

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
2900 Real Estate Commission

Statutory Authority: 24 Delaware Code, Section 2905(a)(1) (24 **Del.C.** §2905(a)(1))
24 **DE Admin. Code** 2900

FINAL

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on May 10, 2007 at a scheduled meeting of the Delaware Real Estate Commission to receive comments regarding the proposed changes its rules and regulations to allow clarify and simplify the online renewal process, to eliminate a provision regarding the assessment of delinquency fees, to implement House Bill 122, with House Amendment No. 1 and Senate Amendment No 1 of the 143rd General Assembly, and to eliminate the regulations regarding out of state land sales, which are no longer regulated by the Commission after the enactment of Senate Bill 370 of the 143rd General Assembly. The proposed changes to the Commission's rules and regulations were published in the *Register of Regulations*, Vol. 10, Issue 10, April 1, 2007.

The Commission's authority to promulgate rules and regulations implementing or clarifying specific sections of Chapter 29 of Title 24 is set forth in 24 **Del.C.** §2905(a)(1).

Summary of the Evidence and Information Submitted

No written comments were received. Four members of the public spoke at the May 10, 2006 meeting. Three of the four went on the record to state that they were in favor of the proposed rule changes. The fourth member of the public stated that he would hold his comments, as they did not directly relate to the proposed rule changes.

Findings of Fact with Respect to the Evidence and Information Submitted

The Commission carefully reviewed and considered the proposed changes to its rules and regulations. Pursuant to Section 2905(a)(1), the Commission has the authority adopt regulations that are not inconsistent with the law and that are necessary to carry out the law. The revisions to Regulation 8.0 clarify the process for license renewal and streamline the process both for licensees and for the Division of Professional Regulation. The deletion of the delinquency fee provision in Regulation 8.2 is necessary because the Division of Professional Regulation sets all fees, as provided in Section 8725(c) of Title 29 of the **Delaware Code**. The revisions to Regulation 10.0 are necessary to implement House Bill 122, as amended by House Amendment No. 1 and Senate Amendment No. 1, which was enacted by the 143rd General Assembly. These revisions provide that the Commission will adopt the required Consumer Information Statement for use with respect to the purchase or sale of one-to-four family residential dwellings and provide the CIS on the Commission's website for use by licensees. The revisions also require that the relationship between a client and a licensee must be identified and confirmed in the contract for the real estate transaction. Finally, the deletion of Regulation 14.0, related to out-of-state land sales and promotions, is necessary because, after the passage of Senate Bill 370 by the 143rd General Assembly, the Commission no longer regulates these transactions.

Decision and Effective Date

The Commission hereby adopts the change to its rules and regulations to be effective 10 days following publication of this Order in the *Register of Regulations*.

Text and Citation

The text of the rule remains as published in *Register of Regulations*, Vol. 10, Issue 10, April 1, 2007, as attached hereto.

SO ORDERED this 15th day of June, 2007.

DELAWARE REAL ESTATE COMMISSION

James C. Brannon, Vice-Chairperson
Denise R. Stokes, Public Member
Harry W. Kreger, Professional Member
James L. Givens, Professional Member
Gilbert Emory, Public Member
Christopher J. Whitfield, Professional Member

2900 Real Estate Commission

1.0 Introduction

1.1 Authority

1.1.1 Pursuant to 24 **Del.C.** §2905, the Delaware Real Estate Commission is authorized and empowered and hereby adopts the rules and regulations contained herein.

1.1.2 The Commission reserves the right to make any amendments, modifications or additions hereto, that, in its discretion are necessary or desirable.

1.1.3 The Commission reserves the right to grant exceptions to the requirements of the rules and regulations contained herein upon a showing of good cause by the party requesting such exception, provided such exception is not inconsistent with the requirements of 24 **Del.C.** Ch. 29.

1.2 Applicability

1.2.1 The rules and regulations contained herein, and any amendments, modifications or additions hereto are applicable to all persons presently licensed as real estate brokers or real estate salespersons, and to all persons who apply for such licenses.

