

Table of Contents

Chapter 1: License Required to Provide Real Estate Brokerage Services.....	1
1-1 General.....	1
1-2 Real Estate Brokers.....	2
1-3 Real Estate Salespersons.....	4
1-4 Real Estate Broker-Salespersons.....	5
1-5 Real Estate Salespersons Licensed With a Real Estate Referral Company.....	6
1-5:1 General.....	6
1-5:2 Lawsuits.....	6
1-5:3 General Restrictions.....	7
1-5:4 Real Estate Referral Companies.....	9
1-5:5 Residential Rental Referral Agencies.....	10
1-6 Non-Resident Licensees.....	12
1-6:1 Licensure in New Jersey.....	12
1-6:2 Payment of Referral Fees to Out-of-State Brokers.....	13
1-7 Exceptions to License Requirement.....	14
1-7:1 General.....	14
1-7:2 Property Owners and their Employees.....	15
1-7:3 Attorneys.....	15
1-7:4 Comprehensive Employment and Training Act.....	17
1-7:5 Equitable Exception.....	17
1-8 Locating Rental Housing.....	17
1-9 Mobile and Manufactured Homes.....	18
Chapter 2: The Relationship Between Brokers and Salespersons.....	21
2-1 Broker Supervision and Oversight of Individual Licensees.....	21
2-2 The Broker-Salesperson Agreement.....	22
2-3 Salespersons as Independent Contractors Versus Employees.....	31
2-3:1 The Applicable Tests.....	31
2-3:2 Workers' Compensation.....	35
2-3:3 Law Against Discrimination.....	39

Table of Contents

2-3:4	Wrongful Termination	42
2-3:5	Unemployment Compensation Law.....	44
2-3:6	Internal Revenue Service.....	45
2-3:7	Conscientious Employee Protection Act	46
2-3:8	Wage Payment Law.....	47
2-4	Deposit and Payment of Commissions by Brokers	51
2-4:1	Deposit of Commissions Received by Brokers	51
2-4:2	Payment of Commissions by Brokers to Salespersons.....	51
2-5	Lawsuits for Commissions	52
2-6	Use of a License for the Benefit of Others.....	55
2-7	Commissions to be Paid Solely by Broker	56
2-8	Teams	56
2-8:1	Payment of a Commissions to an Unlicensed LLC.....	56
2-8:2	Compliance with Applicable Laws	57
Chapter 3: Agency		61
3-1	Broker as a Fiduciary.....	61
3-1:1	Duty to Principal.....	61
3-1:2	Duty to the Other Party in the Transaction.....	66
3-2	Subagency.....	68
3-3	Creation of Additional Real Estate Brokerage Agency Relationships	69
3-4	Consumer Information Statements	70
3-4:1	General.....	70
3-4:2	Applicable Transactions.....	71
3-4:3	Definitions	71
3-4:4	Timing to Deliver Consumer Information Statement and Disclose Agency Relationships.....	73
3-4:5	Mandatory Text.....	75
3-4:6	Acknowledgement of Receipt in Brokerage Agreements.....	80
3-4:7	Acknowledgment of Receipt in Offers, Contracts and Leases	81
3-4:8	Broker as Property Owner	82
3-4:9	Optional Provisions	84
3-5	Seller's Agent	85
3-6	Buyer's Agent	87
3-7	Disclosed Dual Agent	97
3-8	Transaction Broker	98
3-9	Conflicts of Interest	99

