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

October 7, 1999

Rita Halverson, Chairperson  
State Real Estate Commission  
116 Pine Street  
Harrisburg, PA 17105

Re: IRRC Regulation #16A-566 (#2048)  
State Real Estate Commission  
Application Fees

Dear Chairperson Halverson:

Enclosed are our Comments on the subject regulation. They are also available on our website at <http://www.irrc.state.pa.us>.

Our Comments list objections and suggestions for 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 would like to discuss these Comments, please contact Chris Markham at 705-5959.

Sincerely,

Robert E. Nyce  
Executive Director

REN:cae

Enclosure

cc: Judith Pachter Schulder  
Joyce McKeever  
Honorable 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-566

### APPLICATION FEES

OCTOBER 7, 1999

We have reviewed this proposed regulation from the State Real Estate Commission (Commission) 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 fiscal impact and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

#### 1. Section 39.72. Fees. - Fiscal impact and Clarity

##### *Administrative overhead costs*

In the proposed regulation's fee report forms, there are significant differences in the costs covered by different fees except for "Administrative Overhead" costs. According to staff at the Department of State and its Bureau of Professional and Occupational Affairs (BPOA), the allocated share of overhead cost for each fee category is calculated by dividing total overhead costs by the number of active licensees. This methodology for overhead cost allocation is not unreasonable and has been consistently applied. On the other hand, the staff cost allocations are based on estimates of the actual time BPOA staff spends performing the tasks related to each fee.

For overhead cost allocations, there appears to be no relationship to the services covered by the fees or frequency of fee payments. Therefore, there is no indication that the fees will recover actual or projected overhead costs. In addition, the allocated costs are based on past expenditures rather than estimates or projections of future expenditures. Hence, there is no certainty that the fees' "projected revenues will meet or exceed projected expenditures" pursuant to Section 407(a) of the Real Estate Licensing and Registration Act (63 P.S. §455.407(a)).

We question the use of a constant overhead cost allocation that appears to be unrelated to the actual costs of activities covered by different fees. Even though this process was used to determine other fees, why should BPOA maintain this approach? The Commission and BPOA should specifically identify the overhead costs, or portion of the total overhead, to be recouped by these fees, and review their methodology for allocating these overhead costs. Is it the Commission's goal to allocate all overhead costs by category to each fee? If so, we do not believe the current allocation formula gives the desired result.

*Differing overhead costs*

The administrative overhead costs for all fees are \$13.56, except for the certification of history of licensure, registration or approval, which is \$9.76. The Commission should explain why the administrative cost for certification of history of licensure, registration or approval is different.

**2. Section 35.203. Fees – Clarity.**

*Addition of satellite location or instructor for real estate school*

This section lists the category “Addition of a satellite location or instructor for real estate school.” The existing regulation includes “course” in this category. The proposed regulation lists “Addition of course for real estate school” as a separate category. As published in the *Pennsylvania Bulletin*, a comma that should have been shown as a deletion was inadvertently omitted. Therefore, the final regulation should be revised to read as follows: “Addition of satellite location[, course] or instructor for real estate school.”

*Certification of history of licensure, registration or approval*

This category of fees is included in the regulation. However, the accompanying fee report forms do not include “certification of registration” or “certification of approval.” The Commission should clarify if “certification of registration” and “certification of approval” were intended to be part of the fee report form for “certification of history of licensure.” If so, these fees should be added to the fee report form that accompanies the final regulation. If the Commission intended to include these fees on separate fee report forms, those forms should be included with the final regulation.

*Fee report form for ownership change – private real estate school*

This fee report form contains a typographical error. The administrative overhead is listed as \$3.56. It should be changed to \$13.56.

*Name change – private real estate school and initial license application – private real estate school*

The fee report form for “Name change – private real estate school” lists the Commission meeting average cost as \$39.67. The fee report form for “Initial license application – private real estate school” lists the average cost of Commission review as \$21.87. The Commission review of an initial license application is more detailed than the review of a name change. We request the Commission explain why the cost for the Commission meeting for a name change is higher than the more detailed Commission review of an initial license application.