1.3 Responsibility

1.3.1 It is the responsibility of the employing broker to insure that the rules and regulations of the Commission are complied with by licensees. Every broker is responsible for making certain that all of his or her sales agents are currently licensed, and that their agents make timely application for license renewal. A broker's failure to meet that responsibility may result in a civil fine against the broker of up to \$ 1,000.00 per agent.

1.3.2 Each office location shall be under the direction of a broker of record, who shall provide complete and adequate supervision of that office. A broker serving as broker of record for more than one office location within the State shall apply for and obtain an additional license in his name at each branch office. The application for such additional license shall state the location of the branch office and the name of a real estate broker or salesperson licensed in this State who shall be in charge of managing the branch office on a full time basis.

A broker shall not serve as broker of record unless said broker has been actively engaged in the practice of real estate, either as a licensed salesperson or a licensed broker, for the preceding three (3) years.

Where an unforeseen event, such as a resignation or termination from employment, death, emergency, illness, call to military service or training, or a sanction imposed by the Commission causes or necessitates the removal of the sole licensed broker in an office, arrangements may be made with the Commission for another broker to serve as broker of record for said office on a temporary basis.

The employment of a sales manager, administrative manager, trainer, or other similar administrator shall not relieve the broker of record of the responsibilities contained and defined herein.

1.3.3 The failure of any licensee to comply with the Real Estate Licensing Act and the rules and regulations of the Commission may result in disciplinary action in the form of a reprimand, civil penalty, suspension or revocation of the broker's and/or salesperson's license.

2.0 Requirements for Obtaining a Salesperson's License

The Commission shall consider any applicant who has successfully completed the following:

2.1 Course

2.1.1 The Commission shall consider any applicant who has successfully completed an accredited course in Real Estate Practice.

2.1.2 All other regulations regarding real estate courses are issued under the "Guidelines for Fulfilling the Delaware Real Estate Education Requirements".

2.2 Examination

2.2.1 Within twelve (12) months of completing an accredited course, the applicant must make application to the Commission by submitting a score report showing successful completion of the examination required by the Commission. The applicant must forward all necessary documentation to the Commission to be considered for licensure.

2.2.2 An applicant may sit for the examination a maximum of three (3) times after successful completion of an approved course in real estate practice. If an applicant fails to pass the examination after three (3) attempts at such, the applicant shall be required to retake and successfully complete an approved course in real estate practice before being permitted to sit for the examination again.

2.3 Ability to conduct business

2.3.1 The Commission reserves the right to deny licensure to an applicant based upon a determination that the applicant is not competent to transact business of a real estate salesperson.

2.3.2 The minimum age at which a salesperson's license can be issued is eighteen (18).

2.4 Fees

The Commission shall not consider an application for a salesperson's license unless such application is submitted with evidence of payment of the following fees:

2.4.1 Salesperson's application fee established by the Division of Professional Regulation pursuant to 29 Del.C. §8807(d).

5 DE Reg. 1387 (1/01/02)

3.0 Requirements for Obtaining a Real Estate Broker's License

The Commission shall consider the application of any person for a broker's license upon completion of the following:

3.1 Course

3.1.1 The Commission shall consider the application of any person for a license after said applicant has successfully completed an accredited course.

3.1.2 Effective May 1, 1978, all courses shall be limited to thirty-five (35) students in each class.

3.2 Experience

3.2.1 A salesperson must hold an active license in the real estate profession for five (5) continuous years immediately preceding application for a broker's license. If the licensee fails to renew his or her license by the expiration date but then makes an application for reinstatement within sixty (60) days of the expiration of the license and the Commission otherwise approves the application for reinstatement, the five-years' continuity will not be broken.

3.2.2 The applicant shall submit to the Commission a list of at least thirty (30) sales or other qualified transactions, showing dates, location, purchaser's name and seller's name. These sales must have been made by the applicant within the previous five (5) years through the general brokerage business and not as a representative of a builder, developer, and/or subdivider. Transactions involving time-shares, leases, or property management are not qualified transactions for purposes of obtaining a real estate broker's license. The Commission reserves the right to waive any of the above requirements, upon evidence that the applicant possesses sufficient experience in the real estate business or demonstrates collateral experience to the Commission.