Table of Contents

3-9:1	Statutory Prohibitions	99
3-9:2	Regulatory Prohibitions.....	100
3-9:3	Mortgage Transactions	101
3-9:4	Placement of Insurance	103
3-9:5	Effect of Failure to Disclose Conflict.....	103
3-10	Legal Advice for Buyers and Sellers.....	104
Chapter 4: Disclosures to Consumers		105
4-1	Information Concerning the Physical Condition of the Property	105
4-1:1	Regulations.....	105
4-1:2	Caselaw.....	106
4-2	The Consumer Fraud Act	108
4-3	Social Conditions and Psychological Impairments of a Property	110
4-4	Law Against Discrimination	112
4-4:1	Provisions Applicable to Real Estate Licensees	112
4-4:2	Commission's Implementing Regulations	114
4-4:3	Attorney General's Required Housing Discrimination Notice	115
4-5	Megan's Law.....	121
4-5:1	Background	121
4-5:2	Classifications of Sex Offenders.....	121
4-5:3	Statutory Prohibition Against Disclosure About Sex Offenders.....	122
4-5:4	The State Police Website	122
4-5:5	Restrictions on the Use of Information About Sex Offenders.....	123
4-5:6	Commission's Regulations	123
4-6	Contracts of Sale and Leases	125
4-7	Listing Agreements.....	127
4-8	Consumer Information Statements	128
4-9	Mortgage Financing Services.....	129
4-9:1	General.....	129
4-9:2	Written Disclosure to Buyers	129
4-9:3	Disclosure by Seller's Agent and Subagent to Seller	130
4-9:4	Disclosure by Seller's Agent to Buyer	131
4-9:5	Maintaining Copies of Disclosure Statements	132
4-10	Affiliation With Mortgage Lender or Broker	132
4-10:1	Written Disclosure Required.....	132
4-10:2	Definition of Affiliated Relationship.....	133

Table of Contents

4-10:3	Individual or Corporate Affiliation With Lender or Mortgage Broker	134
4-10:4	Combining Commission and RESPA Disclosures	134
4-10:5	Maintaining Copies of the Disclosures	134
4-11	Fairness Foreclosure Act.....	135
4-12	Short Sales.....	135
4-13	Air Safety and Zoning Act.....	141
4-14	Lead-Based Paint.....	143
4-15	Child-Protection Window Guards	144
4-16	Rebates to Buyers	148
4-17	Private Well Testing	148
4-18	Off-Site Conditions.....	149
4-19	Fair Credit Reporting Act.....	150
4-20	Truth-In-Renting Act.....	153
4-21	Fair Chance in Housing Act	154
4-22	Steam Radiators	154
4-23	Daniel’s Law	155
Chapter 5: The Unauthorized Practice of Law		157
5-1	General.....	157
5-2	Residential Real Estate Transactions	158
5-2:1	The Attorney-Review Clause	158
5-2:2	Opinion 26.....	159
5-2:3	Opinion 26 Is Inapplicable to Personal Transactions of Licensees	167
5-2:4	Opinion 716/45	168
5-3	Preparation of Commercial Real Estate Contracts	170
5-4	Real Estate Commissions.....	171
5-5	Other Acts That Constitute the Unauthorized Practice of Law.....	172
5-5:1	The Plain Language Act	172
5-5:2	Appearance Before a Planning Board or Other Quasi-Judicial Body	173
5-6	Penalties.....	174
Chapter 6: The Attorney-Review Clause.....		177
6-1	The Reason Attorney Review was Created	177
6-2	Essential Terms of the Attorney-Review Clause	178
6-3	Interpretation of Attorney Review by the Courts	180
6-4	Offers Received During and After Attorney Review	183
6-5	When Attorney Review Begins to Run.....	183
6-6	Shortening the Attorney-Review Period	185

