ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 3099

STATE OF NEW JERSEY

213th LEGISLATURE

ADOPTED JUNE 4, 2009

Sponsored by:
Assemblywoman BONNIE WATSON COLEMAN
District 15 (Mercer)
Assemblyman PETER J. BIONDI
District 16 (Morris and Somerset)
Assemblyman PATRICK J. DIEGNAN, JR.
District 18 (Middlesex)

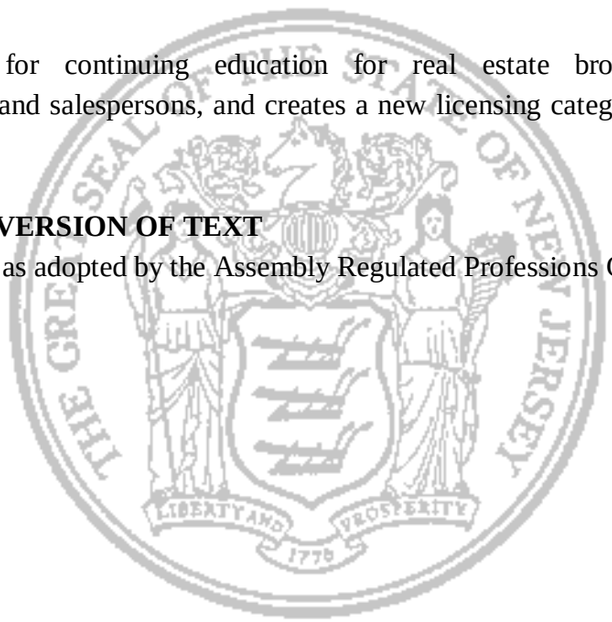
Co-Sponsored by:
Assemblyman Giblin, Assemblywoman Pou, Assemblyman Chivukula and Senator Sweeney

SYNOPSIS

Provides for continuing education for real estate brokers, broker-salespersons and salespersons, and creates a new licensing category of referral agents.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Regulated Professions Committee.



(Sponsorship Updated As Of: 1/8/2010)

AN ACT concerning continuing education requirements for real estate brokers, broker-salespersons and salespersons and creating a new licensing category of referral agents, amending various parts of the statutory law, and supplementing chapter 15 of Title 45 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. R.S.45:15-1 is amended to read as follows:

45:15-1. No person shall engage either directly or indirectly in the business of a real estate broker, broker-salesperson **[**or**]**, salesperson or referral agent, temporarily or otherwise, and no person shall advertise or represent himself as being authorized to act as a real estate broker, broker-salesperson **[**or**]**, salesperson or referral agent, or to engage in any of the activities described in R.S.45:15-3, without being licensed so to do as hereinafter provided.

(cf: P.L.1993, c.51, s.1)

2. R.S.45:15-3 is amended to read as follows:

45:15-3. A real estate broker, for the purposes of **[**this article**]** R.S.45:15-1 et seq., is defined to be a person, firm or corporation who, for a fee, commission or other valuable consideration, or by reason of a promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate or solicits for prospective purchasers or assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate or negotiates, or offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon or transfer of any real estate for others, or any person who, for pecuniary gain or expectation of pecuniary gain conducts a public or private competitive sale of lands or any interest in lands. In the sale of lots pursuant to the provisions of **[**this article**]** R.S.45:15-1 et seq., the term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

agree to negotiate the sale or exchange, of any such lot or parcel of real estate.

A real estate salesperson, for the purposes of [this article] R.S.45:15-1 et seq., is defined to be any natural person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of a licensed real estate broker to sell or offer to sell, buy or offer to buy or negotiate the purchase, sale or exchange of real estate, or offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate, or to lease or rent, or offer to lease or rent any real estate for others, or to collect rents for the use of real estate, or to solicit for prospective purchasers or lessees of real estate, or who is employed by a licensed real estate broker to sell or offer to sell lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell real estate, or any parts thereof, in lots or other parcels.

A real estate broker-salesperson, for the purposes of [this amendatory and supplementary act] R.S.45:15-1 et seq., is defined to be any natural person who is qualified to be licensed as a real estate broker but who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of a licensed real estate broker to perform the functions of a real estate salesperson as defined herein.

A real estate referral agent, for the purposes of R.S.45:15-1 et seq., is defined to be any natural person employed by and operating under the supervision of a licensed real estate broker whose real estate brokerage-related activities are limited to referring prospects for the sale, purchase, exchange leasing or rental of real estate or an interest therein. Referral agent licensees shall only refer such prospects to the real estate broker through whom they are licensed as a referral agent and shall only accept compensation for their activity as a referral agent from that broker. A referral agent shall not be employed by or licensed with more than one real estate broker at any given time. No person may simultaneously be licensed as a referral agent and a real estate broker, broker-salesperson or salesperson and no person licensed as a referral agent may engage in the business of a real estate broker, broker-salesperson or salesperson to an extent beyond that authorized by their status as a licensed real estate agent.

No person, firm, partnership, association or corporation shall bring or maintain any action in the courts of this State for the collection of compensation for the performance of any of the acts mentioned in [this article] R.S.45:15-1 et seq. without alleging and

proving that he was a duly licensed real estate broker at the time the alleged cause of action arose.

No person claiming to be entitled to compensation as a referral agent, salesperson or broker-salesperson for the performance of any of the acts mentioned in [chapter 15 of Title 45 of the Revised Statutes] R.S.45:15-1 et seq. shall bring or maintain any action in the courts of this State for the collection of compensation against any person, firm, partnership or corporation other than the licensed broker with whom the referral agent, salesperson or broker-salesperson was employed at the time the alleged cause of action arose and no action shall be brought or maintained without the claimant alleging and proving that he was a duly licensed real estate referral agent, salesperson or broker-salesperson at the time the alleged cause of action arose.