3.2.3 The list of thirty (30) sales or other qualified transactions and/or the variety of the licensee's experience must be approved by the Commission.

3.3 Examination

3.3.1 Within twelve (12) months of completing an accredited course, the applicant must submit a score report showing successful completion of the examination required by the Commission and submit all necessary documentation including the credit report required by Rule 3.5.1 to the Commission to be considered for licensure.

3.4 Ability to conduct business

3.4.1 The Commission reserves the right to deny licensure to an applicant based upon a determination that the applicant is not competent to transact the business of a real estate broker, including a determination that the applicant lacks experience.

3.4.2 The minimum age at which a person can be issued a broker's license is twenty-three (23).

3.5 Credit Report

3.5.1 Each applicant shall submit a credit report from an approved credit reporting agency, which report shall be made directly to the Commission.

3.6 Fees

The Commission shall not consider an application for a broker's license unless such application is submitted with evidence of payment of the following fees:

3.6.1 Broker's application fee established by the Division of Professional Regulation pursuant to 29 Del.C. §8807(d).

4 DE Reg. 846 (11/01/00)

5 DE Reg. 1387 (1/01/02)

4.0 Reciprocal Licenses

4.1 Requirements

4.1.1 A non-resident of this State who is duly licensed as a broker in another state and who is actually engaged in the business of real estate in the other state may be issued a nonresident broker's license under 24 Del.C. §2909(a).

4.1.2 A non-resident salesperson who is duly licensed as a salesperson in another state and who is actually engaged in the business of real estate in the other state may be issued a non-resident salesperson's license provided such non-resident salesperson is employed by a broker holding a broker's license issued by the Commission.

5 DE Reg. 1387 (1/01/02)

5.0 Escrow Accounts

5.1 All moneys received by a broker as agent for his principal in a real estate transaction shall be deposited within three (3) banking days after a contract of sale or lease has been signed by both parties, in a separate escrow account so designated, and remain there until settlement or termination of the transaction at which time the broker shall make a full accounting thereof to his or her principal.

5.1.1 When the real estate transaction is a non-recurring residential rental agreement of less than one hundred twenty (120) days, the broker may, in accordance with written authorization from his or her principal, transfer from the escrow account a management fee and an amount specified up to a stated dollar amount for authorized repairs or cleaning expenses. Any amounts transferred in accordance with this Rule 5.1.1 must be reconciled and reflected in the written full accounting required by Rule 5.1.

5.2 All moneys received by a salesperson in connection with a real estate transaction shall be immediately delivered to the appropriate broker. A licensee shall not accept, as a good faith or earnest money deposit in connection with a real estate transaction, a photocopy, facsimile, or other copy of a personal check or draft, nor shall a licensee accept as a good faith or earnest money deposit a check or draft that is postdated.

5.3 A broker shall not co-mingle money or any other property entrusted to him with his money or property, except that a broker may maintain up to \$100.00 of his/her own funds in the escrow account to cover bank service charges and to maintain the minimum balance necessary to avoid the account being closed.

5.4 A broker shall maintain in his office a complete record of all moneys received or escrowed on real estate transactions, including the sources of the money, the date of receipt, depository, and date of deposit; and when a transaction has been completed, the final disposition of the moneys. The records shall clearly show the amount of the broker's personal funds in escrow at all times.

5.5 An escrow account must be opened by the broker in a bank with an office located in Delaware in order to receive, maintain or renew a valid license.

5.6 The Commission may summarily suspend the license of any broker who fails to comply with 5.4, who fails to promptly account for any funds held in escrow, or who fails to produce all records, books, and accounts of such funds upon demand. The suspension shall continue until such time as the licensee appears for a hearing and furnishes evidence of compliance with the Rules and Regulations of the Commission.

5.7 Interest accruing on money held in escrow belongs to the owner of the funds unless otherwise stated in the contract of sale or lease.