Table of Contents

6-7	Attorney Approval of Partially Signed Contracts	185
6-8	Effect of Cancellation Clause in the Planned Real Estate Development Full Disclosure Act	186
6-9	Effect of Disapproval on a Broker's Commission	189
6-10	Inapplicable to Auctions	189
6-11	Applicability to Title or Settlement Services Company	193
Chapter 7: Listing Agreements.....		195
7-1	General	195
7-2	Types of Listing Agreements	196
7-2:1	General	196
7-2:2	Open Listing Agreement	196
7-2:3	Exclusive Agency Listing Agreement	197
7-2:4	Exclusive Right to Sell Listing Agreement	198
7-2:5	Multiple Listing Agreement.....	199
7-2:6	Option Listing Agreement	200
7-2:7	Net Listing Agreement.....	200
7-3	Regulations Regarding Listing Agreements	201
7-3:1	Predetermined Fees or Commissions	201
7-3:2	Required Provision Concerning Negotiable Commissions	201
7-3:3	Net Listings Prohibited.....	202
7-3:4	Identity of Multiple Listing Service	202
7-3:5	Termination Date	202
7-3:6	Commission Splits	202
7-3:6.1	Broker's Obligation to Cooperate With Other Brokers	202
7-3:6.2	Mandatory Commission Split Provision.....	203
7-3:7	Waiver of Broker Cooperation.....	205
7-3:8	Law Against Discrimination	207
7-3:9	Delivery of Listing Agreement to Seller	208
7-3:10	Mortgage Financing Services.....	208
7-4	Unilateral Brokerage Contracts	208
7-5	Invalid Listing Agreements	209
7-5:1	Listing Agreements Voidable	209
7-5:1.1	Statutory Violations	209
7-5:1.2	Public Policy Violations.....	210
7-5:2	License Required to Enforce Listing Agreement	211
7-6	Interpretation of Listing Agreements	212
7-6:1	Agreements Strictly Construed	212
7-7	Seller's Right to Withdraw Property From the Market.....	213
7-8	The Statute of Frauds.....	214

Table of Contents

7-8:1	The Statutory Requirements	214
7-8:2	Non-Contractual Theories to Avoid the Statute of Frauds	217
7-8:3	Independent Tort Theories Are Not Barred	220
7-8:4	Strict Compliance Generally Is Required	221
7-9	Effect of Specific Provisions	223
7-9:1	Contingency in Listing Agreement	223
7-9:2	Effect of Selling Price in the Listing Agreement	226
7-9:3	Express Right to Terminate the Listing Agreement	228
7-10	Listing Agreements With Counties or Municipalities	229

Chapter 8: Broker's Recovery of Commissions and Other

	Compensation	231
8-1	Real Estate License as a Requirement to Collect a Commission	231
8-1:1	Statutory Requirement	231
8-1:2	Interpretation by Courts	232
8-1:3	Exceptions to the License Requirement	236
	8-1:3.1 Statutory Exceptions	236
	8-1:3.2 The <i>Sammarone</i> Case	237
8-2	General Requirements for a Commission Claim	238
8-3	Alleged Buyer Default	241
8-4	Alleged Seller Default or Wrongdoing	244
8-5	Tortious Interference With Broker's Right to a Commission	247
8-6	Quantum Meruit for Value of Services	253
8-6:1	Standard for a Quantum Meruit Claim	253
8-6:2	Seller Withdrawing Property From the Market	254
8-6:3	Recovery Where the Statute of Frauds Is Not Satisfied	255
8-7	When a Purchase Contract Differs From the Listing Agreement or Terms Negotiated by the Broker	256
8-8	Broker Misconduct or Noncompliance With Regulations or Statutes	257
8-9	Corporate Shareholder and Officer Liability	257
8-10	Options to Purchase	258
8-11	Lapse of Time	260
8-12	Equitable Liens	261
	8-12:1 Lien for the Sale of Property	261
	8-12:2 Lien for Leasing Property	263

Table of Contents

8-12:2.1	The <i>VRG</i> Decision.....	263
8-12:2.2	The <i>Pagano</i> Decision	266
8-12:2.3	Other Decisions	268
8-12:3	Recording Equitable Liens.....	269
8-12:4	Priority of Equitable Liens	271
8-12:5	Effect of Seller Filing Bankruptcy	271
8-13	Co-Brokerage.....	272
8-14	Short Sales.....	273
8-15	Right of first Refusal	273
Chapter 9: Bases for Broker Liability.....		277
9-1	Breach of Fiduciary Duty.....	277
9-2	Common Law Fraud or Misrepresentation.....	282
9-3	The Consumer Fraud Act	284
9-3:1	General.....	284
9-3:2	Amendment to Include Real Estate Licensees.....	286
9-3:3	Liability for Innocent Misrepresentations	287
9-3:4	Liability for Intentional Misrepresentations.....	291
9-3:5	Liability for Failing to Disclose Information.....	291
9-3:6	Penalties for Violating the Act	292
9-3:7	Exception to Treble Damages and Attorneys' Fees	294
9-3:7.1	Reliance on Certified or Licensed Professionals.....	296
9-3:7.2	Reliance on Government Officials	296
9-3:7.3	Use of Seller Property Condition Disclosure Statements.....	296
9-3:8	Inapplicable to Personal Transactions of Licensees.....	310
9-4	The Condition or Use of the Property	311
9-4:1	Open Houses	311
9-4:2	Short-Term Rentals	314
9-4:3	Inspections.....	320
9-5	Other Potential Bases for Liability	322
9-5:1	Violation of Tenants' Rights in Foreclosures	322
9-5:1.1	Scope of the Foreclosure Fairness Act.....	322
9-5:1.2	Form of the Required Notice	322
9-5:1.3	Delivery of the Required Notice.....	324
9-5:1.4	Cash for Keys	325
9-5:1.5	Prohibited Activities	326
9-5:1.6	Penalties	327
9-5:2	Recommending Lenders and Other Professionals.....	327