(cf: P.L.1993, c.51, s.3)

3. R.S.45:15-9 is amended to read as follows:

45:15-9. All persons desiring to become real estate brokers, broker-salespersons [or], salespersons or referral agents shall apply to the commission for a license under the provisions of this article. Every applicant for a license as a broker, broker-salesperson [or], salesperson or referral agent shall be of the age of 18 years or over, and in the case of an association or a corporation the directors thereof shall be of the age of 18 years or over. Application for a license, whether as a real estate broker, broker-salesperson [or a], salesperson or referral agent, shall be made to the commission upon forms prescribed by it and shall be accompanied by an application fee of $50 which fee shall not be refundable. Every applicant for a license whether as a real estate broker, broker-salesperson [or], salesperson or referral agent shall have the equivalent of a high school education. The issuance of a license to an applicant who is a nonresident of this State shall be deemed to be his irrevocable consent that service of process upon him as a licensee in any action or proceeding may be made upon him by service upon the secretary of the commission or the person in charge of the office of the commission. The applicant shall furnish evidence of good moral character, and in the case of an association, partnership or corporation, the members, officers or directors thereof shall furnish evidence of good moral character. The commission may make such investigation and require such proof as it deems proper and in the public interest as to the honesty, trustworthiness, character and integrity of an applicant. Any applicant for licensure pursuant to this section and any officer, director, partner or owner of a controlling interest of a corporation or partnership filing for licensure pursuant to this section shall submit to the commission the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The

commission is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for the purposes of facilitating determinations concerning licensure eligibility. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commissioner in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background was performed. Every applicant for a license as a broker or broker-salesperson shall have first been the holder of a New Jersey real estate salesperson's license and have been actively engaged on a full-time basis in the real estate brokerage business in this State as a real estate salesperson for three years immediately preceding the date of application, which requirement may be waived by the commission where the applicant has been the holder of a broker's license in another state and actively engaged in the real estate brokerage business for at least three years immediately preceding the date of his application, meets the educational requirements and qualifies by examination. No license as a broker shall be granted to a general partnership or corporation unless at least one of the partners or officers of said general partnership or corporation qualifies as and holds a license as a broker to transact business in the name and on behalf of said general partnership or corporation as its authorized broker and no such authorized broker shall act as a broker on his own individual account unless he is also licensed as a broker in his individual name; the license of said general partnership or corporation shall cease if at least one partner or officer does not hold a license as its authorized broker at all times. A change in the status of the license of an authorized broker to an individual capacity or vice versa shall be effected by application to the commission accompanied by a fee of $50. No license as a broker shall be granted to a limited partnership unless its general partner qualifies as and holds a license as a broker to transact business in the name of and on behalf of the limited partnership. In the event that a corporation is a general partner of a limited partnership, no license as a broker shall be granted to the limited partnership unless the corporation is licensed as a broker and one of the officers of the corporation qualifies as and holds a license as the corporation's authorized broker.

An application for licensure as a referral agent and for any renewal thereof shall include a certification signed by the licensed real estate broker by whom the applicant is or will be employed, on

a form and in a manner prescribed by the commission, which certification shall confirm that: the broker and the applicant or renewing referral agent have reviewed the restrictions imposed by law upon the activities of a referral agent; and the applicant or referral agent has acknowledged that he is aware that such activity is limited to referring prospective consumers of real estate brokerage services to that broker.

In the event that a person who held a broker, broker-salesperson or salesperson license fails to renew that license and then, in the two years immediately following the expiration date of the last license held, seeks to reinstate such license, the commission shall require, as a condition to such reinstatement during that two-year period, that the applicant submit proof of having completed the continuing education requirement applicable to that license type in the preceding license term.

In the event that any person to whom a broker's or broker-salesperson's license has been or shall have been issued shall fail to renew such license or obtain a new license for a period of more than two but less than five consecutive years after the expiration of the last license held, prior to issuing another broker or broker-salesperson license to the person, the commission shall require such person to complete the continuing education requirements applicable to salesperson licensees in the preceding license term, to work as a licensed salesperson on a full-time basis for one full year, to pass [an] the broker's license examination, and to successfully complete a 90-hour general broker's pre-licensure course at a licensed real estate school, as the commission shall prescribe by regulation. In the event that any person to whom a broker's or broker-salesperson's license has been or shall have been issued fails to maintain or renew the license or obtain a new license for a period of more than five consecutive years after the expiration of the last license held, prior to issuing another broker or broker-salesperson license to the person the commission shall require the person to pass the salesperson's license examination and then to work as a licensed salesperson on a full-time basis for three years, to fulfill all of the educational requirements applicable to first time applicants for a broker or broker-salesperson license and to pass the broker's license examination. The commission may, in its discretion, approve for relicensure the former holder of a broker or broker-salesperson license who has not renewed the license or obtained a new license for two or more consecutive years upon a sufficient showing that the applicant was medically unable to do so. All applicants so approved shall pass the broker's license examination and complete the continuing education requirements applicable to broker licensees in the preceding licensure term prior to being relicensed. This paragraph shall not apply to a person reapplying for a broker's or broker-salesperson's license who was licensed as a

broker or broker-salesperson and who allowed his license to expire due to subsequent employment in a public agency in this State with responsibility for dealing with matters relating to real estate if the person reapplying does so within one year of termination of that employment.

