


<b>Regulatory Analysis Form</b>		<b>This space for use by IRRC</b> RECEIVED 2000 SEP 25 PM 2:26 REVIEW COMMISSION  IRRC Number: # 1996	
(1) Agency  <b>Department of State, Bureau of Professional and Occupational Affairs, State Real Estate Commission</b>			
(2) I.D. Number (Governor's Office Use)  <b>16A-560</b>			
(3) Short Title  <b>General Revisions</b>			
(4) PA Code Cite <b>49 Pa. Code §§35.201, 35.222, 35.223, 35.245, 35.271, 35.281, 35.287, 35.304, 35.305, 35.308, 35.321, 35.322, 35.327</b>		(5) Agency Contacts & Telephone Numbers  <b>Primary Contact: Judith Pachter Schulder, Counsel          State Real Estate Commission          783-7200          Secondary Contact: Joyce McKeever, Deputy Chief          Counsel, Department of State 783-7200</b>	
(6) Type of Rulemaking (check one)  Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached?  No <input checked="" type="checkbox"/> Yes: By the Attorney General Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language.  <b>The regulation amends existing regulatory language regarding the display of licenses, preclicensure and continuing education and advertisements to better serve and protect the interest of consumers who use the services of a licensee in a real estate transaction.</b>  (Continued on Page 9)			
(9) State the statutory authority for the regulation and any relevant state or federal court decisions.  <b>The regulation is authorized under Sections 404 and 602 of the Real Estate Licensing and Registration Act, 63 P.S. §455.404 and §455.602.</b>			

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

**No; however, the amendments to sections 35.201, 35.271(b)(2), and 35.287 are responsive to Act 71 of 1996 which, effective September 3, 1998, transfers real estate appraisal activities to the jurisdiction of the State Board of Certified Real Estate Appraisers.**

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

**Many of the Commission's regulations have not been updated since 1989. 19 Pa. B. 781 (February 25, 1989). Other regulations which are to be amended were last revised in 1994. 24 Pa. B. 2904 (June 11, 1994).**

**The regulation updates the existing regulations of the Commission to address issues of current importance to the regulated community and to better serve and protect the interests of consumers who use the services of a licensee in a real estate transaction. Of specific importance to the public interest are the proposed amendments to sections 35.304, 35.305, and 35.321.**

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

**There are no identifiable public health, safety, environmental or general welfare risks associated with nonregulation.**

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

**Consumers of real estate services and the regulated community as a whole (including nonresident licensees) will benefit from the guidance to be provided by the proposed regulations. Currently, there are approximately 49,000 licensees of the Commission who will benefit from the regulations.**

## Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

**There are no perceived people or groups of people who will be adversely affected by the proposed regulations.**

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

**All licensees of the Commission will be required to comply with the regulation. Applicants for licensure will also be required to satisfy the requirements of sections 35.222, 35.223 and/or 35.271. Currently, there are approximately 49,000 licensees of the Commission.**

(16) Describe the communications with and input from the public in the development and drafting of the regulation List the persons and/or groups who were involved, if applicable.

**Notice of proposed rulemaking was published at 29 Pa. B. 565 (January 30, 1999). Publication was followed by a 30-day public comment period during which the Board received comments from the Pennsylvania Association of Realtors.**

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

**There are no costs to the regulated community associated with compliance with the regulation. Savings to the regulated community are not specifically quantifiable, but, would include savings associated with lower advertisement costs (section 35.305).**

## Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

N/A

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

N/A

## Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated	N/A	N/A	N/A	N/A	N/A	N/A
Local Government						
State Government						
Total Savings						
<b>COSTS:</b>						
Regulated						
Local Government						
State Government						
Total Costs						
<b>REVENUE LOSSES:</b>						
Regulated						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

N/A

### Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A				

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

**There are no adverse effects and costs associated with compliance with the regulation.**

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

**Nonregulatory alternatives were not considered because policy statements on any of the issues covered by the amendments would not have the force or effect of law.**

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

**No other regulatory schemes were considered.**

## Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

N/A

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

**This regulation does put Pennsylvania at a competitive disadvantage with other states. Most other states regulations concerning the display of licenses, precensure and continuing education and advertisements.**

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

**The regulation amends and updates existing regulations of the Commission. The regulation should not affect regulations of other state agencies.**

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

**The Commission reviews its regulatory proposals at regularly scheduled public meetings each month.**

## Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

**No.**

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

**The Commission is aware of no special needs of any subset or group which should be excepted.**

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

**The regulation will be effective upon publication as an Order of Final Rulemaking in the Pennsylvania Bulletin. Compliance will be required as of that date.**

(31) Provide the schedule for continual review of the regulation.