Table of Contents

9-5:3	Presenting Offers During and After Attorney Review	330
9-5:4	Invasion of Privacy	330
9-6	Punitive Damages and Attorneys' Fees	330
9-7	Successor Liability for Brokers.....	331
Chapter 10: The New Jersey Real Estate Commission		335
10-1	Membership of the Commission.....	335
10-2	Personnel of the Commission	336
10-3	Organization of the Commission	337
10-4	Commission Records	338
10-4:1	Public Records Maintained by the Commission.....	338
10-4:2	Commission Records Not Available to the Public.....	339
10-4:3	Sealed Records as Evidence	339
10-5	Implementation of the Real Estate Sales Full Disclosure Act	340
10-5:1	General.....	340
10-5:2	New Jersey Brokers Representing Applicants and Registrants.....	341
10-6	Implementation of the Real Estate Timeshare Act	343
10-7	Rulemaking and Petitions for Rulemaking.....	346
10-7:1	Notice of Proposed Adoption of New Rule or Amendment or Repeal of Existing Rule	346
10-7:2	Comments Concerning Proposed Rule Changes	347
10-7:3	Public Hearings Concerning Rule Changes.....	347
10-7:4	Procedure for Submitting Petitions for Rulemaking	348
10-7:5	Procedure to Consider and Dispose of Rulemaking Petitions	349
10-8	Procedures for Disciplinary Actions, Contested Applications and Declaratory Ruling Requests	351
10-8:1	Types of Pleadings	351
10-8:2	Notice of Proposed License Suspension or Revocation	352
10-8:3	Answers	353
10-8:4	Adversarial Hearing	353
10-8:5	Motions	354
10-8:6	Emergent Hearing Procedures	355
10-8:7	Sanctions for Failure to Appear or Comply With an Order	356
10-8:8	Settlements	356
10-8:9	Motions for Reconsideration	356

Table of Contents

10-8:10	Decisions in Enforcement Actions	357
10-8:11	Applications to Temporarily Suspend a Licensee.....	357
10-8:12	Procedure to Appeal Initial Denial of a Licensing Application	360
10-8:13	Appeal of License Suspension or Revocation	362

Chapter 11: Education and Licensing Requirements for Brokers, Salespersons and Salespersons Licensed With a Real Estate

	Referral Company.....	365
11-1	Education	365
11-1:1	General Education Requirements	365
11-1:2	Salesperson's and Salesperson Licensed With a Real Estate Referral Company's License Education Requirements.....	366
11-1:3	Broker's License Education Requirements	368
11-1:3.1	The 90-Hour General Prelicensure Course...	368
11-1:3.2	The Two 30-Hour Prelicensure Courses....	369
11-1:4	Continuing Education.....	370
11-1:4.1	Generally.....	370
11-1:4.1a	Basic Requirements.....	370
11-1:4.1b	Definitions	372
11-1:4.2	The Volunteer Advisory Committee	373
11-1:4.3	Schools and Instructors.....	374
11-1:4.3a	Qualified Providers	374
11-1:4.3b	The Approval Application for Providers.....	375
11-1:4.3c	Responsibilities of Providers...	376
11-1:4.3d	Recordkeeping and Reporting Requirements for Providers.....	377
11-1:4.3e	Advertising by Providers.....	379
11-1:4.3f	The Approval Application for Instructors	379
11-1:4.4	Required Courses	381
11-1:4.4a	Application for Courses	381
11-1:4.4b	Core Courses	382
11-1:4.4c	Elective Courses.....	382
11-1:4.4d	Distance Learning and Correspondence Courses	383
11-1:4.4e	Courses Not Approved for Continuing Education.....	383
11-1:4.5	Credit for Teaching and Unaccredited Courses Taken	384
11-1:4.6	Out-of-State Courses	384

