

REAL ESTATE COMMISSION**11:5-5.4**

shall within 90 days after such charge or collection furnish his principal with an accounting as to the use of such moneys.

(b) Such accounting shall set forth the actual amount of each individual expenditure, including date of insertion and name of newspaper or periodical, and similarly detail any other type of promotional expenditure if the funds are spent for other than newspaper or periodical advertising.

11:5-5.4 Records to be maintained by broker

(a) Every broker shall keep records as prescribed herein of all funds of others received by him or her for not less than six years from the date of receipt of any such funds. All such funds shall be deposited by the broker in accordance with the requirements of N.J.A.C. 11:5-5.1.

1. Whenever a broker receives funds to be held in trust in cash, a written receipt signed by the licensee to whom the funds were paid and specifying the date, amount, purpose and from whom those funds were received shall be issued to the payor of the funds. A copy of that receipt shall be retained by the broker as prescribed in this section.

(b) The records required to be kept pursuant to (a) above shall include:

1. Written references on the checkbook stubs or checkbook ledger pages to all deposits into and withdrawals from the account(s) maintained by the broker in accordance with N.J.A.C. 11:5-5.1, which shall specifically identify the date, amount and payor of each item deposited, the property to which the monies pertain and the reason for their being held by the broker. Such records shall also specify the date, amount, payee and purpose of each disbursement. All trust or escrow account withdrawals shall be only by authorized intrastate or interstate bank transfer or by check payable to a named payee and not to cash;

2. In appropriate ledger book for all trustee accounts or escrow accounts showing, in one location in that ledger book for each separate trust transaction, the payor of all funds deposited in such accounts, the date of deposit, the names of all persons for whom the funds are or were held, the amount of such funds, the amounts and dates of all disbursements of such moneys, and the names of all persons to whom such funds were disbursed. The Commission will not deem a regular checkbook ledger as sufficient to constitute an appropriate ledger book. Such a ledger book may be maintained in a computer or similar device, so long as it is capable of reproducing the electronically stored data on paper so as to depict the complete history of all activity in each separate trust transaction, and the data can be maintained in an easily accessible form for the required six year period. A regular running balance of the individual transaction ledger sheets shall be maintained. The total of the running balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust on that transaction, and deducting the total of all moneys disbursed;

i. Brokers who accept credit card charges on short term rental transactions and who maintain a reserve in their special trust or escrow account to which funds received through such charges are credited as provided in N.J.A.C. 11:5-5.1(j) shall record in one location in their ledger book, entries specifying deposits made to establish, replenish, and increase the reserve amount and all withdrawals made to reduce the reserve amount. Brokers who maintain reserves in such special escrow or trust accounts shall not be required to make an entry in their ledger for each transaction fee debited from the said account as a result of their acceptance of a payment through a charge on a credit card.

3. Copies of all records, showing that at least quarterly a reconciliation has been made of the checkbook balance, the bank statement balance and the client trust ledger sheet balances;

4. All bank statements, cancelled checks, duplicate deposit slips and, if the broker accepts credit card charges on short term rental transactions as provided in N.J.A.C. 11:5-5.1, all confirmation slips or other written material reflecting the broker's acceptance of such payments;

5. Copies of all offers, contracts of sale and sale or rental listing agreements;

6. Copies of all leases and property management agreements;

7. Copies of all statements to owners, sellers, purchasers and tenants showing the disbursement of funds to them or on their behalf, which statements shall identify the property and unit, if applicable, for which the disbursement was made and the reason for the disbursement;

8. Copies of all bills paid for owners, sellers, purchasers or tenants by the broker from escrowed funds, which payments may only be made pursuant to written authorization;

9. Copies of all records showing payments to persons licensed with the paying broker and to cooperating brokers, which records shall contain all information required by N.J.A.C. 11:5-5.1(d); and

10. Copies of all receipts issued for all security deposits accepted from tenants, and of checks for and letters accompanying the release of such funds, and/or the duplicate deposit slips evidencing the deposit of such funds by the broker.

(c) With the exception of the materials described in (d) below, on transactions where a broker has not received the property or funds of others, the following records shall be maintained for six years from the earlier of the date of the listing or property management agreement or of the contract or lease:

1. Copies of all fully executed leases, contracts of sale, property management and listing agreements;

2. Copies of bills for brokerage services rendered in such transactions;

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3. Copies of all records showing payments to persons licensed with the paying broker and to co-operating brokers; and

4. Copies of all bank statements, cancelled checks and duplicate deposit slips pertaining to the broker's general business account.