4 DE Reg. 457 (9/1/00)

5 DE Reg. 1070 (11/1/01)

6.0 Transfer of Broker or Salesperson

6.1 All licensees who transfer to another office, or brokers who open their own offices, but who were associated previously with another broker or company, must present a completed transfer form to the Commission signed by the individual broker or company with whom they were formerly associated, before the broker's or salesperson's license will be transferred. In addition all brokers who are non-resident licensees must also provide a current certificate of licensure.

6.2 The Commission reserves the right to waive this requirement upon a determination of good cause.

6.3 All brokers of record who move the physical location of their office shall notify the Commission in writing at least 30 days, or as soon as practical, prior to such move by filing a new office application.

7.0 Business Transactions and Practices

7.1 Written Listing Agreements

7.1.1 Listing Agreements for the rental, sale, lease or exchange of real property, whether exclusive, co-exclusive or open shall be in writing and shall be signed by the seller or owner.

7.2 Copy of agreements

7.2.1 Every party to a listing agreement, agreement of purchase and sale, or lease shall be furnished with an executed copy of such contract or contracts. It shall be the responsibility of the licensee to deliver an executed copy of the agreements to the principals within a reasonable length of time after execution.

7.3 Advertising

7.3.1 Any licensee who advertises in newspapers, the Internet, or any other media, real property personally owned or real property in which the licensee has any ownership interest must include in the advertisement that he or she is the owner of said property, and that he or she is a real estate licensee. This subsection does not apply to signs.

7.3.2 Any licensee who advertises on signs, newspapers, the Internet, or any other media an offer to purchase real property must include in the advertisement that he or she is a real estate licensee.

7.3.3 Any licensee who advertises, by signs, or in newspapers, the Internet, or any other media, any real property for sale, lease, exchange, or transfer that is listed with a broker must include in legible print in the advertisement the complete business name that has been registered with the Commission, and office phone number registered by the broker of record with the Commission for that office location. Nothing contained herein shall preclude the listing of additional phone numbers. All such advertising shall also contain language or abbreviations that clearly identify each phone number listed; examples include, but are not limited to: "Office"; "Home"; "Res."; "Car"; and "Cell".

7.3.4 All advertisements for personal promotion of licensees must include the complete business name that has been registered with the Commission, and office phone number registered by the broker of record with the Commission for that office location.

7.4 Separate Office

7.4.1 Each licensed broker who is a resident of this State shall maintain an office in this State approved by the Commission in which to transact real estate business. No licensee shall transact real estate business at any office location unless an office application has been filed with and approved by the Commission. Nothing contained herein, however, shall preclude said persons from sharing facilities approved by the Commission with such other businesses as insurance, banking, or others that the Commission shall deem compatible.

7.4.2 If a broker maintains more than one place of business within the State, the broker shall apply for and obtain approval by the Commission for each office location.

7.4.3 Any office located in a private home must be approved by the Commission and have a separate entrance. The broker must place a permanent sign indicating the name under which the office is registered with the Commission in a conspicuous location.

7.5 Compensation

7.5.1 Licensees shall not accept compensation from more than one party to a transaction, even if permitted by law, without timely disclosure to all parties to the transaction.

7.5.2 When acting as agent, a licensee shall not accept any commission, rebate, or profit on expenditures made for his principal-owner without the principal's knowledge and informed consent.

7.6 Duty to Cooperate

7.6.1 Brokers and salespersons shall cooperate with all other brokers and salespersons involved in a transaction except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions or to otherwise compensate another broker or salesperson.