In the event that any person to whom a salesperson's or a referral agent's license has been or shall have been issued shall fail to maintain or renew such license or obtain a new license for a period of two consecutive years or more after the expiration of the last license held, the commission shall require such person to attend a licensed school and pass the State examination prior to issuance of a further license. The commission may, in its discretion, approve for relicensure a salesperson or a referral agent applicant who has not renewed his license or obtained a new license for two or more consecutive years upon a sufficient showing that the applicant was medically unable to do so. All salesperson or referral agent applicants so approved shall pass the salesperson's license examination and, with respect to salespersons, complete the continuing education requirements applicable to salesperson licensees in the preceding licensure term prior to being relicensed. This paragraph shall not apply to a person reapplying for a salesperson's or referral agent's license who was a licensed salesperson or referral agent and who allowed his license to expire due to subsequent employment in a public agency in this State with responsibility for dealing with matters relating to real estate if the person reapplying does so within one year of termination of that employment.

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 the six immediately preceding years or any lesser period of time shall, in order to qualify for licensure as a salesperson, complete up to 30 hours of continuing education as prescribed by commission rule. A person who was previously licensed as a broker, broker-salesperson or salesperson and who has been licensed as a referral agent for the six immediately preceding years or any lesser period of time shall, in order to qualify for the reissuance of a broker, broker-salesperson or salesperson license, as applicable, complete up to 30 hours of continuing education as prescribed by commission rule.

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 pre-licensure education requirement applicable to candidates for licensure as a salesperson and pass the State license examination. A person who was 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 relicensure as a broker, broker-salesperson or salesperson, as applicable, complete up to 30 hours of continuing education as prescribed by commission rule and pass the broker license examination or the salesperson license examination, as applicable.

Any referral agent seeking licensure as a real estate broker, broker-salesperson or salesperson shall make application for such license on a form as prescribed by the commission, pay all application and licensure fees as set forth herein, furnish to the commission evidence of the referral agent's good moral character, and be subject to investigation by and required to produce to the commission such proof of the referral agent's honesty, trustworthiness and integrity as the commission deems proper and in the public interest.

(cf: P.L.2003, c.199, s.26)

4. R.S.45:15-10 is amended to read as follows:

45:15-10. Before any such license shall be granted, the applicant, and in the case of a partnership, association or corporation, the partners, directors or officers thereof actually engaged in the real estate business as a broker, broker-salesperson [or], salesperson, or referral agent, shall submit to an examination to be conducted under the supervision of the commission which examination shall test the applicant's general knowledge of the statutes of New Jersey concerning real property, conveyancing, mortgages, agreements of sale, leases and of the provisions of this article, the rules and regulations of the commission and such other subjects as the commission may direct. The commission may make rules and regulations for the conduct of such examinations. Upon satisfactorily passing such examination and fulfilling all other qualifications a license shall be granted by the commission to the successful applicant therefor as a real estate broker, broker-salesperson [or], salesperson, or referral agent and the applicant upon receiving the license is authorized to conduct in this State the business of a real estate broker, broker-salesperson [or], salesperson, or referral agent, as the case may be. Such license shall expire on the last day of a two-year license term as established by the commission; such license shall be renewed, without examination, biennially thereafter, upon the payment of the fee fixed by R.S.45:15-15 , and in the case of a broker, broker-salesperson or salesperson license, upon completion of the continuing education requirements applicable to the holders of such licenses.

(cf: P.L.1996, c.38, s.1)

5. Section 1 of P.L.1966, c.227 (C.45:15-10.1) is amended to read as follows:

1. a. As a prerequisite to admission to an examination, every individual applicant for licensure as a real estate salesperson or a real estate referral agent shall give evidence of satisfactory completion of 75 hours in the aggregate of such courses of education in real estate subjects at a school licensed by the commission as the commission shall by regulation prescribe. At least three hours of that course of study shall be on the subject of ethics and ethical conduct in the profession of a real estate salesperson.

b. As a prerequisite to admission to an examination, every individual applicant for licensure as a real estate broker or broker-salesperson shall give evidence of satisfactory completion of 150 hours in the aggregate of such courses of education in real estate and related subjects at a school licensed by the commission as the commission shall by regulation prescribe. Thirty hours of that course of study shall be on the subject of ethics and ethical conduct in the profession of a real estate broker.

The commission may approve courses in specialized aspects of the real estate brokerage business offered by providers who are not the holders of a real estate school license pursuant to section 47 of P.L.1993, c.51 (C.45:15-10.4), the completion of which may be recognized as fulfilling a portion of the total broker pre-licensure education requirements.

(cf: P.L.1993, c.51, s.9)

6. Section 54 of P.L.1993, c.51 (C.45:15-10.11) is amended to read as follows:

54. The commission may suspend or revoke the license of any real estate school or instructor or impose fines as provided in R.S.45:15-17 upon satisfactory proof that the licensee is guilty of:

a. Making any false promise or substantial misrepresentation;

b. Pursuing a flagrant and continued course of misrepresentation or making false promises through agents, advertisements or otherwise;

c. Engaging in any conduct which demonstrates unworthiness, incompetency, bad faith or dishonesty;

d. Failing to provide a student with a copy of a written agreement which designates the total tuition charges for attendance at a real estate pre-licensure or continuing education course offered by a licensed school, or other charges imposed upon students who enroll in the course, and the refund policy of the school in regard to tuition and other charges;

e. Using any plan, scheme or method of attracting students to enroll in a real estate pre-licensure or continuing education course which involves a lottery, contest, game, prize or drawing;

f. Being convicted of a crime, knowledge of which the commission did not have at the time of last issuing a license to the licensee;

g. Procuring a real estate license for himself or anyone else by fraud, misrepresentation or deceit;

h. Making any verbal or written statement which falsely indicates that a person attended or successfully completed any real estate pre-licensure or continuing education course conducted by the licensee; or

i. Any other conduct whether of the same or of a different character than specified in this section which constitutes fraud or dishonest dealing.

