance of a notice of termination or receipt of a resignation, if the licensee has not requested the delivery of the license to them so as to personally facilitate a transfer of their license to another broker, the broker shall either:

1. – 3. (No change.)

(e) The following regulations pertain to online transfers and terminations:

1. Only **referral agent**, salesperson or broker-salesperson licenses can be transferred or terminated online;

2. – 3. (No change.)

4. Online transfers are not allowed unless the license of a **referral agent**, salesperson or broker-salesperson has been terminated by the broker of record or employing broker under whose supervision the transferring individual was licensed to engage in brokerage activity prior to the termination.

(f) (No change.)

11:5-3.12 License applications processed by the Real Estate Section of the Department of Banking and Insurance Licensing Services Bureau

(a) Applications for the following license types are processed by the Department of Banking and Insurance Licensing Services Bureau, Real Estate Section:

1. (No change.)

2. Real Estate Referral Agent;

Recodify existing 2. - 6. as **3. - 7.** (No change in text.)

11:5-3.13 Licensing Services Bureau, Real Estate Section forms, instructions, processing times, deadlines

(a) The following forms are utilized by the Real Estate Section of the Department of Banking and Insurance Licensing Services Bureau:

1. Original salesperson **or referral agent** license application;

2. – 4. (No change.)

5. [Salesperson] **Referral agent, salesperson** or broker-salesperson transfer of license (on rear of license document);

6. – 9. (No change.)

10. Application for reactivation within current license term or for reinstatement of **referral agent or salesperson** license;

11. - 30. (No change.)

31. Partnership/LLC/other irrevocable consent to service of process; [and]
32. The form to request fingerprint scan processing utilized by the State-contracted fingerprint scanning vendor[.]; **and**
- 33. Change of license type.**

(b) – (c) (No change.)

(d) Deadlines for the submission of license applications and other required forms are as follows:

1. Original salesperson, **referral agent**, broker-salesperson or broker: one year from date on which prelicensure course and education requirements were completed (see N.J.A.C. 11:5-3.6(c) for salespersons **and referral agents** and 11:5-3.8(e) for brokers and broker-salespersons);
2. Applications for the reinstatement of a salesperson, **referral agent**, broker-salesperson or brokers license: two years from the expiration date of the last license held unless exempted as provided in N.J.S.A. 45:15-9;
3. – 6. (No change.)

(e) (No change.)

11:5-3.14 Licensing fees

The fees applicable to transactions processed by the Department of Banking and Insurance Licensing Services Bureau, Real Estate Section are listed in the table below.

Renewal fees are assessed biennially for the renewal of licenses for a two-year term pursuant to N.J.S.A. 45:15-15. All other fees are payable in full regardless of when during a license term the application to which the fee pertains is submitted.

LICENSE FEES

Initial License Fees (amounts include \$50.00 application fee and, where applicable, Real Estate Guaranty Fund fees of \$10.00 for salespersons **and referral agents** and \$20.00 for brokers and broker-salespersons. See N.J.S.A. 45:15-35. Amounts do not include the processing fee for fingerprint scanning payable directly to the State-contracted vendor):

<u>License</u>	<u>Fee</u>
...	
Referral agent	\$160.00
...	

Renewal Fees:

<u>License</u>	<u>Fee</u>
...	
Referral agent	\$100.00
...	

Late Renewal Fees:

<u>License</u>	<u>Fee</u>
----------------	------------

...

Referral agent **\$20.00**

Transfers:

<u>License</u>	<u>Fee</u>
----------------	------------

...

Referral agent **\$25.00**

Reinstatements of unexpired licenses
(amounts include \$ 50.00 application fee):

<u>License</u>	<u>Fee</u>
----------------	------------

...

Referral agent **\$150.00**

...

Changes:

<u>Type</u>	<u>Fee</u>
-------------	------------

...

Change of status--sole proprietor, broker, broker of record, \$50.00
[or] broker-salesperson, **salesperson or referral agent**

...

11:5-3.15 Change of status from referral agent to salesperson or broker-salesperson

(a) A licensed referral agent who was not previously licensed as a broker, broker-salesperson or salesperson and who has been licensed as a referral agent for less than one year shall be eligible for licensure as a salesperson without being required to complete any continuing education.