**The rules and regulations committee of the Commission continuously reviews its regulations.**



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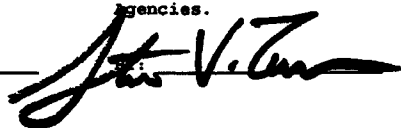
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STATE REAL ESTATE COMMISSION

BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

(AGENCY)



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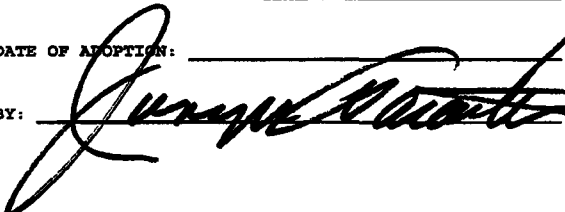
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BY: \_\_\_\_\_



(Deputy General Counsel  
(Chief Counsel,  
~~Independent Agency~~  
(Strike inapplicable  
title)

Joseph Tarantino, Jr., Chairman

TITLE: \_\_\_\_\_  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[ ] Check if applicable  
Copy not approved.  
Objections attached.

[ ] Check if applicable. No Attorney  
General approval or  
objection within 30 day  
after submission.

NOTICE OF FINAL RULEMAKING

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE REAL ESTATE COMMISSION  
49 Pa. Code, Chapter 35  
GENERAL REVISIONS

The State Real Estate Commission (Commission) amends 49 Pa. Code, Chapter 35 as set forth in Annex A.

### Summary

This regulation updates the Commission's existing regulations to address issues of current importance to the real estate industry and to better serve and protect the interest of consumers who use the services of a licensee in a real estate transaction.

In final rulemaking the Commission made changes to Sections 35.271 (education requirements), 35.304 (advertisements), 35.305 (business names) and 35.308 (escrow requirement). Editorial changes are also made to Sections 35.201 (definitions), 35.281 (putting contracts, commitments and agreements in writing) and 35.287 (supervised assistance by salespersons). As to proposed changes to Sections 35.222 (licensure as a broker) 35.223 (licensure as a salesperson), 35.245 (display of licenses in office), 35.322 (nonwaiver of escrow duty) and 35.327 (procedure when entitlement to money held in escrow is disputed), the Commission has made no changes in final rulemaking.

### Response to Comments

Notice of proposed rulemaking was published at 29 Pa. B. 565 (January 30, 1999). Publication was followed by a 30-day public comment period during which the Board received comments from the Pennsylvania Association of Realtors (PAR). Following the close of the public comment period, the Board also received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The final rulemaking is in response to the comments and suggestions received by the commentators and the regulatory review bodies.

For ease of reference, the Commission will address the comments in the order in which the amendments appear.

1. §35.222(b). Licensure as broker.  
§35.223(b). Licensure as salesperson.

In proposed form, the Commission rewrote the requirements for nonresident brokers and salespersons seeking to obtain licensure by recognition of a license in another state. The HPLC questioned the rationale Commission's requirement that a broker be licensed in another state for five years prior to submitting an application for licensure. The IRRC suggested that the term "active" replace "current" since a current license may be inactive.

The Commission has determined that it wishes to study the issue of license by endorsement of another state's license. As such in final form, the Commission has stricken the proposed revision. Therefore no changes to Sections 35.322(b) and 35.323(b) are made in final rulemaking.

**2. §35.245. Display of licenses in office.**

Proposed Section 35.245 required licensees to display their licenses in their broker's office and display a photocopy in the office where they work. The HPLC questioned the Commission's authority to require that a photocopy and not the original be displayed. Owing to HPLC's concern, the Commission has stricken the revision and has determined to make no change to Section 35.245 in final rulemaking.

**3. §35.271(b)(2). Examination for broker's license.**

Proposed Section 271(b)(2) would be amended to require mandatory education courses for brokers in office management and real estate law. The HPLC suggested that these courses would be more appropriate for continuing education for all licensees and not just newly licensed brokers. Although these courses may be of some educational value to licensees generally, it is the Commission experience that many broker violations involve escrow accounts and failure to supervise salespersons. These activities are, in the view of the Commission, core practices, knowledge of which should form the basis of broker education. In an attempt to reduce the number of violations, the Commission believes that applicants for a license should be required to complete an intensive course specifically designed to address the additional responsibilities imposed upon brokers. Finally, the Commission notes that salespersons and licensed brokers may take either the office management or law courses as part of their continuing education requirement.