(cf: P.L.1993, c.51, s.54)

7. R.S.45:15-11 is amended to read as follows:

45:15-11. Any citizen of New Jersey who has served in the armed forces of the United States or who served as a member of the American Merchant Marine during World War II and is declared by the United States Department of Defense to be eligible for federal veterans' benefits, who has been honorably discharged, and who, having been wounded or disabled in the line of duty, has completed a program of courses in real estate approved by the New Jersey Real Estate Commission, and who has successfully passed an examination conducted by said commission qualifying him to operate as a real estate broker, broker-salesperson [or], salesperson or referral agent, may, upon presentation of a certificate certifying that he has completed such program of courses as aforesaid, obtain without cost from the commission and without qualification through experience as a salesperson, a license to operate as a real estate broker, broker-salesperson [or a], real estate salesperson or referral agent, as the case may be, which licenses shall be the same as other licenses issued under this article. Renewal of licenses may be granted under this section for each ensuing license term, upon request, without fees therefor.

(cf: P.L.1996, c.38, s.2)

8. R.S.45:15-14 is amended to read as follows:

45:15-14. All licenses issued to real estate brokers, broker-salespersons [and], salespersons and referral agents shall be kept by the broker by whom such real estate licensee is employed, and the pocket card accompanying the same shall be delivered by the broker to the licensee who shall have the card in his possession at all times when engaged in the business of a real estate broker, broker-salesperson [or], salesperson or referral agent. When any real estate licensee is terminated or resigns his employment with the real estate broker by whom he was employed at the time of the issuing of such license to him, notice of the termination shall be

given in writing by the broker to the terminated licensee with the effective date of the termination reflected thereon, or notice of the resignation shall be given in writing by the resigning licensee to the broker with the effective date of the resignation reflected thereon. Upon the issuance of a written notice of termination by a broker or his authorized representative, or upon receipt of a written resignation by a broker or his authorized representative, such employer shall within five business days of the effective date of the termination or resignation, either: a. deliver, or send by registered mail, to the commission, such real estate licensee's license and, at the same time, send a written communication to such real estate licensee at his last known residence, advising him that his license has been delivered or mailed to the commission. A copy of such communication to the licensee shall accompany the license when mailed or delivered to the commission; or, b. deliver to the departing licensee and to the commission any other materials as the commission may prescribe by regulation to accomplish the transfer of the licensee to another employing broker. No real estate licensee shall perform any of the acts contemplated by this article, either directly or indirectly, under the authority of such license, from and after the effective date of the licensee's termination or resignation until authorized to do so by the commission. A new license may be issued to such licensee, upon the payment of a fee of $25, and upon the submission of satisfactory proof that he has obtained employment with another licensed broker. A broker-salesperson **[**or**]**, salesperson or referral agent must be licensed under a broker; he cannot be licensed with more than one broker at the same time.
(cf: P.L.1993, c.51, s.16)

9. R.S.45:15-15 is amended to read as follows:

45:15-15. The biennial fee for each real estate broker's license shall be $200, the biennial fee for each real estate broker-salesperson's license shall be $200 and the biennial fee for each real estate salesperson's license and each real estate referral agent's license shall be $100. The biennial fee for a branch office license shall be $100. Each license granted under this article shall entitle the licensee to perform all of the acts contemplated herein during the period for which the license is issued, as prescribed by this article. If a licensee fails to apply for a renewal of his license prior to the date of expiration of such license, the commission may refuse to issue a renewal license except upon the payment of a late renewal fee in the amount of $20 for a referral agent, salesperson or broker-salesperson and $40 for a broker; provided, however, the commission may, in its discretion, refuse to renew any license upon sufficient cause being shown. The commission shall refuse to renew the license of any licensee convicted of any offense enumerated in section 6 of P.L.1953, c.229 (C.45:15-19.1) during

the term of the last license issued by the commission unless the conviction was previously the subject of a revocation proceeding. Renewed licenses may be granted for each ensuing two years upon request of licensees and the payment of the full fee therefor as herein required. Upon application and payment of the fees provided herein, initial licenses and licenses reinstated pursuant to R.S.45:15-9 may be issued, but the commission may, in its discretion, refuse to grant or reinstate any license upon sufficient cause being shown. The license fees for initial or reinstated licenses shall be determined based upon the biennial fees established herein, with a full biennial fee payable for the license term in which application is received. The revocation or suspension of a broker's license shall automatically suspend every real estate broker-salesperson's **[**and**]**, salesperson's and referral agent's license granted to employees of the broker whose license has been revoked or suspended, pending a change of employer and the issuance of a new license. The new license shall be issued without additional charge, if the same is granted during the license term in which the original license was granted. Any renewal fee in this section shall be billed by the commission **[**on or after April 1 but before April 15, and such fees shall be paid on or before June 1, except that the fee increases imposed pursuant to the amendments made in this section pursuant to section 36 of P.L.2003, c.117 due for the first biennial renewal period ending after enactment of section 36 shall be paid on or before June 1, 2004**]** at or before the time of the submission of a renewal application by a licensee.

A real estate broker who maintains a main office or branch office licensed by the commission which is located in another state shall maintain a valid real estate broker's license in good standing in the state where the office is located and shall maintain a real estate license in that other state for each office licensed by the commission. Upon request, the real estate broker shall provide a certification of his license status in the other state to the commission. Any license issued by the commission to a real estate broker for a main or branch office located outside this State shall be automatically suspended upon the revocation, suspension or refusal to renew the real estate broker's license issued by the state where the office is located. The licenses issued by the commission to every broker-salesperson **[**or**]**, salesperson or referral agent employed by the broker shall be automatically suspended pending a change of employer and the issuance of a new license. The new license shall be issued without additional charge if granted during the license term in which the original license was granted.

