

MARIO J. CIVERA, JR., MEMBER  
HOUSE POST OFFICE BOX 202020  
MAIN CAPITOL BUILDING  
HARRISBURG, PENNSYLVANIA 17120-2020

232 LONG LANE  
UPPER DARBY, PENNSYLVANIA 19082



*House of Representatives*  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

October 11, 2000

Original: 1996

John R. McGinley, Jr., Chairman  
Independent Regulatory Review Commission  
14th Floor, Harristown 2  
333 Market Street  
Harrisburg, PA 17101

Dear Chairman McGinley:

I am writing to inform you that the House Professional Licensure Committee held a meeting on October 11, 2000, and voted to approve Regulation 16A-5113, State Board of Nursing; Regulation 16A-556, State Board of Accountancy; Regulation 16A-560, State Real Estate Commission; Regulation 16A-558, State Board of Accountancy; Regulation 16A-600, State Board of Vehicle Manufacturers, Dealers and Salespersons; and Regulation 16A-626, State Board of Examiners of Nursing Home Administrators.

Please feel free to contact my office if any questions should arise.

Sincerely,

A handwritten signature in cursive script that reads "Mario J. Civera".

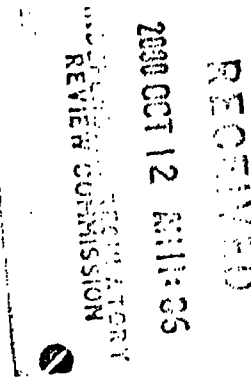
Mario J. Civera, Chairman  
House Professional Licensure Committee

MJC/sms  
Enclosures

cc: K. Stephen Anderson, CRNA, Chairman  
State Board of Nursing  
Thomas J. Baumgartner, CPA, Chairman  
State Board of Accountancy  
Joseph Tarantino, Jr., Chairman  
State Real Estate Commission  
Robert G. Pickerill, Chairman  
State Board of Vehicle Manufacturers, Dealers and Salespersons  
Robert H. Morrow, Chairman  
State Board of Examiners of Nursing Home Administrators  
Honorable Kim H. Pizzigrilli, Secretary of the Commonwealth  
Department of State

COMMITTEES

PROFESSIONAL LICENSURE,  
MAJORITY CHAIRMAN  
LIQUOR CONTROL  
FIREFIGHTERS' CAUCUS,  
COCHAIRMAN EMERITUS



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REVIEW COMMISSION

**Regulation 16A-560**

**State Real Estate Commission**

**PROPOSAL:** Regulation 16A-560 amends 49 PA Code, Chapter 35, regulations of the State Real Estate Commission. The amendments make many revisions to the Commission's regulations, including the definitions of "broker" and "salesperson," education requirements for initial licensure, approval of courses offered by real estate schools in other jurisdictions, listing agreements, disclosure of licensure status, business names on advertisements, and relationships with educational institutions.

Regulation 16A-560 is Final Rulemaking which was delivered to the Professional Licensure Committee on September 25, 2000. The Professional Licensure Committee has until October 15, 2000 to approve or disapprove the regulation.

**ANALYSIS:** The amendment proposes the deletion of references to "appraising" from the definitions of "broker" and "salesperson". This is in conformity with the statutory change of Act 71 of 1996 which deleted the words "or appraises" from the Real Estate Licensing and Registration Act.

In final form, the Commission has withdrawn proposed changes to Sections 35.222(b) and 35.223(b), pertaining to licensing of brokers and salespersons of other jurisdictions. The proposed changes would have deleted the requirement that these licensees possess licenses from their jurisdictions which have been active within 5 years prior to the submission of an application for a Pennsylvania license. The Committee questioned the rationale for this change, and the Commission indicates that the proposal has been withdrawn for further study on the issue.

The Commission has also withdrawn a proposed change to Section 35.245, which would have allowed a photocopy of an associate broker or salesperson's license to be displayed in a conspicuous place in the main office out of which the licensee works, with the original to be kept on file at the broker's main office or an office within the Commonwealth. The Committee noted that Section 601 of the Act expressly provides that the "current license" be displayed.