(b) A licensed referral agent who was not previously licensed as a broker, broker-salesperson or salesperson and who has been licensed as a referral agent for between one and six years immediately preceding making application for a change of status to that of a licensed salesperson shall, in order to qualify for licensure as a salesperson, complete 24 hours of continuing education, all of which shall be in core topics as set forth in N.J.A.C. 11:5-12.4. The 24 hours of continuing education shall be completed within the two years immediately preceding application for licensure as a salesperson.

(c) A licensed referral agent who was not previously licensed as a broker, broker-salesperson or salesperson and who has been licensed as a referral agent for more than the six immediately preceding years shall, in order to qualify for licensure as a salesperson, be required to complete the prelicensure education requirement applicable to salespersons and to pass the State license examination for salespersons.

(d) A licensed referral agent who was previously licensed as a broker, broker-salesperson or salesperson who has been licensed as a referral agent for the six immediately preceding years or any lesser period shall, in order to qualify for reissuance of a broker, broker-salesperson or salesperson license, complete the hours of continuing education as set forth below:

- 1. To qualify for relicensure as a salesperson, a person who has been licensed as a referral agent for less than three years shall complete 12 hours of continuing education, all of which shall be in core topics as set forth in N.J.A.C. 11:5-12.4 within the two years immediately preceding application.**

2. To qualify for relicensure as a salesperson, a person who has been licensed as a referral agent three years or more, but less than six years, shall complete 18 hours of continuing education, all of which shall be in core topics as set forth in N.J.A.C. 11:5-12.4 within the two years immediately preceding application.

3. To qualify for relicensure as a broker or broker-salesperson, a person who has been licensed as a referral agent for less than three years shall complete 18 hours of continuing education within two years immediately preceding application, all of which shall be in core topics as set forth in N.J.A.C. 11:5-12.4.

4. To qualify for relicensure as a broker or broker-salesperson, a person who has been licensed as a referral agent for three years or more, but less than six years, shall complete 24 hours of continuing education within the two years immediately preceding application, all of which shall be in core topics as set forth in N.J.A.C. 11:5-12.4.

(e) A licensed referral agent who was previously licensed as a broker, broker-salesperson or salesperson who has been licensed as a referral agent for more than the six immediately preceding years shall, in order to qualify for re-licensure as a broker, broker-salesperson or salesperson, complete 30 hours of continuing

education, 24 hours of which shall be in core topics as set forth in N.J.A.C. 11:5-12.4, and shall pass the broker's license examination or the salesperson's license examination, as applicable.

11:5-4.1 Employment agreements; commissions; accounting to salespersons **and referral agents**; actions for collection of compensation

(a) No salesperson **or referral agent** may commence operations as such for a broker and no broker may authorize a salesperson **or referral agent** to act as such on his or her behalf until a written agreement as provided in this subsection has been signed by the broker and salesperson **or referral agent**. Prior to an individual's commencement of activity as a salesperson **or referral agent** under the authority of a broker, the broker and salesperson **or referral agent** shall both sign a written agreement which recites the terms under which the services of the salesperson **or referral agent** have been retained by the broker. Such terms shall include, but need not be limited to, the following:

1. The rate of compensation to be paid to the salesperson **or referral agent** during his or her affiliation with the broker;
2. A promise by the broker to pay to the salesperson **or referral agent** his or her portion of commissions earned within 10 business days of their receipt by the broker or as soon thereafter as such funds have cleared the broker's bank, or in accordance with another payment schedule explicitly set forth in the employment agreement;

3. The rate of compensation payable to the salesperson **or referral agent** on transactions which close and, if applicable, on renewals which occur subsequent to the termination of the salesperson's **or referral agent's** affiliation with the broker; and

4. (No change.)

(b) A copy of the fully executed agreement shall be provided to the salesperson **or referral agent** upon the commencement of his or her affiliation with the broker, and the original thereof shall be maintained by the broker as a business record in accordance with N.J.A.C. 11:5-5.5.

(c) (No change.)

(d) In the event that any monies due a salesperson **or referral agent** under the terms of the written agreement with their broker are not paid within 10 business days of the broker's receipt of such funds or promptly thereafter upon their having cleared the broker's account, the broker shall provide to the salesperson **or referral agent** a complete and comprehensive written explanation of the failure to pay such monies.