(cf: P.L.2003, c.117, s.36)

10. R.S.45:15-16 is amended to read as follows:

45:15-16. No real estate salesperson [or], broker-salesperson or referral agent shall accept a commission or valuable consideration for the performance of any of the acts herein specified, from any person except his employer, who must be a licensed real estate broker.
(cf: P.L.1993, c.51, s.18)

11. R.S.45:15-17 is amended to read as follows:

45:15-17. The commission may, upon its own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any real estate broker, broker-salesperson [or], salesperson, referral agent, or any person who assumes, advertises or represents himself as being authorized to act as a real estate broker, broker-salesperson [or], salesperson or referral agent or engages in any of the activities described in R.S.45:15-3 without being licensed so to do. The lapse or suspension of a license by operation of law or the voluntary surrender of a license by a licensee shall not deprive the commission of jurisdiction to proceed with any investigation as herein provided or prevent the commission from taking any regulatory action against such licensee, provided, however, that the alleged charges arose while said licensee was duly licensed. Each transaction shall be construed as a separate offense.

In conducting investigations, the commission may take testimony by deposition as provided in R.S.45:15-18, require or permit any person to file a statement in writing, under oath or otherwise as the commission determines, as to all the facts and circumstances concerning the matter under investigation, and, upon its own motion or upon the request of any party, subpoena witnesses, compel their attendance, take evidence, and require the production of any material which is relevant to the investigation, including any and all records of a licensee pertaining to his activities as a real estate broker, broker-salesperson [or], salesperson or referral agent. The commission may also require the provision of any information concerning the existence, description, nature, custody, condition and location of any books, documents, or other tangible material and the identity and location of persons having knowledge of relevant facts of any other matter reasonably calculated to lead to the discovery of material evidence. Upon failure to obey a subpoena or to answer questions posed by an investigator or legal representative of the commission and upon reasonable notice to all affected persons, the commission may commence an administrative action as provided below or apply to the Superior Court for an order compelling compliance.

The commission may place on probation, suspend for a period less than the unexpired portion of the license period, or may revoke any license issued under the provisions of this article, or the right of

licensure when such person is no longer the holder of a license at the time of hearing, or may impose, in addition or as an alternative to such probation, revocation or suspension, a penalty of not more than $5,000 for the first violation, and a penalty of not more than $10,000 for any subsequent violation, which penalty shall be sued for and recovered by and in the name of the commission and shall be collected and enforced by summary proceedings pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), where the licensee or any person, in performing or attempting to perform any of the acts mentioned herein, is deemed to be guilty of:

a. Making any false promises or any substantial misrepresentation; or

b. Acting for more than one party in a transaction without the knowledge of all parties thereto; or

c. Pursuing a flagrant and continued course of misrepresentation or making of false promises through agents, broker-salespersons **[**or**]**, salespersons or referral agents, advertisements or otherwise; or

d. Failure to account for or to pay over any moneys belonging to others, coming into the possession of the licensee; or

e. Any conduct which demonstrates unworthiness, incompetency, bad faith or dishonesty. The failure of any person to cooperate with the commission in the performance of its duties or to comply with a subpoena issued by the commission compelling the production of materials in the course of an investigation, or the failure to give a verbal or written statement concerning a matter under investigation may be construed as conduct demonstrating unworthiness; or

f. Failure to provide his client with a fully executed copy of any sale or exclusive sales or rental listing contract at the time of execution thereof, or failure to specify therein a definite terminal date which terminal date shall not be subject to any qualifying terms or conditions; or

g. Using any plan, scheme or method for the sale or promotion of the sale of real estate which involves a lottery, a contest, a game, a prize, a drawing, or the offering of a lot or parcel or lots or parcels for advertising purposes, provided, however, that a promotion or offer of free, discounted or other services or products which does not require that the recipient of any free, discounted or other services or products enter into a sale, listing or other real estate contract as a condition of the promotion or offer shall not constitute a violation of this subsection if that promotion or offering does not involve a lottery, a contest, a game, a drawing or the offering of a lot or parcel or lots or parcels for advertising purposes. A broker shall disclose in writing any compensation received for such promotion or offer in the form and substance as required by the

federal "Real Estate Settlement Procedures Act of 1974," (Pub.L.93-533, 12 U.S.C. ss.2601 et seq.), except that, notwithstanding the provisions of that federal act, written disclosure shall be provided no later than when the promotion or offer is extended by the broker to the consumer; or

h. Being convicted of a crime, knowledge of which the commission did not have at the time of last issuing a real estate license to the licensee; or

i. Collecting a commission as a real estate broker in a transaction, when at the same time representing either party in a transaction in a different capacity for a consideration; or

j. Using any trade name or insignia of membership in any real estate organization of which the licensee is not a member; or

k. Paying any rebate, profit, compensation or commission to anyone not possessed of a real estate license, except that free, discounted or other services or products provided for in subsection g. of this section shall not constitute a violation of this subsection; or

l. Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing; or

m. Accepting a commission or valuable consideration as a real estate broker-salesperson **[**or**]**, salesperson or referral agent for the performance of any of the acts specified in this act, from any person, except his employing broker, who must be a licensed broker; or

n. Procuring a real estate license, for himself or anyone else, by fraud, misrepresentation or deceit; or

o. Commingling the money or other property of his principals with his own or failure to maintain and deposit in a special account, separate and apart from personal or other business accounts, all moneys received by a real estate broker, acting in said capacity, or as escrow agent, or the temporary custodian of the funds of others, in a real estate transaction; or

p. Selling property in the ownership of which he is interested in any manner whatsoever, unless he first discloses to the purchaser in the contract of sale his interest therein and his status as a real estate broker, broker-salesperson **[**or**]**, salesperson or referral agent; or