**4. §35.271(b)(3)(iv). Examination for broker's license.**

The proposed amendment to Section 271(b)(3)(iv) would permit education courses offered by real estate organizations in another jurisdiction, provided they are approved by the licensing authority in that state to be counted toward the education requirement to sit for the examination.

The HPLC questioned whether permitting out-of-state courses to be counted toward the educational requirement would raise or lower standards for licensure. Under the current regulations, only courses offered in Pennsylvania are eligible for credit. Unfortunately, not all national courses, especially those in specialized areas such as commercial and property management, are taught in Pennsylvania. Therefore the Commission believes that permitting applicants to receive credit for a real estate course

taught in another jurisdiction may raise educational standards and will benefit the licensees and consumers of real estate services in the Commonwealth.

**5. §35.305. Business name on advertisements.**

Proposed Section 305 eliminates the current requirement that the brokers name and telephone number be given greater prominence in advertisements. As proposed, the Section requires that the broker's name and number be the same size as the advertising licensee. HPLC questioned the necessity of the amendment.

HPLC commented that the current regulation accomplishes the Commission's objective of "ensuring that a consumer will know the name and telephone number of the broker who is legally responsible for the activities of the employee." The HPLC requested a cost analysis of the cost differential under the current regulation and the proposed amendment.

The existing regulation imposes a cost on salespersons not justified by a larger typeface. Since advertising fees vary by media and market area it is not possible to quantify the costs throughout the Commonwealth. Nonetheless, the Commission believes most licensees experience a substantial cost savings annually by eliminating the greater prominence requirement because advertisements are paid by the inch. The public will be able to identify the broker's name and number, equally as well as those of the salesperson. For these reasons, no change has been made in final rulemaking.

**6. §35.308. Relationship with educational institution.**

Proposed Section 308 requires real estate companies, franchises and networks to disclose ownership interests in advertisements, promotions and endorsements.

The HPLC requested an explanation why the Commission reversed its position taken when this provision was originally promulgated, that this regulation was needed "to prevent real estate firms from steering prospective students to real estate providers with which the firms have business or financial relationships."

The Commission understands that some real estate companies have an ownership interest 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. Despite this notice ability, Section 354(a)(8) prohibits schools from recruiting or soliciting students.

**7. §35.322. Transfer of escrow funds.**

Proposed Section 322 would have permitted buyers and sellers to change how the escrow monies are being held after the agreement is signed. The Commission is aware there are circumstances where the parties desire to have escrow funds released prior to the consummation of the agreement. For example, after the agreement is signed, the seller may agree to extend the settlement date for the buyer if the buyer agrees to release the escrow funds. In order to accomplish this under the current regulations, the agreement must be terminated and a new agreement executed.

The HPLC commented that Section 604(5)(l) prohibits a broker from transferring funds prior to the consummation or termination of the real estate transaction. It opined that "the Commission lacks the legislative authority to promulgate the provisions related to the transfer of escrow funds." Echoing PAR's comment, IRRRC suggested that the term "separate" be deleted.

In response to the comments of the HPLC, the Commission has removed the language added on proposed.

**8. §35.327. Procedure when entitlement to money held in escrow is disputed.**

Under the current regulations, when parties to disputed escrow funds are unwilling to sign a release, it is left to the broker to file an interpleader action in the Courts of Common Pleas. The costs associated with this interpleader action include the filing fee and the attorneys fees to draft the pleading. The amendment to subsection (a) would have permitted the broker to recoup the costs of filing the interpleader.

Also, during the Commission's public meetings and in many inquiries by consumers and licensees, the Commission has been asked what a broker is to do when the broker either goes out of business or retires and there is money in the disputed escrow fund. Under the current regulations, the accounts must remain open. In an attempt to deal with this issue, the Commission would have amended subsection (b).

Both the HPLC and IRRRC commented that the Commission does not have the statutory authority under Section 604(a)(5)(iv) to permit the broker to deduct costs from the escrow account or dispose of monies where the parties have not consented or a civil action filed. The HPLC further suggested that subsection (b) "improperly places the broker in the position of being the final arbiter of fact and law" and "unnecessarily exposes the broker to claims of liability from the aggrieved party." Both recommend deleting all

amendments. Additionally, PAR and IRRC recommended that the term "release" be replaced with "agreement regarding its disposition."