(e) Upon the termination of the affiliation of a salesperson **or referral agent** with a broker, the broker shall make a complete accounting in writing of all monies due the salesperson **or referral agent** as of the date of termination and/or which may become due in the future. In the event any sums so accounted for are not in accord with the terms of

the post-termination compensation clause in the written agreement between the broker and the salesperson **or referral agent**, the broker shall give a complete and comprehensive written explanation of any difference to the salesperson **or referral agent** with the accounting. Such accounting shall be delivered to the salesperson **or referral agent** not later than 30 days after termination.

(f) Copies of all written agreements as described in (a) above, of all written explanations of the failure to pay compensation due a salesperson **or referral agent** on a timely basis as described in (e) above, and of all accountings and written explanations regarding compensation due a salesperson **or referral agent** subsequent to the termination of their affiliation with a broker as described in (f) above shall be maintained by the broker, with adequate proof of the delivery of the same to the salesperson **or referral agent**, for a period of six years.

(g) In situations where the Commission confirms that a broker has complied with all of the requirements imposed by this section, the Commission will not further investigate a complaint alleging the non-payment of a commission by a broker to a salesperson **or referral agent** unless such complaint is accompanied by a copy of an arbitration decision or the equivalent, or a copy of a judgment of a court of competent jurisdiction secured by the salesperson **or referral agent** against the broker. Unless appealed, the failure by a broker to pay monies awarded to a salesperson **or referral agent** under the terms of any such decision or judgment within 30 days of its effective date shall subject the broker to sanctions pursuant to N.J.S.A. 45:15-17.

(h) Broker, [and] salesperson **and referral agent** licensees may only bring or maintain actions in the courts of New Jersey for the payment of compensation due them for brokerage services performed as provided in N.J.S.A. 45:15-3.

1. - 2. (No change.)

(i) (No change.)

11:5-4.4 Maintained offices

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

(c) No broker's maintained place or places of business shall be in the dwelling premises of any salesperson **or referral agent** in that broker's employ.

(d) (No change.)

11:5-4.5 Branch office compliance with N.J.A.C. 11:5-4.4 (Maintained offices)

(a) (No change.)

(b) No license shall be issued for a branch office situated in the dwelling premises of a **referral agent, a salesperson or a broker-salesperson.**

(c) – (e) (No change.)

(f) When a branch office license is issued to a broker it shall specifically set forth the name of the broker and the address of the branch office, and shall be conspicuously displayed at all times in the branch office. The branch office shall also prominently display the name of the broker-salesperson licensee in charge as "office supervisor" and the names of all other [broker-salespersons and the salespersons] **licensees** doing business at that branch office.

(g) (No change.)

11:5-5.5 Inspection of records

(a) – (b) (No change.)

(c) All files on pending and closed sale, exchange or lease transactions, all files on listings for sales or rentals, and all property management files shall be maintained or stored at the offices of brokers licensed as employing brokers or corporate or partnership brokers. Upon terminating their employment with such a broker, and/or transferring to the employ of another such broker, no **referral agent, salesperson or broker-salesperson**

shall remove or cause to be removed any of the contents of such files from the offices of the broker. The term "files" as used herein shall be construed to mean all transaction records required to be kept by brokers pursuant to N.J.A.C. 11:5-5.4.

11:5-6.1 Advertising rules

(a) (No change.)

(b) All advertising of any licensed individual, partnership, firm, or corporate broker shall include their regular business name which for the purposes of these rules, shall mean the name in which that individual, partnership, firm or corporation is on record with the Commission as doing business as a real estate broker. All advertising by a **referral agent**, a salesperson or a broker-salesperson shall include the name in which they are licensed and the regular business name of the individual, partnership, firm or corporate broker through whom they are licensed. If such advertisements contain a reference to the licensed status of the person placing the ad, their status as a **referral agent**, a salesperson or a broker-salesperson must be indicated through inclusion of a descriptive term as provided in (e) below. A **referral agent** or salesperson may not indicate in any advertisement or otherwise that he or she is licensed as a broker-salesperson.

1. In all advertisements which contain the name of a **referral agent**, a salesperson or a broker-salesperson, the regular business name of the individual, partnership, firm or corporate broker through whom that person is licensed shall appear in

larger print or be displayed in a more prominent manner than the name of the **referral agent**, salesperson or broker-salesperson.

2. Where a webpage on the worldwide web established by a **referral agent**, a salesperson, a broker-salesperson, or a team of such licensees is not linked electronically to the webpage of the broker through whom the person or team is licensed, the webpage shall display the telephone number and may display the street address of the licensed brokerage office from which the individual or team operates as real estate licensees. That information shall appear in wording as large as the predominant size wording on the webpage.