q. Purchasing any property unless he first discloses to the seller in the contract of sale his status as a real estate broker, broker-salesperson **[**or**]**, salesperson or referral agent; or

r. Charging or accepting any fee, commission or compensation in exchange for providing information on purportedly available rental housing, including lists of such units supplied verbally or in written form, before a lease has been executed or, where no lease is drawn, before the tenant has taken possession of the premises

without complying with all applicable rules promulgated by the commission regulating these practices; or

s. Failing to notify the commission within 30 days of having been convicted of any crime, misdemeanor or disorderly persons offense, or of having been indicted, or of the filing of any formal criminal charges, or of the suspension or revocation of any real estate license issued by another state, or of the initiation of formal disciplinary proceedings in another state affecting any real estate license held, or failing to supply any documentation available to the licensee that the commission may request in connection with such matter; or

t. The violation of any of the provisions of this article or of the administrative rules adopted by the commission pursuant to the provisions of this article. The commission is expressly vested with the power and authority to make, prescribe and enforce any and all rules and regulations for the conduct of the real estate brokerage business consistent with the provisions of chapter 15 of Title 45 of the Revised Statutes.

If a licensee is deemed to be guilty of a third violation of any of the provisions of this section, whether of the same provision or of separate provisions, the commission may deem that person a repeat offender, in which event the commission may direct that no license as a real estate broker, broker-salesperson **[**or**]**, salesperson or referral agent shall henceforth be issued to that person.

(cf: P.L.2001, c.68, s.1)

12. R.S.45:15-18 is amended to read as follows:

45:15-18. With the exception of a temporary suspension imposed by the commission pursuant to section 23 of P.L.1993, c.51 (C.45:15-17.1), the commission shall, before suspending or revoking any license, and at least ten days prior to the date set for the hearing, notify in writing the licensee of any charges made, and afford him an opportunity to be heard in person or by counsel. Such written notice may be served either personally or sent by certified mail to the last known business address of the licensee. If the licensee is a broker-salesperson **[**or**]**, salesperson or referral agent, the commission shall also notify the broker employing him, specifying the charges made against such licensee, by sending a notice thereof by certified mail to the broker's last known business address. The commission shall have power to bring before it any licensee or any person in this State pursuant to subpoena served personally or by certified mail; or the commission may take testimony by deposition in the same manner as prescribed by law in judicial proceedings in the courts of this State. Any final decision or determination of the commission shall be reviewable by the Appellate Division of the Superior Court.

(cf: P.L.1993, c.51, s.25)

13. R.S.45:15-19 is amended to read as follows:

45:15-19. Any unlawful act or violation of any of the provisions of this article, by any real estate broker-salesperson [or] , salesperson or referral agent, shall not be cause for the revocation of any real estate broker's license, unless it shall appear to the satisfaction of the commission that the real estate broker employing such licensee had guilty knowledge thereof.

(cf: P.L.1993, c.51, s.26)

14. Section 6 of P.L.1953, c.229 (C.45:15-19.1) is amended to read as follows:

6. When, during the term of any license issued by the commission, the licensee shall be convicted in a court of competent jurisdiction in the State of New Jersey or any state (including federal courts) of forgery, burglary, robbery, any theft or related offense with the exception of shoplifting, criminal conspiracy to defraud, or other like offense or offenses, or any crime involving, related to or arising out of the licensee's activities as a real estate broker, broker-salesperson [or], salesperson or referral agent, and a duly certified or exemplified copy of the judgment of conviction shall be obtained by the commission, the commission shall revoke forthwith the license by it theretofore issued to the licensee so convicted.

(cf: P.L.1993, c.51, s.27)

15. Section 7 of P.L.1953, c.229 (C.45:15-19.2) is amended to read as follows:

7. In the event that any licensee shall be indicted in the State of New Jersey or any state or territory (including federal courts) for murder, kidnapping, aggravated sexual assault, robbery, burglary, arson, any theft offense, bribery, racketeering, distribution of a controlled dangerous substance or conspiracy to distribute a controlled dangerous substance, forgery, criminal conspiracy to defraud, or other like offense or offenses, or any crime involving, related to or arising out of the licensee's activities as a real estate broker, broker-salesperson [or], salesperson or referral agent, and a certified copy of the indictment is obtained by the commission, or other proper evidence thereof be to it given, the commission shall have authority, in its discretion, to suspend the license issued to such licensee pending trial upon such indictment.

(cf: P.L.1993, c.51, s.28)

16. R.S.45:15-20 is amended to read as follows:

45:15-20. A nonresident may become a real estate broker, broker-salesperson [or], salesperson or referral agent by conforming to all of the provisions of this article. All nonresident licenses issued by the commission prior to July 1, 1994 may be

renewed upon payment of the renewal fees established pursuant to R.S.45:15-15. All nonresident licenses so renewed shall be issued by the commission in the same form as a resident license. In the event that any person to whom a nonresident license is issued fails to maintain or renew the license or to obtain a new license from the commission for a period of two or more consecutive years, the person shall be required to fulfill the requirements for initial licensure established pursuant to R.S.45:15-9 prior to the issuance of any further license.

A licensed broker whose main office is not located within this State shall only provide brokerage services concerning real estate located within this State either personally or through persons in the broker's employ who are the holders of real estate broker-salesperson **[**or**]**, salesperson or referral agent licenses issued by the commission. In the event that a broker maintains one or more branch offices in this State, no person shall engage in the business of a real estate broker, broker-salesperson **[**or**]**, salesperson or referral agent at those offices unless the person is a holder of a license issued by the commission authorizing him to do so.