Owing to the statutory concerns raised by the HPLC and IRRC the Commission has removed the amendatory language in final rulemaking.

#### Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final regulation addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

#### Fiscal Impact and Paperwork Requirements

The amendments will have no fiscal impact on the Commonwealth, its political subdivisions, the public and the regulated community. Likewise, the amendments will not necessitate any legal, accounting, reporting or other paperwork requirements on the regulated community.

#### Statutory Authority

The amendments are authorized by Section 404 and 602 of the Act (63 P.S. §§455.404 and 455.602).

#### Sunset Date

The Board continually monitors the effectiveness of its regulations through communications with the regulated population; accordingly, no sunset date has been set.

#### Regulatory Review

Under Section 5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19), (71 P.S. §§745.1 -745.15), the agency submitted a copy of the Notice of Proposed Rulemaking, published at 29 Pa. B. 565, on January 30, 1999, to the IRRC and the Chairmen of the HPLC and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment. In compliance with Section 5(b.1), the agency also provided the IRRC and the committees with copies of all comments received, as well as other documentation.

In preparing this final form regulation the agency has considered all comments received from the IRRC and the public.

This final form regulation was approved by the HPLC on \_\_\_\_\_ and deemed/ approved by the SCP/PLC on \_\_\_\_\_. The IRRC met on \_\_\_\_\_ and approved the regulation in accordance with Section 5(c) of the Act.

Contact Person

Further information may be obtained by contacting Deborah A. Sopko, Administrative Assistant, State Real Estate Commission, at P. O. Box 2649, Harrisburg, PA 17105-2649; telephone (717) 783-7155.

Findings

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769) (45 P.S. §§1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) This amendment does not enlarge the purpose of proposed rulemaking published at 29 Pa. B. 565.

(4) This amendment is necessary and appropriate for administration and enforcement of the Board's authorizing statute.

Order

The Board, acting under its authorizing statute, orders that:

(1) The regulations of the Board, 49 Pa. Code Chapter 35, are amended as set forth in Annex A.

(2) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(3) The Board shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

- (4) This order shall take effect upon publication in the Pennsylvania Bulletin.



ANNEX A  
TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS  
PART I. DEPARTMENT OF STATE  
SUBPART A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
CHAPTER 35. STATE REAL ESTATE COMMISSION

SUBCHAPTER B. GENERAL PROVISIONS

§35.201. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

. . .

Broker - An individual or entity that, for another and for a fee, commission or other valuable consideration, does one or more of the following:

. . .

(iii) Manages [or appraises] real estate.

. . .

Salesperson - An individual who is employed by a broker to do one or more of the following:

. . .

(vii) Assist a broker in managing [or appraising] property.

. . .

SUBCHAPTER C. LICENSURE  
LICENSURE REQUIREMENTS

. . .

**§35.222. Licensure as broker.**

. . .

‡(b) An individual holding a broker's license issued by another jurisdiction who wants to obtain a Pennsylvania broker's license either shall comply with subsection (a) or shall:

(1) Possess a broker's license issued by another jurisdiction that has been active within 5 years prior to the submission of a properly completed license application.

(2) Have scored a passing grade on the Pennsylvania portion of the broker's examination within 3 years prior to the submission of a properly completed license application. See §35.271.

(3) Comply with §§35.241 and 35.242.

(4) Submit a completed license application to the Commission with a certification from the real estate licensing authority of the other jurisdiction containing the following information:

(i) The applicant's license number, the date of issuance of the license and confirmation that the applicant obtained initial licensure by written examination.

(ii) Whether the license has been active within the past 5 years.

(iii) A description of past disciplinary action taken by the licensing authority against the applicant.