Table of Contents

	11-1:4.7	Waiver of Continuing Education	384
	11-1:4.8	Methods of Providing Courses	386
	11-1:4.9	Time to Complete Courses	387
	11-1:4.10	Fees	387
	11-1:4.11	Denials, Suspensions or Revocations of Approvals and Applications	388
	11-1:4.12	Appeal of a Denial of an Application for a Course, Instructor, Provider or Waiver	389
11-2	Licensing		390
	11-2:1	General Requirements	390
	11-2:1.1	Age and Education	390
	11-2:1.2	Term of Licenses	390
	11-2:1.3	Applicable Fees.....	391
	11-2:1.4	Nonresidents	391
	11-2:1.5	Background Checks.....	391
	11-2:1.6	Individual Broker’s License Required for Corporate and Other Entities	393
	11-2:1.7	Temporary Licenses for Corporate and Other Entities	393
	11-2:1.8	Salesperson Licensed With a Real Estate Referral Company.....	394
	11-2:1.9	Social Security Numbers	395
	11-2:1.10	Bases to Deny License	395
	11-2:2	Examination Rules.....	397
	11-2:3	Salesperson’s and Salesperson Licensed With a Real Estate Referral Company’s License	398
	11-2:4	Broker and Broker-Salesperson License	399
	11-2:4.1	Experience Requirement and Application.....	399
	11-2:4.2	Return of Licenses, Office Closing and Change of Broker of Record	400
	11-2:4.3	Transfer or Termination of Broker’s License	404
	11-2:4.4	Out of State Main and Branch Offices.....	404
	11-2:4.5	Sponsoring of License Applications	405
	11-2:4.6	Transfer of Licenses	405
	11-2:4.7	Custody of Licenses	406
	11-2:4.8	Termination or Resignation of Broker-Salesperson, Salesperson or Salesperson Licensed With a Real Estate Referral Company.....	407
	11-2:4.9	Revocation or Suspension of Licenses.....	409

Table of Contents

11-2:5	Salesperson Licensed With a Real Estate Referral Company Obtaining a Broker's or Salesperson's License	410
11-2:6	Failure to Maintain or Renew a License	413
11-2:7	Licensure Forms	415
11-2:8	License Application and Other Deadlines.....	418
11-2:9	Applicable Fees for Licensure	419
Chapter 12: Real Estate Schools		423
12-1	Introduction	423
12-2	Licensing Requirements for Schools	424
12-2:1	General.....	424
12-2:2	Applications, Fees and Background Checks.....	425
12-2:3	School's Name	426
12-2:4	Offices and Teaching Facilities	426
12-2:5	School Policy and Regulations.....	427
12-2:6	Director of the School	428
12-3	Licensing Requirements for Instructors	429
12-3:1	Applications, Fees and Background Checks.....	429
12-4	Instructors and Guest Lecturers	432
12-5	Recruitment of Students by Brokers at Schools	433
12-5:1	Written Notice of Nonsolicitation Required	433
12-5:2	School Personnel Prohibited From Soliciting Students.....	435
12-5:3	Promises of Reduced Tuition or Employment	435
12-5:4	Advertisements	436
12-5:5	Schools in a Broker's Office.....	436
12-6	Brokerage or Related Activities by Students	437
12-7	Tuition	437
12-8	Disabled and Transfer Students	437
12-9	Recordkeeping	438
12-10	Standard for Students to Pass Courses	438
12-11	Advertisements	438
12-12	Closing of School	439
12-13	Revocation or Suspension of Real Estate School or Instructor Licenses	439
12-14	Role of Commission's Education Bureau.....	441
12-14:1	General.....	441
12-14:2	Forms	442
12-14:3	Fees	443
12-15	Americans With Disabilities Act	444