Section 35.271(b)(2), pertaining to education requirements for taking the broker's examination, would be amended to require that two of the required 16 education credits be in a Commission-developed or approved real estate office management course and that two credits be in a Commission-developed or approved law course. The stated goal is to better educate brokers

relevant to their responsibility for the overall operation of a real estate office and their legal responsibility for the activities of their licensed employees. Commission-developed or approved law course. The Committee commented that these courses would be more appropriate for continuing education for all licensees and not just prospective licensees. However, the Commission states that these subjects cover activities which are core practices, knowledge of which should form the basis of broker education.

Section 35.271(b)(3)(iv) provides that a course offered by a real estate industry organization in another jurisdiction will be counted toward the education requirement only if the course is also offered by a real estate school in Pennsylvania. This section would be amended to substitute the requirement that the course be offered in Pennsylvania with the requirement that the course be approved by the licensing jurisdiction of another state. The course transcript must state that the course was approved by such licensing jurisdiction. The Committee requested information regarding the impact this change would have on educational standards. The Commission responds that certain courses in specialized areas are not taught in Pennsylvania. Accordingly, accepting credit for courses taught in other jurisdictions may raise educational standards and benefit licensees and consumers.

Section 35.281 would be amended to delete reference to an oral listing agreement in subsection (b) as being contradictory to the requirement of subsection (a) that agreements in connection with a real estate transaction be in writing.

Section 35.287 would be amended to delete language that allows a salesperson to assist in the preparation of an appraisal. Real estate appraisal activities are now under the jurisdiction of the State Board of Real Estate Appraisers.

Section 35.304 currently requires only brokers to disclose their status as a licensee when selling or leasing his or her own property. The section would be amended to clarify that such disclosure is required of all licensees.

Section 35.305 would be amended to allow individual licensees to advertise their nicknames if their nicknames are included on their licensure application and/or their biennial renewal application. The section would also be amended to require that the employer broker's telephone number be only at least equal in size to an employee salesperson's number in any advertisement. Currently, the name and telephone number of the employer broker must be given greater prominence. In response to the Committee's question as to the rationale for this change, the Commission responds that the existing regulation imposes a cost on salespersons not justified by a larger typeface, and that the public will be able to identify the broker's name and number as readily as those of the salesperson.

Section 35.308 currently prohibits a real estate company, franchise or network from promoting, advertising or endorsing its affiliation or association with any real estate school, college, university or institute of higher learning regarding its offering of real estate instruction. This section would be amended to allow that practice. The amendment would require full disclosure of any ownership interest. Ownership interest would be defined to include proprietary or

beneficial interest through which the real estate company earns or has the potential to earn income, or which produces a direct or indirect economic interest. The Committee questioned why the Commission has apparently reversed itself on this issue since the original promulgation of the regulation in 1994. The Commission responds that there are real estate companies that have ownership interests in real estate schools. The Commission believes that it is in the best interest of students and consumers to know of this ownership interest and make choices accordingly. Additionally, schools are prohibited from recruiting or soliciting students by sec. 354(a)(8).

Section 35.321(e) requires a broker to pay over money held as a security deposit upon the end of the tenancy. This section would be amended to allow a broker to transfer the security deposit to the lessor or the lessor's broker if a sale of the leased premises occurs or if there is a change in property management during the term of the tenancy. The broker must notify each tenant in writing the name and address of the bank in which the deposits will be held, and the amount of the deposits.

Section 35.322 would be amended to allow a broker to transfer escrow funds held by the broker to either party to a transaction, at any time and to either party, if the parties by separate written agreement direct the broker to do so. The Committee questioned legality of this amendment in that any transfer of escrow funds prior to the consummation or termination of the transaction involved is a prohibited act pursuant to Sec. 604(a)(5) of the Act. The Commission has withdrawn this amendment.

Section 35.327 would have been amended to provide new procedures in cases where entitlement to escrow money is in dispute. The Committee also questioned the legality of this amendment and it has been withdrawn by the Commission.

**RECOMMENDATIONS:** It is recommended that the Professional Licensure Committee approve the regulation

House of Representatives  
Professional Licensure Committee  
October 5, 2000