5 DE Reg. 1387 (1/01/02)

8.0 Renewal of Licenses

8.1 Renewal Required by Expiration Date on License

8.1.1 In order to qualify for license renewal as a real estate salesperson or broker in Delaware, a licensee shall have completed 15 hours of continuing education within the two year period immediately preceding the renewal. The ~~broker of record for the licensee seeking renewal shall certify to the Commission, on a form supplied by the Commission,~~ that the licensee has complied with the necessary continuing education requirements. This certification form shall be submitted by the licensee together with his/her renewal application and renewal fee. The ~~broker of record licensee~~ shall retain for a period of two (2) years, the documents supporting his/her certification that ~~the licensee~~ he/she has complied with the continuing education requirement. A licensee who has not paid the fees and/or met the requirements for the renewal of his or her license by the expiration date shown thereon, shall not list, sell, lease or negotiate for others after such date.

8.2 Delinquency Fee

~~8.2.1 If a licensee fails to renew his or her license prior to the expiration date shown thereon, he or she shall be required to pay the full license fee and an additional delinquency fee equal to one half of the license fee. If a licensee fails to renew his or her license within 60 days of the expiration date shown thereon, the license shall be cancelled.~~

~~8.2.2 Failure to receive notice of renewal by a licensee shall not constitute a reason for reinstatement.~~

8.3 8.2 Reinstatement of License

~~8.3.1 8.2.1~~ An ~~cancelled~~ expired license shall be reinstated only after the licensee pays the necessary fees, ~~including the delinquency fee,~~ and passes any examinations required by the Commission. If the licensee fails to apply for renewal within 6 months of the cancellation date, the licensee shall be required to take the state portion of the examination. If the licensee fails to apply for renewal before the next renewal period commences (two years), the licensee shall be required to pass both the state and the national portions of the examination.

~~8.3.2 8.2.2~~ No person whose license has been revoked will be considered for the issuance of a new license for a period of at least two (2) years from the date of the revocation of the license. Such person shall then fulfill the following requirements: he or she shall attend and pass the real estate course for salespersons; take and pass the Commission's examination for salespersons; and any other criteria established by the Commission. Nothing above shall be construed to allow anyone to take the course for the purpose of licensing until after the waiting period of two (2) years. Nothing contained herein shall require the Commission to issue a new license upon completion of the above mentioned requirements, as the Commission retains the right to deny any such application.

5 DE Reg. 1387 (1/01/02)

9.0 Availability of Rules and Regulations

9.1 Fee Charge for Primers

9.1.1 Since licensees are required to conform to the Commission's Rules and Regulations and the Laws of the State of Delaware, these Rules and Regulations shall be made available to licensees without charge. However, in order to help defray the cost of printing, students in the real estate courses and other interested parties may be required to pay such fee as stipulated by the Division of Professional Regulation for the booklet or printed material.

10.0 Disclosure

10.1 A licensee who is the owner, the prospective purchaser, lessor or lessee or who has any personal interest in a transaction, must disclose his or her status as a licensee to all persons with whom he or she is transacting such business, prior to the execution of any agreements and shall include on the agreement such status.

10.2 Any licensee advertising real estate for sale stating in such advertisement, "If we cannot sell your home, we will buy your home", or words to that effect, shall disclose in the original listing contract at the time he or she obtains the signature on the listing contract, the price he will pay for the property if no sales contract is executed during the term of the listing. Said licensee shall have no more than sixty (60) days to purchase and settle for the subject property upon expiration of the original listing or any extension thereof.

10.3 A licensee who has direct contact with a potential purchaser or seller shall disclose in writing whom he/she represents in any real estate negotiation or transaction. ~~The disclosure as to whom the licensee represents should be made at the 1st substantive contact to each party to the negotiation or transaction. In all cases such disclosure must be made prior to the presentation of an offer to purchase.~~ A written confirmation of disclosure shall also be included in the contract for the real estate transaction regardless of whether the relationship is a statutory agency relationship or a common law agency relationship.

10.3.1 Statutory Agency Relationships

10.3.1.1 The licensee shall provide a consumer information statement (CIS), as approved by this Commission, to the consumer no later than the first scheduled appointment or showing of a property, as required by Section 2972.

10.3.1.2 The Commission will approve a CIS which will be available on its website for use by licensees. The Commission may also approve alternative CIS's, as provided for in Section 2972(a), which also will be posted on its website. Any changes to a CIS must be approved by a quorum of the Commission.