(iv) The applicant's office address and the name of the applicant's employer.‡

~~(b) The Commission will grant a broker's license to an individual holding a broker's license issued by another jurisdiction who meets substantially equivalent experience requirements of section 35.271(a)(3) of this Chapter, and who satisfies the following requirements:~~

~~(1) Has scored a passing grade on the Pennsylvania portion of the broker's examination within 3 years prior to the submission of a properly completed license application.~~

~~(2) Possesses a current broker's or associate broker's license issued by another jurisdiction prior to the submission of a properly completed license application.~~

~~(3) Submits a completed license application to the Commission containing:~~

~~(i) A signed affidavit attesting that the individual has received a copy of the act and the regulations of the Commission and has read, understands and agrees to comply with all provisions of the act and regulations while performing real estate activities in Pennsylvania;~~

~~(ii) A signed written consent to service of process as required under section 35.221(3);~~

~~(iii) A signed affidavit agreeing to cooperate with any investigation and to provide information requested by the Commission or any of its authorized agents as a result of a formal or informal complaint to the Commission indicating a violation of the act.~~

~~(iv) A certification from the real estate licensing authority of the other~~

~~jurisdiction containing:~~

~~(A) The applicant's license number, the date of issuance of the license and confirmation that the applicant obtained initial licensure by written examination.~~

~~(B) Confirmation that the applicant's license is current and in good standing.~~

~~(C) A description of any past disciplinary action taken by the licensing authority against the applicant.~~

~~(D) The applicant's office address and, if an associate broker, the name of the applicant's employer.~~

~~(e) An applicant for an associate broker's license shall satisfy the requirements of subsection (b) and submit an affidavit from a licensed Pennsylvania broker with whom the applicant will be affiliated:~~

~~(1) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.~~

~~(2) Certifying that he will actively supervise the applicant.~~

§35.223. Licensure as salesperson.

†(b) An individual holding a broker's or salesperson's

license issued by another jurisdiction who wants to obtain a Pennsylvania salesperson's license shall comply with subsection (a) or shall:

(1) Possess a broker's or salesperson's license issued by another jurisdiction that has been active within 5 years prior to the submission of a properly completed license application.

(2) Have scored a passing grade on the Pennsylvania portion of the salesperson's examination within 3 years prior to the submission of a properly completed license application. See §35.272.

(3) Submit a completed license application to the Commission with a certification from the real estate licensing authority of the other jurisdiction containing the following information:

(i) The applicant's license number, the date of issuance of the license and confirmation that the applicant obtained initial licensure by written examination.

(ii) An indication of whether the license has been active within the past 5 years.

(iii) A description of past disciplinary action taken by the licensing authority against the applicant.

(iv) The applicant's office address and name of the applicant's employer.†

~~(b) The Commission will grant a salesperson's license to an individual holding a broker's or salesperson's license issued by another jurisdiction who meets substantially equivalent education requirements of section 35.272 of this Chapter, and satisfies the~~

following requirements:

(1) Has scored a passing grade on the Pennsylvania portion of the salesperson's examination within 3 years prior to the submission of a properly completed license application.

(2) Possesses a current broker's or salesperson's license issued by another jurisdiction prior to the submission of a properly completed license application.

(3) Submits a completed license application to the Commission containing:

(i) A signed affidavit attesting that the individual has received a copy of the act and the regulations of the Commission and has read, understands and agrees to comply with all provisions of the act and regulations while performing real estate activities in Pennsylvania.

(ii) A sworn statement from a licensed Pennsylvania broker with whom the applicant will be affiliated:

(A) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.

(B) Certifying that he will actively supervise and train the applicant.

(iii) Official transcripts evidencing the acquisition of degrees or course credits required by §35.272(a)(2).

~~(iv) A certification from the real estate licensing authority of the other jurisdiction containing:~~

~~(A) The applicant's license number, the date of issuance of the license and confirmation that the applicant obtained initial licensure by written examination.~~

~~(B) Confirmation that the applicant's license is current and in good standing.~~

~~(C) A description of any past disciplinary action taken by the licensing authority against the applicant.~~

~~(v) The applicant's office address and name of the applicant's employer.~~

~~(vi) A written consent to service of process as required under section 35.221(3).~~

~~(vii) An affidavit agreeing to cooperate with any investigation and to provide information requested by the Commission or any of its authorized agents as a result of a formal or informal complaint to the Commission indicating a violation of the act.~~

§35.245. Display of licenses in office.

(b) The current license of an associate broker, salesperson,

April 5, 2000

General Revisions

associate cemetery broker or cemetery salesperson shall be  
~~{displayed in a conspicuous place at the office out of which the  
licensee works.} on file and readily available for inspection in  
the main office or an office designated by the broker within the  
Commonwealth of Pennsylvania. A photocopy of the license shall  
be displayed in a conspicuous place in the main or branch office  
out of which the licensee works.~~

. . .

## SUBCHAPTER D. LICENSING EXAMINATIONS

**§35.271. Examination for broker's license.**

. . .