Table of Contents

Chapter 13: Maintaining Brokerage Offices	447
13-1 Place of Business	447
13-2 Supervision of Office	448
13-3 Offices in Residences	449
13-4 Sole Proprietors	449
13-5 Branch Offices	450
Chapter 14: Broker's Trust Accounts and Recordkeeping.....	451
14-1 Accounts for Funds of Others	451
14-1:1 Special Accounts.....	451
14-1:2 Commingling Funds.....	452
14-1:3 Deposit of Funds.....	453
14-1:4 Signatories on Escrow and Trust Accounts.....	453
14-1:5 Payments to be Held in Escrow or Trust	453
14-1:6 Credit Card Payments.....	454
14-1:7 Adequate Safeguards for Funds.....	456
14-1:8 Advanced Fees for Brokers	456
14-2 Maintaining Records	457
14-2:1 Timeframe for Keeping Records	457
14-2:2 Deposits and Withdrawals	457
14-2:3 Cash Receipts	458
14-2:4 Ledger and Other Documents.....	458
14-2:4.1 Ledgers.....	458
14-2:4.2 Credit Card Records.....	458
14-2:4.3 Bank Statements.....	459
14-2:4.4 Contracts and Other Transaction- Related Documents	459
14-2:4.5 Location for Maintaining Documents	460
14-2:4.6 Unaccepted Offers and Expired Listing Agreements.....	460
14-2:5 Production of Documents to the Commission.....	461
14-2:6 Storing Documents on Disks or Tapes	461
Chapter 15: Trade Associations and Multiple Listing Services.....	463
15-1 Regulatory Restrictions on Membership.....	463
15-2 Trade Associations.....	464
15-2:1 The National Association of REALTORS®	464
15-2:1.1 NAR's Code of Ethics	468
15-2:1.2 NAR's Arbitration Requirement	478

Table of Contents

15-2:2	The New Jersey REALTORS®	481
15-2:3	Local Boards/Associations of REALTORS®	483
15-2:4	Other Trade Associations.....	486
15-3	Multiple Listing Services	487
15-3:1	General.....	487
15-3:2	Advertising	488
15-3:3	Antitrust	489
Chapter 16: Real Estate Commission and Other Advertising Rules		493
16-1	Broker's Place of Business.....	493
16-1:1	Signs at the Broker's Office	493
16-1:2	References in Advertising to the Broker's Office.....	494
16-2	Proper Use of Names	494
16-3	Webpages.....	495
16-4	Telephone Numbers.....	496
16-5	Franchises.....	496
16-6	Membership in Multiple Listing Services.....	497
16-7	Home Warranty Offers	497
16-8	Free, Discounted, or Other Services or Products.....	498
16-9	Properties Listed With Another Broker	500
16-10	Properties "Sold" or "Under Contract"	501
16-11	Commissions Rates.....	501
16-12	Business Cards.....	501
16-13	Loan Information	502
16-14	Location of the Property for Sale or Lease	502
16-15	Discriminatory Language	503
16-16	Licensure by the Commission	503
16-17	False, Misleading or Deceptive Claims	503
16-18	Lotteries, Contests and the Like	504
16-19	Rebates	504
16-20	Real Estate Sales Full Disclosure Act	505
16-21	Real Estate Timeshare Act.....	508
16-22	Market Analyses and Price Opinions.....	509
16-22:1	Comparative Market Analyses/Broker Price Opinions....	509
16-22:2	Appraisals.....	514
16-22:3	NAR's Code of Ethics Regarding Price Opinions.....	516
16-23	Charitable Contributions.....	517
16-24	Social Media	517
16-25	Additional Regulations for Salespersons Licensed With a Real Estate Referral Company.....	519