(d) Unaccepted offers and expired listing agreements during the term of which no contract of sale was executed or no tenancy was entered into shall be maintained for six months from the date of the offer or the expiration date of the listing agreement.

(e) The financial books and other records as described in (a), (b), (c) and (d) above shall be maintained in accordance with generally accepted accounting practice. They shall be located at the main New Jersey office of each broker or, in situations where separate general business and/or trust or escrow accounts are maintained at licensed branch offices, either at that branch office or at the main office of the broker. Copies of all items designated as records in (a) through (d) above shall be maintained by brokers as provided in this section. Items may be maintained either on paper or stored electronically in a computer or similar device, so long as the electronically stored data can be readily reproduced on paper so as to depict the complete history of all activity and the data can be maintained in an easily accessible form for the required six-year period. This requirement shall apply to all such records, including any items generated through e-mail or any other means which does not require the creation of a paper document. All such records shall be available for inspections, checks for compliance with this section and copying by a duly authorized representative of the New Jersey Real Estate Commission. Licensees may be required to certify to the accuracy of the reproduced data.

Amended by R. 1989 d.425, effective August 21, 1989 (operative November 19, 1989).

See: 21 N.J.R. 1 310(a), 21 N.J.R. 2520(a).

Clear specifications added regarding the type of business records brokers are required to maintain, new (a)1, new (b)1-10, and new (c)-(e).

Amended by R. 1998 d.246, effective May 18, 1998.

See: 30 N.J.R. 2 78(a), 30 N.J.R. 1827(a).

In (e), inserted new third and fourth sentences.

Amended by R. 1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2 333(a), 30 N.J.R. 3646(a).

In (a), changed N.J.A.C. reference and deleted references to property; and in (b), changed N.J.A.C. references.

Amended by R. 1999 d.444, effective December 20, 1999.

See: 31 N.J.R. 2 675(a), 31 N.J.R. 4282(a).

In (b), inserted 2i, and rewrote 4.

Amended by R. 2009 d.287, effective September 21, 2009.

See: 41 N.J.R. 13 81(a), 41 N.J.R. 3440(a).

In (e), substituted "Copies" for "Paper copies" and "e-mail" for "E-mail", and inserted the fourth and last sentences.

11:5-5.5 Inspection of records

(a) Every licensee shall make available for inspection by the Commission or its designated representatives all records of transactions, books of account, instruments, documents and forms utilized or maintained by such licensee in the conduct of

the licensed business, which may be pertinent to the conduct of the investigation of any specific complaint.

(b) To accomplish the objectives and carry out the duties prescribed by this Act, especially the provisions of N.J.S.A. 45:15-17, the Commission may issue subpoenas to any person, administer an oath or affirmation to any person, and conduct hearings in aid of any investigation or inquiry.

(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 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.

As amended, R.1983 d.471, effective November 7, 1983.

See: 15 New Jersey Register 1343(a), 15 New Jersey Register 1865(c).

Language citing statute deleted in subsection (a).

Amended by R.1988 d.410, effective September 6, 1988.

See: 20 New Jersey Register 883(a), 20 New Jersey Register 2295(a).

Added (c).

Petition for Rulemaking: Upon termination from employment with a broker, no salesperson or broker salesperson may remove files from the office pertaining to sale or rental listings.

See: 23 New Jersey Register 1968(e).

Public Notice: Petition to amend subsection (c).

See: 23 New Jersey Register 2191(b).

Amended by R.1992 d.107, effective March 2, 1992.

See: 23 New Jersey Register 3428(a), 23 New Jersey Register 3739(a), 24 New Jersey Register 852(b).

Meaning of "files" specified at (c).

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 New Jersey Register 2333(a), 30 New Jersey Register 3646(a).

In (b), deleted ", in addition to other powers conferred upon it by the Act" following "Commission"; and in (c), changed N.J.A.C. reference.

SUBCHAPTER 6. CONDUCT OF BUSINESS**11:5-6.1 Advertising rules**

(a) Unless otherwise set forth herein, subsections (b) through (o) below shall apply to all categories of advertising including all publications, radio or television broadcasts, all electronic media including E-mail and the Internet, business stationery, business cards, business and legal forms and documents, and signs and billboards.

1. Individuals operating as sole proprietors and licensed as employing brokers shall conspicuously display on the exterior of their maintained place of business their name and the words "Licensed Real Estate Broker".

2. Firms licensed as corporate or partnership brokers shall conspicuously display on the exterior of their maintained place of business their regular business name and the name of the indi-