(b) The Commission will apply the following standards in determining whether an examination candidate has met the education requirement of subsection (a) (4):

. . .

(2) Except as provided in paragraph (6), [at least eight] two of the required 16 credits shall be in [real estate courses in four] a Commission-developed or approved real estate office management course and two of the required 16 credits shall be in a Commission-developed or approved law course. At least six of the remaining 12 credits shall be in three or more of the Commission-developed courses listed in this paragraph. The remaining [eight] six credits shall be in real estate courses but not necessarily those listed in this paragraph. A candidate may not apply credits used to qualify for the salesperson's examination toward fulfillment of the broker education requirement.



. . .

[(vii) Real Estate Brokerage and Office Management.]

[(viii)] (vii) Residential Construction.

[(ix) Appraisal] (viii) Valuation of Residential Property.

[(x) Appraisal] (ix) Valuation of Income-Producing Property.

(3) To be counted toward the education requirement, a real estate course shall have been offered by:

. . .

(iii) A real estate school outside this Commonwealth that has been approved by the real estate licensing authority of the jurisdiction where the school is located. The course transcript or certificate of completion shall state that the course is approved by the licensing authority of the jurisdiction where the school is located.

(iv) A real estate industry organization outside this Commonwealth, if the course is approved by the licensing jurisdiction of another state. [also offered by a real estate school in this Commonwealth approved by the Commission.] The course transcript or certificate of completion shall state that the course is approved by the licensing jurisdiction which has approved it.

(4) A maximum of four credits will be allowed for each real estate course. A maximum of four credits

will be allowed for each area of real estate study listed in paragraph (2) [, except that a maximum of six credits will be allowed for courses in Real Estate Appraisal].

. . .

#### **GENERAL ETHICAL RESPONSIBILITIES**

**§35.281. Putting contracts, commitments and agreements in writing.**

(a) A licensee who acts in a representative capacity [in connection with a real estate transaction] shall ensure that sale or lease contracts, commitments and agreements in connection with a real estate transaction [regarding the transaction] that he has knowledge of, or that he reasonably should be expected to have knowledge of, are in writing.

(b) A licensee who enters into an [oral] open listing agreement shall provide the seller or lessor with a written memorandum stating the terms of the agreement.

(c) A rental listing referral agent shall ensure that the agreement between himself and a prospective tenant is in writing.

. . .

**§35.287. Supervised [appraisal and] property management assistance by salespersons.**

[(a) A salesperson may assist in the preparation of an appraisal by the employing broker or an associate broker, if the employing broker or associate broker:

(1) Directly supervises and controls the salesperson's work, assuming total responsibility for the contents of the appraisal documents and value conclusions. The salesperson may not arrive at an independent determination of value.

(2) Personally makes a physical inspection of the interior and exterior of the subject property.

(3) Signs the appraisal document as "appraiser" and has the salesperson sign as "assistant to the appraiser."]

[(b)] A salesperson may assist in the management of real estate if the salesperson's work is directly supervised and controlled by the employing broker. The salesperson may not independently negotiate the terms of a lease nor execute a lease on behalf of the lessor.

**§35.304. Disclosure of licensure when advertising own real estate.**

A [broker] licensee who sells or leases his own real estate shall disclose that he is a real estate [broker] licensee in advertisements for the property. This requirement does not apply if the property is listed with a real estate company.

**§35.305. Business name on advertisements.**

(a) [A broker, cemetery broker or rental listing referral agent] Brokerage companies, including sole proprietorships, cemetery companies and rental listing referral agencies shall advertise or otherwise hold [himself] themselves out to the public only under the business name designated on [the] their license.

(b) Individual brokers of record, associate brokers, salespersons, cemetery associate brokers, cemetery salespersons and rental listing referral agents who wish to use and advertise nicknames, e.g., Jack v. John or Margaret v. Peggy, shall include such names on their licensure applications and/or biennial renewal applications.

[(b)] (c) An advertisement by an associate broker,

salesperson, cemetery associate broker or cemetery salesperson shall contain the business name and telephone number of the employing broker. The name [S] ~~and telephone number~~ S of the employing broker shall be given greater prominence in the advertisement than the name ~~and telephone number~~ of the employe. The telephone number of the employing broker shall be at of least equal in size in the advertisement to the telephone number of the employe.

. . .