(c) (No change.)

(d) Any advertising which contains a home telephone number, cell-phone number, beeper or pager number, home fax number, or [E-mail] **e-mail** address of an individual **referral agent**, salesperson or broker-salesperson, or a team of such licensees, shall also include the telephone number and may include the street address of the licensed brokerage office from which the advertising licensee(s) operate. All such advertising shall also contain language identifying each number included in the advertising. For example, a home telephone number may be followed or preceded by the word "home" or the abbreviation "res."

1. No advertising shall represent that a location is a place at which the business of a real estate licensee is conducted unless that location is the licensed main office or a licensed branch office of the broker through whom the advertising licensee is licensed. [Salespersons] **Referral agents, salespersons** and broker-salespersons shall not include in their advertisements any reference to a "home office."

(e) The business card of any licensed referral agent shall indicate that this licensee is a referral agent by the use of the words referral agent or referral associate. The business card of any licensed salesperson shall indicate that this licensee is a salesperson by the use of the words salesperson or sales representative, or sales associate, or where permitted by law, realtor-associate or realtist associate. The business card of any licensed broker-salesperson shall indicate that this licensee is a broker-salesperson by the use of the words broker-associate, associate broker, realtor-associate or broker-salespersons. The business card of any licensed broker shall indicate that this licensee is a broker by use of the word broker or, where permitted by law, Realtor or Realtist.

(f) – (r) (No change.)

(s) No person licensed as a referral agent shall include in any advertisement any content stating or implying that he or she is authorized to engage in real estate brokerage activity beyond that which he or she is permitted under N.J.S.A. 45:15-3 or N.J.A.C. 11:5-6.10.

(t) On all advertisements, except business cards, referral agents shall include the following statement in a clear and conspicuous manner: Services limited to referring prospects to broker.

11:5-6.8 Disclosure of licensee's affiliation with a mortgage lender or mortgage broker to whom the licensee refers buyers

(a) – (b) (No change.)

(c) Where an employing broker or broker of record of a real estate agency has an individual or corporate affiliation with a lender or mortgage broker, all licensees licensed with that real estate broker must provide the required disclosures to buyers referred to the affiliate.

1. (No change.)

2. Where a **referral agent, a** salesperson or **a** broker-salesperson has such an individual affiliation, he or she must provide the disclosure to all buyers he or she refers to the affiliate.

(d) (No change.)

11:5-6.10 Referral agents

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

1. Directing prospects to websites and other sources of information on real estate matters generally available to the general public; and

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.

(b) A referral agent shall not be employed by or licensed with more than one real estate broker at any given time.

(c) No person shall be simultaneously licensed as a referral agent and a real estate broker, broker-salesperson or a salesperson in this State.

(d) Referral agents shall not engage in prohibited brokerage activity for their broker or for others, and shall not receive compensation from their broker or any other person for engaging in prohibited brokerage activity. For the purposes of this section, prohibited brokerage activity includes, but is not limited to, the following:

1. Negotiating the purchase, sale, or exchange of an interest in real estate;

2. Leasing or renting or offering to lease or rent any interest in real estate;

3. Collecting rents for the use of real estate or any other monies;

4. Negotiating commissions or compensation rates and otherwise negotiating or signing listing or buyer-brokerage agreements;

- 5. Negotiating or signing contracts of sale or leases of real estate;**
- 6. Accepting any funds of others to be held by a real estate broker acting in that capacity or as escrow agent or as the temporary custodian of the funds of others in a real estate transaction;**
- 7. Conducting a public or private competitive sale of land or any interest in lands;**
- 8. Negotiating, assisting in, or directing, the closing of any transaction which results or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate;**
- 9. Negotiating, offering, attempting to, or agreeing to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of any real estate;**
- 10. Conducting showings or open house presentations of properties;**
- 11. Participating in expositions, marketing shows or other presentations where information on specific properties or real estate interests marketed through a common promotional plan, including but not limited to planned unit developments, is provided to the public;**
- 12. Providing information on listings, either in person, or through electronic communication including telephone and the internet, beyond the information which referral agents are permitted to provide with respect to websites and other sources of information as referenced in (a) above; and**
- 13. Producing or presenting comparative market analyses or similar studies of real estate.**

11:5-7.1 Prohibition against licensees receiving dual compensation for dual representation in the sale or rental transaction

(a) – (e) (No change.)