(cf: P.L.1993, c.51, s.29)

17. Section 1 of P.L.1976, c.112 (C.45:15-34) is amended to read as follows:

1. A real estate guaranty fund is established as a special trust fund to be maintained by the State Treasurer and administered by the New Jersey Real Estate Commission in accordance with the provisions of this act to provide a fund from which recovery may be obtained by any person aggrieved by the embezzlement, conversion or unlawful obtaining of money or property in a real estate brokerage transaction by a licensed real estate broker, broker-salesperson **[**or**]**, salesperson or referral agent or an unlicensed employee of a real estate broker; provided, however, that the amount of such recovery shall not exceed in the aggregate the sum of $10,000 in connection with any one transaction regardless of the number of claims, persons aggrieved, or parcels of, or interests in real estate involved in the transaction. The maximum amount recoverable per transaction shall be increased to $20,000 for claims filed on the basis of causes of action which accrue after the effective date of P.L.1993, c.51 (C.45:15-12.3 et al.).

(cf: P.L.1993, c.51, s.35)

18. Section 2 of P.L.1976, c.112 (C.45:15-35) is amended to read as follows:

2. Upon the initial issuance of a biennial license as a real estate broker, broker-salesperson **[**or**]**, salesperson or referral agent the licensee shall pay to the commission, in addition to the license fee fixed by R.S.45:15-15, an additional amount to be forwarded by the

commission to the State Treasurer and accounted for and credited by him to the real estate guaranty fund. The additional amount payable by a broker or broker-salesperson shall be $20 and by a salesperson or referral agent, $10.
(cf: P.L.1996, c.38, s.4)

19. Section 4 of P.L.1976, c.112 (C.45:15-37) is amended to read as follows:

4. No claim shall be made for payment from the real estate guaranty fund except upon the reduction to final judgment, which shall include reasonable attorney fees and costs, of a civil action against the broker, broker-salesperson [or] , salesperson, referral agent or unlicensed employee of a broker, and, where the judgment creditor has pursued all available remedies, made all reasonable searches, and has been unable to satisfy the judgment from the licensee's assets, the entry of a court order which directs the New Jersey Real Estate Commission to make payment from the fund. No such order shall authorize a payment to the spouse or personal representative of the spouse of the judgment debtor.

No order shall be entered unless the claimant, either at the time of filing the civil action or thereafter, files a certification affirming that a criminal complaint alleging the misappropriation of funds by the broker, broker-salesperson, salesperson [or] , referral agent or unlicensed employee has been filed with a law enforcement agency of this State or of a county or municipality in this State. The criminal complaint shall refer to the same conduct to which reference is made in the civil action as forming the basis for a claim against the real estate guaranty fund. The certification shall specify the date on which the criminal complaint was filed and the law enforcement agency with which it was filed. A copy of the certification shall be provided to the New Jersey Real Estate Commission upon its being filed. The requirement to file a certification shall apply prospectively only to claims seeking reimbursement from the fund filed on the basis of causes of action which accrue after the effective date of P.L.1993, c.51 (C.45:15-12.3 et al.).

Upon delivery by the New Jersey Real Estate Commission to the State Treasurer of a certified copy of the court order together with an assignment to the New Jersey Real Estate Commission of the judgment creditor's right, title and interest in the judgment to the extent of the amount of the court order, the State Treasurer shall make payment to the claimant from the real estate guaranty fund.
(cf: P.L.1993, c.51, s.37)

20. Section 6 of P.L.1976, c.112 (C.45:15-39) is amended to read as follows:

6. Any person to whom is issued a license to be a real estate broker, broker-salesperson [or], salesperson or referral agent shall, by the securing of said license, make and constitute the secretary of the commission or the person in charge of the office of the commission as agent for the acceptance of process in any civil proceeding hereunder.
(cf: P.L.1993, c.51, s.38)

21. Section 7 of P.L.1976, c.112 (C.45:15-40) is amended to read as follows:

7. a. If at any time the funds available in the real estate guaranty fund are insufficient to satisfy in full court orders for payment therefrom, payment shall be made in the order in which such court orders were issued; and the New Jersey Real Estate Commission shall by regulation impose further additional amounts to be paid by brokers, broker-salespersons [and], salespersons and referral agents to replenish the guaranty fund. No such additional amount assessed at any one time shall exceed the amounts specified in section 2 of this act.

b. If at any time the funds available in the real estate guaranty fund are, in the opinion of the New Jersey Real Estate Commission, in excess of amounts anticipated to be necessary to meet claims for a period of at least two years, the commission may, with the approval of the Commissioner of Banking and Insurance, allocate and receive from the guaranty fund a specified amount thereof for research and educational projects to increase the proficiency and competency of real estate licensees.
(cf: P.L.1993, c.51, s.39)

22. Section 8 of P.L.1976, c.112 (C.45:15-41) is amended to read as follows:

8. Upon the issuance of a court order for payment from the real estate guaranty fund the license of the broker, broker-salesperson [or], salesperson or referral agent, whose acts gave rise to the claim, shall be revoked and no such broker, broker-salesperson [or], salesperson or referral agent shall be eligible for reinstatement of his license until he shall have satisfied the judgment in full including reimbursement of the real estate guaranty fund together with interest.
(cf: P.L.1993, c.51, s.40)

23. (New section) a. The New Jersey Real Estate Commission shall require each natural person licensed as a real estate broker, broker-salesperson or salesperson, as a condition of biennial license renewal pursuant to R.S.45:15-10, to complete not more than 16 hours of continuing education requirements imposed by the

commission pursuant to this section and sections 24 through 28 of this amendatory and supplementary act.

b. The commission shall:

(1) (a) Approve continuing education courses, course providers, and instructors recommended to the commission by the Volunteer Advisory Committee created pursuant to subparagraph (b) of this paragraph. Schools licensed by the commission as real estate schools pursuant to section 47 of P.L.1993, c.51 (C.45:15-10.4) shall be deemed approved providers of continuing education courses. Persons licensed by the commission as real estate instructors pursuant to section 48 of P.L.1993, c.51 (C.45:15-10.5) shall be deemed approved instructors of continuing education courses in core topics as set forth in section 27 of P.L. , c. (C.) (pending before the Legislature as this bill). Real estate trade associations that qualify under the standards to be established by commission rule as approved providers may offer approved continuing education courses.