Table of Contents

Chapter 17: Commission Regulations and Other Requirements

Regarding Contracts of Sale and Leases.....	521
17-1 Memorializing Offers and Counter-Offer in Writing	521
17-2 Predetermined Fees or Commissions	523
17-3 Required Provisions in Contracts of Sale and Leases.....	524
17-3:1 Attorney Review	524
17-3:2 Off-Site Conditions.....	524
17-3:3 Megan’s Law	525
17-3:4 Opinion 26.....	525
17-3:5 Licensee’s Disclosure of Interest as Seller or Buyer....	525
17-3:6 Real Estate Sales Full Disclosure Act	526
17-3:7 Private Well Testing	527
17-3:8 Lead-Based Paint.....	528
17-3:9 Rent Control Exemption for Multiple Dwelling Units.....	528
17-4 Duty to Submit Offers	529
17-5 Back-Up Offers.....	531
17-6 A Broker’s Declaration of Business Relationship.....	532
17-7 Americans With Disabilities Act	534
17-8 Bulk Sales Law	538

Chapter 18: Prohibited Activities 543

18-1 Section 17 of the Real Estate License Act	543
18-1:1 False Promises	544
18-1:2 Representing Multiple Parties.....	544
18-1:3 Flagrant Misrepresentations	544
18-1:4 Failure to Account for Money	544
18-1:5 Conduct Demonstrating Unworthiness, Incompetency, Bad Faith or Dishonesty	545
18-1:6 Providing Listing Agreements to Clients.....	545
18-1:7 Lotteries, Contests, Games, Etc.	547
18-1:8 Criminal Convictions.....	548
18-1:9 Collecting a Commission While Being Paid by Another Party	548
18-1:10 Use of Trade Names.....	548
18-1:11 Paying Rebates or Compensation to Unlicensed Persons	548
18-1:11.1 General Prohibitions	548
18-1:11.2 Rebates	549
18-1:11.3 Rebate Agreement	551
18-1:12 Other Fraudulent Acts.....	552
18-1:13 Accepting Payment From Any Person Other Than a Broker.....	552

Table of Contents

18-1:14	Fraudulent Procurement of a License.....	552
18-1:15	Commingling Funds.....	552
18-1:16	Disclosure of Interest in Property to be Sold.....	553
18-1:17	Disclosure of Interest in Property to be Purchased.....	553
18-1:18	Referral Fees for Rental Housing.....	553
18-1:19	Notifying the Commission About a Criminal Charge or Conviction or a License Suspension or Revocation.....	554
18-1:20	Violation of Statute or Commission Regulations.....	554
18-1:21	Procedural Issues.....	554
18-1:22	Penalties.....	555
18-2	Kickbacks.....	556
18-2:1	Real Estate Commission Regulations.....	556
18-2:2	Real Estate Settlement Procedures Act.....	557
18-3	Dual Compensation.....	558
18-4	In-House Mortgage Services.....	563
18-5	Blockbusting.....	564
18-6	Discriminatory Commission Splits.....	565
18-7	Pressuring Media.....	568
18-8	Fixing Commissions.....	568
18-8:1	Real Estate Commission Prohibition.....	568
18-8:2	Antitrust Implications.....	569
18-9	Acting as a Debt Adjuster.....	570
18-10	Sale of Mobile or Manufactured Homes.....	572
18-11	Mortgage Assistance Relief Services Rule.....	572
Chapter 19: Discipline of Real Estate Licensees.....		577
19-1	Section 17 of the Real Estate License Act.....	577
19-2	Real Estate Commission Sanctions Imposed.....	579
19-3	Procedural Issues.....	579
19-4	Freezing a Broker's Assets and Paying Funds into Court.....	580
19-5	Conviction of Certain Offenses.....	581
19-6	Suspension of License.....	581
19-7	Effect of Revocation of Salesperson or Broker-Salesperson License on Broker.....	582
19-8	Real Estate Guaranty Fund.....	582
19-9	Rehabilitation Convicted Offenders Act.....	586
Chapter 20: Disclosure of Off-Site Conditions.....		589
20-1	Early Duty to Disclose Off-Site Conditions.....	589
20-2	The New Residential Construction Off-Site Conditions Disclosure Act.....	599

