



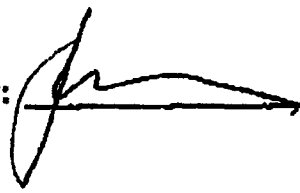
INDEPENDENT REGULATORY REVIEW COMMISSION

To: Joyce McKeever
Agency: Department of State
 Licensing Boards and Commissions
Phone: 3-1088
Fax: 7-0251

From: Kristine M. Shomper
 Deputy Director for Administration
Company: Independent Regulatory Review
 Commission
Phone: (717) 783-5419 or (717) 783-5417
Fax: (717) 783-2664

Date: April 1, 1999
of Pages: 5

Comments: We are submitting the Independent Regulatory Review Commission's comments on the State Real Estate Commission's regulation #16A-560 (#1996). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by:  Date: 4-1-99



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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

April 1, 1999

Rita Halverson, Chairman
State Real Estate Commission
124 Pine Street
Harrisburg, PA 17105

Re: IRRC Regulation #16A-560 (#1996)
State Real Estate Commission
General Revisions

Dear Chairman Halverson:

Enclosed are our Comments on your proposed regulation #16A-560. They are also available on our website at <http://www.irrc.state.pa.us>.

The Comments list our objections and suggestions for your consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you want to meet with us to discuss these Comments, please contact Fiona Wilmarth at 783-5438.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce
Executive Director

REN:kcg

Enclosure

cc: Judith Pachter Schulder
Joyce McKeever
Kim Pizzingrilli
Dorothy Childress
Office of General Counsel
Office of Attorney General
Pete Tartline

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

STATE REAL ESTATE COMMISSION REGULATION NO. 16A-560

GENERAL PROVISIONS

APRIL 1, 1999

We have reviewed this proposed regulation from the State Real Estate Commission (SREC) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to statutory authority, reasonableness, need and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 35.327. Procedure when entitlement to money held in escrow is disputed. – Statutory Authority and Reasonableness.

Paragraph (a).

This paragraph provides the following:

(a) In the event of a dispute over the return or forfeiture of any earnest money deposit held by a broker, the broker shall continue to hold the deposit in escrow until a written release is obtained from all parties consenting to its disposition or until a civil action is filed to determine its disposition, at which time the broker may petition the county court having jurisdiction in the matter to interplead the rival claimants. The costs incurred by the broker to interplead the rival claimants may, with written notice to the parties, be deducted from the funds being held in escrow. (emphasis added)

We have two concerns with this provision. First, SREC lacks the statutory authority to permit the broker to deduct costs from the escrow account. Section 604(5)(iv) of the Real Estate Licensing and Registration Act (Act) (63 P.S. § 455.604(5)(iv)) provides the following:

Every broker shall immediately deposit such moneys, of whatever kind or nature, belonging to others, in a separate custodial or trust fund account maintained by the broker with some bank or recognized depository until the transaction involved is consummated or terminated, at which time the broker shall account for the full amount received. Under no circumstances shall a broker permit any advance payment of funds belonging to others to be deposited in the broker's business or personal account, or to be commingled with any funds he may have on deposit; (emphasis added)

The Act does not authorize the broker to deduct costs for interpleading the rival claimants. SREC should delete the last sentence of Section 35.327(a).

Our second concern relates to the use of the term “release.” In its comments, the Pennsylvania Association of Realtors (PAR) notes that a “release” typically refers to a document drafted by legal counsel which addresses a waiver of rights, entitlement and other obligations of the parties. PAR also states that an agreement over the distribution of escrow funds is an integral part of a sale transaction which can be drafted by the broker.

We agree that the term “release” is a legal term indicating a waiver of certain rights. Furthermore, it is reasonable for the broker to draft an agreement for the disposition of funds in escrow, rather than retaining an attorney to draft a “release.” We suggest SREC replace “release” in Paragraph (a) with “agreement regarding its disposition.”

Paragraphs (b), (b)(1), (b)(2) and (c).

These paragraphs provide the options available to a broker if the parties to a dispute over funds held in escrow have not released the broker and a civil action has not been filed 180 days after the settlement date. The broker has the option of returning the money to the payor-buyer, if the broker believes the payor-buyer is entitled to the money because a contingency in the purchase agreement has not been met. Alternatively, the broker may pay out the money to the seller, if the broker believes the payor-buyer has abandoned any claim to it. Under Paragraph (c), the broker will not be subject to disciplinary action by SREC for returning the money to either party.

Section 455.604(a)(5)(i) of the Act (63 P.S. § 455.604(a)(5)(i)) provides the following:

(i) all deposits or other moneys accepted by every person, holding a real estate broker license under the provisions of this act, shall be retained by such real estate broker pending **consummation or termination** of the transaction involved, and shall be accounted for in the full amount thereof at the time of consummation or termination; (Emphasis added.)

If at the end of 180 days there is no consent between the parties for disposition of the money and no civil action filed to resolve the dispute, the transaction is neither consummated nor terminated. Consequently, we find no authority in the Act for the provisions in Paragraphs (b), (b)(1), (b)(2) and (c). SREC should delete these paragraphs or explain its statutory authority for these provisions.

2. Section 35.322. Transfer of escrow funds. – Need.

This section provides the following:

The buyer and the seller or the lessor and the lessee may, at any time, by **separate written agreement**, direct the broker to transfer escrow funds to either the buyer or the seller, the lessor or the lessee or a bona fide escrow agent – for example, an attorney, a title company or a real estate brokerage company. (Emphasis added.)

In its comments, PAR questions the need for a separate written agreement. PAR asserts the agreement for transfer of escrow funds can be included in the parties' Agreement of Sale. We agree that requiring a separate written agreement creates an unnecessary paperwork burden since the agreement to transfer escrow funds could be part of the transaction in question. Consequently, SREC should delete "separate" from Section 35.322.

3. Section 35.222. Licensure as broker. – Clarity.

Section 35.222(b)(2) requires an out-of-state applicant for licensure to "possess a current broker or associate broker's license" issued by the jurisdiction in which the applicant currently practices. Some jurisdictions may permit active and inactive status of licenses. If so, an applicant may possess a current license which is in inactive status at the time of application for a Pennsylvania license. Therefore, although the license is current, the applicant may not be currently practicing. To improve the clarity of the regulation, the Board should replace the term "current" with "active" in the final-form regulation.

MARIO J. CIVERA, JR., MEMBER
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HARRISBURG, PENNSYLVANIA 17120-2020

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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

October 11, 2000

Original: 1996

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

RECEIVED
2000 OCT 12 AM 11:35
INDEPENDENT REGULATORY
REVIEW COMMISSION

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,

Handwritten signature of Mario J. Civera in cursive script.

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

RECEIVED
2000 OCT 12 AM 11:05
REGULATORY
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