(b) There is hereby created a Volunteer Advisory Committee which shall consist of 14 members to be comprised of real estate licensees and other subject matter experts, whose members shall be appointed by and serve at the pleasure of the Commissioner of Banking and Insurance. One real estate licensee shall be selected upon the recommendation of the President of the Senate and one real estate licensee shall be selected upon the recommendation of the Speaker of the General Assembly. Three members of the advisory committee shall be members of the commission or their designees, and not less than eight of the members, other than the commission members, shall be real estate licensees. Members shall be appointed to affect balanced geographic representation from the central, northern and southern areas of the State, with not less than three members serving from each of these areas at any time on the advisory committee.

Members shall be appointed by the Commissioner of Banking and Insurance no later than 60 days following the enactment date of this act. The first meeting of the advisory committee shall be held no later than 30 days from the date the commission adopts initial regulations for the effectuation of this act.

(2) Confer continuing education credits for courses completed in other states on topics approved by the commission as appropriate for elective courses, provided that such courses have been approved as continuing education courses by the agency exercising regulatory authority over the real estate licensees of another state and that satisfactory evidence of licensees' attendance at and completion of such courses is provided to the commission by the course provider.

(3) Confer continuing education credits for courses completed and offered in this State on topics deemed of a timely nature which have not been granted prior approval by the advisory committee,

provided that such courses are advertised prior to the time of offering as not having been approved; that the course provider shall submit such course offering for approval and the course is subsequently approved as provided in subparagraph (a) of paragraph (1) of this subsection; and that satisfactory evidence of licensees' attendance at and completion of such courses is provided to the commission by the course provider.

(4) Set parameters for the auditing and monitoring of course providers.

(5) Establish, by regulation, the amounts of application fees payable by persons seeking approval as continuing education course providers, persons seeking approval of continuing education courses, and persons other than instructors of pre-licensure real estate education courses licensed by the commission pursuant to R.S.45:15-10, seeking approval as instructors of continuing education courses. These fees shall be non-refundable and shall be in amounts which do not exceed the costs incurred by the commission to review these applications.

(6) Have the authority to waive continuing education requirements, in whole or in part, on the grounds of illness, emergency, hardship or active duty military service.

(7) Confer continuing education credits upon a person who is licensed by the commission as a real estate instructor or as a broker, broker-salesperson or salesperson for teaching an approved continuing education course offered by an approved provider. Regardless of the number of times during a biennial license term that the same approved course is taught by that person, the person shall receive credit toward the continuing education requirement for the renewal of the person's broker, broker-salesperson or salesperson license, as applicable, only in the number of credit hours conferred upon licensees who attend and complete that course one time during that biennial license term.

24. (New section) Continuing education courses may be delivered in a classroom setting or via the Internet, distance learning, correspondence or video modalities, subject to the approval by the New Jersey Real Estate Commission of the providers and the content of such courses and of the measures utilized to ensure the security and integrity of the course delivery process. The commission may approve continuing education courses which include periodic progress assessments and the achievement of a satisfactory level of performance by the licensee on such progress assessments as a condition to continuing to a succeeding segment of the course. The commission shall not require, as a condition of the receipt of credit for attendance at any continuing education course that a licensee pass a comprehensive

examination testing the licensee's knowledge of the entire course content.

25. (New section) Continuing education requirements, as set forth by the New Jersey Real Estate Commission, shall be completed on or before April 30 of the year in which the biennial license expires. Any licensee required to complete continuing education requirements who fails to do so prior to May 1 of the second year of a biennial license term shall be subject to a reasonable processing fee, as determined by the commission, of not more than $200.

26. (New section) A person who, during a biennial licensing term, successfully completes one or more broker pre-licensure education courses as prescribed by the New Jersey Real Estate Commission shall be deemed to have fulfilled the continuing education requirement applicable to the license that such a person may seek to renew upon the conclusion of that license term. A person who is initially licensed as a salesperson during the first year of a two-year license term shall complete all applicable continuing education requirements in order to renew that license upon the conclusion of that license term. A person who is initially licensed as a salesperson in the second year of the two-year license term shall not be required to fulfill any continuing education requirements in order to renew that license at the conclusion of that license term.

27. (New section) a. Not less than 50 percent of the continuing education courses of study that a broker, broker-salesperson or salesperson are required to complete as a condition for license renewal shall be comprised of one or more of the following core topics:

(1) Agency;

(2) Disclosure;

(3) Legal issues;

(4) Ethics;

(5) Fair housing;

(6) Rules and regulations; and

(7) Any other core topics that the New Jersey Real Estate Commission may prescribe by rule.

In no event shall the commission require that courses in these core topics comprise more than 60 percent of the total continuing education hours required for the renewal of any license.

b. In the case of continuing education courses and programs, each hour of instruction shall be equivalent to one credit.

28. (New section) Course providers shall maintain records of the successful completion of continuing education courses by licensees and shall transmit this data to the New Jersey Real Estate Commission or its designee in a manner as directed by the commission.

29. (New section) The New Jersey Real Estate Commission shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the purposes of this act.

30. This act shall take effect July 1, 2011, but the New Jersey Real Estate Commission may take such anticipatory rulemaking and other administrative action in advance as shall be necessary for the implementation of this act.