Table of Contents

20-3	Regulations Regarding New and Other Construction	604
20-4	Varying the Notice Language in the Act	606
Chapter 21: The Real Estate Settlement Procedures Act		611
21-1	General	611
21-2	Covered Transactions.....	611
21-2:1	Loans Secured by a Lien	612
21-2:2	One to Four Family Dwellings	612
21-2:3	Federally Related Lenders.....	612
21-2:4	Federally Related Loans	613
21-2:5	Lender as a Creditor	613
21-2:6	Transactions That Are Exempt	614
21-2:6.1	Business, Commercial or Agricultural Loans	614
21-2:6.2	Temporary Loans	614
21-2:6.3	Vacant Property.....	615
21-2:6.4	Loan Assumptions Without Lender Approval.....	615
21-2:6.5	Conversion of Loans	616
21-2:6.6	Secondary Market Transactions	616
21-2:6.7	Loans to Government Agencies.....	616
21-2:6.8	Partial Requirement for Loans Covered by Disclosure Requirements of Regulation Z.....	617
21-3	Referral Fees and Unearned Fees Prohibited	617
21-3:1	Referral Fees.....	617
21-3:1.1	Payments or Things of Value	617
21-3:1.2	Agreements to Refer Business.....	618
21-3:1.3	Referrals	618
21-3:1.4	Examples of Permitted Payments	619
21-3:2	Unearned Fees.....	620
21-3:2.1	Unearned Mark-Ups	624
21-3:3	Excluded Transactions	626
21-3:4	Affiliated Business Arrangements	626
21-3:4.1	Disclosure Requirements	628
21-3:4.2	Required Use of a Settlement Service Provider	630
21-3:4.3	Return on Ownership Interest	631
21-3:5	Recordkeeping	633
21-3:6	Sanctions	633
21-4	Requiring a Specific Title Company.....	634
21-5	Enforcement Actions	634

Table of Contents

21-5:1	Jurisdiction of Courts.....	634
21-5:2	The Statute of Limitations.....	634
21-5:3	Defenses	635
21-5:4	Liens.....	636
Chapter 22: The Fair Housing Act		637
22-1	General.....	637
22-2	Protected Classes	638
22-2:1	Race, Color or National Origin	638
22-2:2	Sex	639
22-2:3	Religion	640
22-2:4	Familial Status.....	640
22-2:5	Handicap.....	641
22-2:6	Persons Providing Assistance.....	643
22-2:7	Additional Protected Classes in New Jersey.....	643
22-3	Exceptions	645
22-3:1	Single-Family Houses	645
22-3:2	Mrs. Murphy	646
22-3:3	Private Clubs and Religious Organizations	647
22-3:4	Maximum Occupancy Requirements.....	648
22-3:5	Housing for Older Persons.....	648
22-4	Discriminatory Activities.....	650
22-4:1	Steering.....	650
22-4:2	Redlining	650
22-4:3	Misrepresenting Unavailability	651
22-4:4	Contract Terms.....	651
22-4:5	Blockbusting.....	652
22-4:6	Applicability of the Disparate Impact Test	653
22-4:7	Use of Criminal Records by Landlords in New Jersey.....	655
22-5	Advertising	658
22-6	Membership in Trade and Other Organizations.....	662
22-7	Enforcement	663
22-7:1	The Department of Housing and Urban Development	663
22-7:2	Private Persons	665
22-7:3	Private Organizations.....	666
22-8	Penalties.....	667
Chapter 23: Lead-Based Paint Disclosures.....		671
23-1	Enactment of the Residential Lead-Based Paint Hazardous Reduction Act	671

Table of Contents

23-2	Types of Housing Affected by the Act	672
23-3	Responsibilities of Real Estate Agents.....	673
23-4	Sellers' and Lessors' Responsibilities.....	675
23-5	Mandatory Warning Statements	677
	23-5:1 Contracts of Sale	677
	23-5:2 Leases	677
	23-5:3 Acknowledgement of the Disclosure	678
23-6	Penalties.....	681
23-7	Renovations to Properties With Lead-Based Paint.....	683
	23-7:1 Information Distribution Requirements	684
23-8	New Jersey Law	685
	Table of Cases.....	689
	Table of Statutes and Codes	701
	Index	731