10.3.1.3 The written confirmation of disclosure in the contract for the real estate transaction shall identify and confirm the form of statutory agency relationship.

10.3.2 Common Law Agency Relationships

10.3.2.1 The disclosure as to whom the licensee represents should be made at the 1st substantive contact to each party to the negotiation or transaction. In all cases such disclosure must be made prior to the presentation of an offer to purchase.

10.3.2.2 The written confirmation of disclosure in the contract shall be worded as follows:

10.3.2.2.1 With respect to agent for seller: "This broker, any cooperating broker, and any salesperson working with either, are representing the seller's interest and have fiduciary responsibilities to the seller, but are obligated to treat all parties with honesty. The broker, any cooperating broker, and any salesperson working with either, without breaching the fiduciary responsibilities to the seller, may, among other services, provide a potential purchaser with information about the attributes of properties and available financing, show properties, and assist in preparing an offer to purchase. The broker, any cooperating broker, and any salesperson working with either, also have the duty to respond accurately and honestly to a potential purchaser's questions and disclose material facts about properties, submit promptly all offers to purchase and offer properties without unlawful discrimination."

10.3.2.2.2 With respect to agent for buyer: "This broker, and any salesperson working for this broker, is representing the buyer's interests and has fiduciary responsibilities to the buyer, but is obligated to treat all parties with honesty. The broker, and any salesperson working for the broker, without breaching the fiduciary responsibilities to the buyer, may, among other services, provide a seller with information about the transaction. The broker, and any salesperson working for the broker, also has the duty to respond accurately and honestly to a seller's questions and disclose material facts about the transaction, submit promptly all offers to purchase through proper procedures, and serve without unlawful discrimination."

10.3.2.2.3 In the case of a transaction involving a lease in excess of 120 days, substitute the term "lessor" for the term "seller", substitute the term "lessee" for the terms "buyer" and "purchaser", and substitute the term "lease" for "purchase" as they appear above.

10.4 If a property is the subject of an agreement of sale but being left on the market for backup offers, or is the subject of an agreement of sale which contains a right of first refusal clause, the existence of such agreement must be disclosed by the listing broker to any individual who makes an appointment to see such property at the time such appointment is made.

11.0 Hearings

11.1 When a complaint is filed with the Commission against a licensee, the status of the broker of record in that office shall not change.

11.2 There shall be a maximum of one (1) postponement for each side allowed on any hearing which has been scheduled by the Commission. If any of the parties are absent from a scheduled hearing, the Commission reserves the right to act based upon the evidence presented.

12.0 Inducements

12.1 Real Estate licensees cannot use commissions or income received from commissions as rebates or compensation paid to or given to Non-licensed Persons, partnerships or corporations as inducements to do or secure business, or as a finder's fee.

12.2 This Rule does not prohibit a real estate broker or salesperson from giving a rebate or discount or any other thing of value directly to the purchaser or seller of real estate. The real estate broker or salesperson, however, must be licensed as a resident or non-resident licensee by the Commission under the laws of the State of Delaware.

12.3 A real estate broker or salesperson has an affirmative obligation to make timely disclosure, in writing, to his or her principal of any rebate or discount that may be made to the buyer.

13.0 Necessity of License

13.1 For any property listed with a broker for sale, lease or exchange, only a licensee shall be permitted to host or staff an open house or otherwise show a listed property. That licensee may be assisted by non-licensed persons provided a licensee is on site. This subsection shall not prohibit a seller from showing their own house.

13.2 For new construction, subdivision, or development listed with a broker for sale, lease or exchange, a licensee shall always be on site when the site is open to the general public, except where a builder and/or developer has hired a non-licensed person who is under the direct supervision of said builder and/or developer for the purpose of staffing said project.