**§35.308. Relationship with educational institution.**

A real estate company, franchise or network may [not] promote, endorse, or advertise its association, affiliation or connection with a real estate school or with a college, university or institute of higher learning regarding its offering of real estate instruction. [This prohibition does not apply to individual licensees.] An association, affiliation or connection which includes an ownership interest must be disclosed in all promotions, endorsements or advertisements. For purposes of this section, an ownership interest will be considered by the Commission to include proprietary or beneficial interests through which the real estate company, franchise or network earns or has the potential to earn income, or which produces a direct or indirect economic benefit.

. . .

**ESCROW REQUIREMENTS**

**§35.321. Duty to deposit money belonging to another into escrow account.**

(a) Except as provided in subsection (b) ~~and section 35.322 of this Subchapter~~, a broker shall deposit money that he receives belonging to another into an escrow account in a Federally or State-insured bank or depository to be held pending consummation of the transaction or a prior termination thereof that does not

involve a dispute between the parties to the transaction, at which time the broker shall pay over the full amount to the party entitled to receive it. If a broker is a partnership, association or corporation, its broker of record shall be responsible for ensuring that the escrow duty is performed.

. . .

(e) If a broker receives a security deposit belonging to another under a lease agreement, the broker's duty to pay over the deposit for purposes of subsection (a), shall arise when the tenancy ends. If a sale of the leased premises or a change in a property management contract occurs during the term of the tenancy, the broker may transfer the security deposit from the broker's escrow account to the escrow account of the lessor or the lessor's broker upon notification in writing to each tenant from whom the broker received such a deposit of the name and address of the banking institution in which such deposits will be held, and the amount of such deposits.

**§35.322. ~~{Nonwaiver of escrow duty.} Transfer of escrow funds~~**

~~{A broker's escrow duty may not be waived or altered by an agreement between the parties to the transaction, between the broker and the parties, or between the broker and other brokers who may be involved in the transaction.} 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, e.g., an attorney, a title company or a real estate brokerage company.~~

. . .

**§35.327. Procedure when entitlement to money held in escrow is disputed.**

~~{If a dispute arises between the parties to a real estate transaction over entitlement to money that is being held in~~

escrow by a broker, the broker shall retain the money in escrow until the dispute is resolved. If resolution of the dispute appears remote without legal action, the broker may, following 30 days' notice to the parties, petition the county court having jurisdiction in the matter to interplead the rival claimants.†

~~(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.~~

~~(b) If the parties have not released the broker and a civil action has not been filed 180 days after the settlement date, the broker may, after written notice to the parties, either:~~

~~(1) Return the earnest money to the payor buyer where the broker in good faith believes that the payor buyer is entitled to it because a contingency in the purchase agreement has not been met; or~~

~~(2) Pay out the earnest money to the seller where the broker in good faith believes that the payor buyer has abandoned any claim to it.~~

~~(c) A broker will not be subject to disciplinary action by the Commission for returning the earnest money to either party under subsection (b).~~



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE REAL ESTATE COMMISSION

(717) 783-3658

116 PINE STREET  
P. O. BOX 2649  
HARRISBURG, PA  
17105-2649

September 25, 2000

The Honorable John R. McGinley, Chairman  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, Harestown 2  
333 Market Street  
Harrisburg, PA 17101

RE: Final Regulation  
State Real Estate Commission  
General Revisions: 16A-560

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Real Estate Commission pertaining to general revisions.

The Commission will be pleased to provide whatever information your Committee may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joseph Tarantino, Jr.', written in a cursive style.

Joseph Tarantino, Jr., Chairperson  
State Real Estate Commission

JT:JPS:apm  
Enclosures

- c: John T. Henderson, Jr., Chief Counsel  
Department of State
- Dorothy Childress, Commissioner  
Bureau of Professional and Occupational Affairs
- Joyce McKeever, Deputy Chief Counsel  
Department of State
- Gerald S. Smith, Senior Counsel in Charge  
Bureau of Professional and Occupational Affairs
- Judith Pachter Schulder, Counsel  
State Real Estate Commission
- State Real Estate Commission



**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-560  
 SUBJECT: State Real Estate Commission  
 AGENCY: DEPARTMENT OF STATE

**TYPE OF REGULATION**

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a. With Revisions
  - b. Without Revisions

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 TORY

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
9-25-00	<i>[Signature]</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
9/25	<i>Charlotte C. [Signature]</i>	
9-25-00	<i>[Signature]</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
9-25-00	<i>[Signature]</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

June 19, 2000