(f) Except as provided in (g) below, when providing mortgage financing services related to the purchase or sale of a one to six family residential dwelling, a portion of which may be used for non-residential purposes, located in New Jersey:

1. (No change.)

2. A real estate **referral agent**, salesperson or broker-salesperson shall not solicit or receive any compensation or reimbursement pursuant to (e) above from any person other than his or her employing real estate broker unless licensed as a **residential** mortgage broker or mortgage banker **or a mortgage loan originator** by the Department of Banking and Insurance pursuant to the New Jersey [Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq.] **Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 et seq.**

(g) (No change.)

11:5-7.2 Prohibition against kickbacks for related business referrals

(a) (No change.)

(b) **Any compensation paid by a real estate broker to a referral agent shall be limited to compensation for referring prospective consumers of real estate brokerage services to the broker.** Real estate brokers are prohibited from offering incentives to the **referral agents**, salespersons or broker-salespersons licensed under them for merely referring clients or customers to a particular lender, mortgage broker or other provider of related services. Any compensation paid by a real estate broker to a salesperson **or broker-salesperson** for services in transactions related to a sale or rental transaction must be for services actually performed by the salesperson beyond mere referral **to a mortgage lender, mortgage broker or other provider of related services.** For example, a real estate broker who provides in-house mortgage services may compensate a salesperson licensed with that broker who performs actual mortgage services. However, the broker is prohibited from offering bonuses or any extra consideration of any kind to [salespersons] **licensees of his or her firm** for merely referring buyers to the in-house mortgage service or any particular lender or mortgage broker. For example, a real estate broker shall not offer or pay a salesperson a higher commission rate on a real estate transaction because the mortgage is placed through the in-house mortgage service or affiliated lender. A broker shall not award prizes or bonuses to salespersons based upon the number of customer referrals made to the in-house mortgage service or to a particular lender.

11:5-7.4 Blockbusting; solicitation

(a) No [broker or salesman] **licensee** shall affirmatively solicit the sale, lease or the listing for sale or lease of residential property on the grounds of alleged change of value due to the presence or prospective entry into the neighborhood of a person or persons of another race, religion or ethnic origin, nor shall distribute, or cause to be distributed, material, or make statements designed to induce a residential property owner to sell or lease his property due to such change in the neighborhood.

(b) Every real estate broker who, in a personal meeting, solicits the sale, lease or the listing for sale or lease of three or more residential properties fronting on either side of any street between intersecting or cross streets or between a cul-de-sac or other like termination point and an intersecting or cross street within the same month, whether directly or through personal meetings attended by his or her [salespersons] **firm's licensees**, shall maintain a permanent record for at least one year from the date of said solicitation, which shall be available for inspection by the Commission or any representative thereof upon request, setting forth the name and address of each person so solicited, the address of the property involved, the name of the licensee actually making such solicitation, and the date upon which the solicitation took place. At the request of the Commission or any representative thereof, any such broker shall file with the Commission a copy of the permanent record, or a statement containing the same information as set forth in the permanent record. Such filing shall be made with the Commission no later than [ten] **10** days following the request therefore.

11:5-8.2 Real estate guaranty fund

(a) Every [licensed] real estate [broker and licensed broker-salesperson] **licensee** shall pay an additional amount as specified in N.J.S.A. 45:15-35 [and every licensed real estate salesperson shall pay an additional amount as specified in N.J.S.A. 45:15-35] with their application for a license [renewal next following January 1, 1993].

1. (No change.)

(b) (No change.)

11:5-9.6 Representation of applicants and registrants by New Jersey real estate brokers

(a) – (b) (No change.)

(c) Only authorized brokers and persons licensed under them may distribute literature on, or personally or via telephone solicit for prospective purchasers [or] **and only persons licensed under such authorized brokers as broker-salespersons or salespersons may offer or attempt to negotiate the sale or rental of an interest in a registered property, or provide or prepare contracts in New Jersey pertaining to registered property.**

1. (No change.)

2. An authorized broker [or a person licensed under them] **and only persons licensed under such authorized brokers as broker-salespersons or salespersons** shall be present at any promotional booth maintained by a registrant

or an agent of a registrant at any trade show or similar exhibition in New Jersey,
and at any seminar promoting the sale or rental of registered property conducted
by a registrant or any agent of a registrant in this State.

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