14.0 ~~Out of State Land Sales Applications~~

~~14.1 All applications for registration of an out of state land sale must include the following:~~

~~14.1.1 A completed license application on the form provided by the Commission.~~

~~14.1.2 A \$100 filing fee made payable to the State of Delaware.~~

~~14.1.3 A valid Business License issued by the State of Delaware, Division of Revenue.~~

~~14.1.4 A signed Appointment and Agreement designating the Delaware Secretary of State as the applicant's registered agent for service of process. The form of Appointment and Agreement shall be provided by the Commission. In the case of an applicant which is a Delaware corporation, the Commission may, in lieu of the foregoing Appointment and Agreement, accept a current certificate of good standing from the Delaware Secretary of State and a letter identifying the applicant's registered agent in the State of Delaware.~~

~~14.1.5 The name and address of the applicant's resident broker in Delaware and a completed Consent of Broker form provided by the Commission. Designation of a resident broker is required for all registrations regardless of whether sales will occur in Delaware.~~

~~14.1.6 A bond on the form provided by the Commission in an amount equal to ten (10) times the amount of the required deposit.~~

~~14.1.7 Copies of any agreements or contracts to be utilized in transactions completed pursuant to the registration.~~

~~14.2 Each registration of an out of state land sale must be renewed on an annual basis. Each application for renewal must include the items identified in subsections 14.1.2 through 14.1.4 of Rule 14.0 above and a statement indicating whether there are any material changes to information provided in the initial registration. Material changes may include, but are not limited to, the change of the applicant's resident broker in Delaware; any changes to the partners, officers and directors' disclosure form included with the initial application; and any changes in the condition of title.~~

~~14.3 If, subsequent to the approval of an out of state land sales registration, the applicant adds any new lots or units or the like to the development, then the applicant must, within thirty days, amend its registration to include this material change. A new registration statement is not required, and the amount of the bond will remain the same.~~

4514.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

4514.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

4514.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

4514.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

4514.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

4514.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in section 15.8.

4514.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

4514.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

4514.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

4514.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

4514.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

4514.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or

designates or to the Director of the Division of Professional Regulation or his/ her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

4514.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

4514.6.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

4514.6.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

4514.6.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

4514.6.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

4514.6.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

4514.6.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

4615.0 Crimes Substantially Related To The Practice Of Real Estate Brokers, Salespersons And Appraisers

4615.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of real estate brokers, salespersons and appraisers in the State of Delaware without regard to the place of conviction:

- 4615.1.1** Murder by abuse or neglect in the second degree; class B felony. 11 **Del.C.** §633.
- 4615.1.2** Murder by abuse or neglect in the first degree; class A felony. 11 **Del.C.** §634.
- 4615.1.3** Murder in the second degree; class A felony. 11 **Del.C.** §635.
- 4615.1.4** Murder in the first degree; class A felony. 11 **Del.C.** §636.
- 4615.1.5** Unlawful sexual contact in the second degree; class G felony. 11 **Del.C.** §768.
- 4615.1.6** Unlawful sexual contact in the first degree; class F felony. 11 **Del.C.** §769.
- 4615.1.7** Rape in the fourth degree; class C felony. 11 **Del.C.** §770.
- 4615.1.8** Rape in the third degree; class B felony. 11 **Del.C.** §771.
- 4615.1.9** Rape in the second degree; class B felony. 11 **Del.C.** §772.
- 4615.1.10** Rape in the first degree; class A felony. 11 **Del.C.** §773.
- 4615.1.11** Continuous sexual abuse of a child; class B felony. 11 **Del.C.** §778.
- 4615.1.12** Dangerous crime against a child; class B felony. 11 **Del.C.** §779.
- 4615.1.13** Kidnapping in the second degree; class C felony. 11 **Del.C.** §783.
- 4615.1.14** Kidnapping in the first degree; class B felony. 11 **Del.C.** §783A.
- 4615.1.15** Arson in the third degree; class G felony. 11 **Del.C.** §801.
- 4615.1.16** Arson in the second degree; class D felony. 11 **Del.C.** §802.
- 4615.1.17** Arson in the first degree; class C felony. 11 **Del.C.** §803.
- 4615.1.18** Burglary in the second degree; class D felony. 11 **Del.C.** §825.
- 4615.1.19** Burglary in the first degree; class C felony; class B felony. 11 **Del.C.** §826.
- 4615.1.20** Robbery in the second degree; class E felony. 11 **Del.C.** §831.
- 4615.1.21** Robbery in the first degree; Class B. 11 **Del.C.** §832.
- 4615.1.22** Carjacking in the first degree; class C felony; class B felony. 11 **Del.C.** §836.

- 4615.1.23 Extortion; class E felony. 11 **Del.C.** §846.
 4615.1.24 Misapplication of property; class G felony. 11 **Del.C.** §848.
 4615.1.25 Theft of rented property; class G felony. 11 **Del.C.** §849.
 4615.1.26 Identity theft; class E felony; class D felony. 11 **Del.C.** §854.
 4615.1.27 Forgery; class F felony; class G felony. 11 **Del.C.** §861.
 4615.1.28 Possession of forgery devices; class G felony. 11 **Del.C.** §862.
 4615.1.29 Tampering with public records in the first degree; class E felony. 11 **Del.C.** §876.
 4615.1.30 Issuing a false certificate; class G felony. 11 **Del.C.** §878.
 4615.1.31 Fraudulent conveyance of public lands; class G felony. 11 **Del.C.** §911.
 4615.1.32 Fraudulent receipt of public lands; class G felony. 11 **Del.C.** §912.
 4615.1.33 Insurance fraud; class G felony. 11 **Del.C.** §913.
 4615.1.34 Home improvement fraud; class G felony. 11 **Del.C.** §916.
 4615.1.35 New home construction fraud; class C felony, class F felony, class G felony. 11 **Del.C.** §917.
- 4615.1.36 Dealing in children; class E felony. 11 **Del.C.** §1100.
 4615.1.37 Endangering the welfare of a child; class E or G felony. 11 **Del.C.** §1100.
 4615.1.38 Sexual exploitation of a child; class B felony. 11 **Del.C.** §1108.
 4615.1.39 Unlawfully dealing in child pornography; class D felony. 11 **Del.C.** §1109.
 4615.1.40 Possession of child pornography; class F felony. 11 **Del.C.** §1111.
 4615.1.41 Sexual solicitation of a child; class C felony. 11 **Del.C.** §1112A.
 4615.1.42 Bribery; class E felony. 11 **Del.C.** §1201.
 4615.1.43 Receiving a bribe; class E felony. 11 **Del.C.** §1203.
 4615.1.44 Perjury in the second degree; class F felony. 11 **Del.C.** § 1222.
 4615.1.45 Perjury in the first degree; class D felony. 11 **Del.C.** §1223.
 4615.1.46 Tampering with physical evidence; class G felony. 11 **Del.C.** §1269.
 4615.1.47 Hate crimes; class G felony, class F felony, class E felony, class D felony, class C felony, class B felony, class A felony. 11 **Del.C.** §1304.
- 4615.1.48 Possession of a deadly weapon during commission of a felony; class B felony. 11 **Del.C.** §1447.
- 4615.1.49 Possession of a firearm during commission of a felony; class B felony. 11 **Del.C.** §1447A.
- 4615.1.50 Removing a firearm from the possession of a law enforcement officer; class C felony. 11 **Del.C.** §1458.
- 4615.1.51 Organized Crime and Racketeering, Class B Felony. 11 **Del.C.** §1504.
- 4615.1.52 Abuse of patient or resident in nursing home; Class D felony; Class G felony; Class A felony. 16 **Del.C.** §1136(a).
- 4615.1.53 Prohibited acts A; Class B felony. 16 **Del.C.** §4751.
- 4615.1.54 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA); Class B felony. 16 **Del.C.** §4753A.
- 4615.1.55 Knowing or reckless abuse of an infirm adult; Class D felony; Class E felony; Class G felony; Class A felony. 31 **Del.C.** §3913.
- 4615.2 Crimes substantially related to the practice of real estate brokers, salespersons and appraisers shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

8 DE Reg. 1283 (3/01/05)

11 DE Reg. 87 (07/01/07) (Final)