

<b>Regulatory Analysis Form</b>		This space for use by IRRC 90 AUG -9 PM 2: 22 <b>Cocodrilli</b>  IRRC Number: 2051	
<b>(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-567			
<b>(3) Short Title</b> Disclosure Summary			
<b>(4) PA Code Cite</b> 49 Pa. Code §35.336		<b>(5) Agency Contacts &amp; 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)</b> <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Policy Statement		<b>(7) Is a 120-Day Emergency Certification Attached?</b> <input checked="" type="checkbox"/> No Yes: By the Attorney General Yes: By the Governor	
<b>(8) Briefly explain the regulation in clear and nontechnical language.</b>  The regulation embodies a disclosure summary which advises consumers about agency relationships, fees, and services which a licensee may provide to the consumer. Licensees will be required to provide consumers with the disclosure at the first initial contact in a real estate transaction and retain a copy of the acknowledgment following disclosure.			
<b>(9) State the statutory authority for the regulation and any relevant state or federal court decisions.</b>  The regulation is proposed under the statutory authority of Section 608 of the Real Estate Licensing and Registration Act, 63 P.S. §455.608.			

## 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.**

Yes. Act 112 of 1998 requires the Commission to promulgate a disclosure regulation containing the eleven statements listed in Section 608 by November 24, 1999.

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

In addition to being mandated by the Act, the disclosure assists consumers of real estate services by explaining the various agency relationships, describing how fees can be allocated, reminding consumers that all real estate transactions must be in writing and listing the phone number for the Real Estate Recovery Fund.

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

Nonregulation is not an option as Section 608 requires the Commission to promulgate a disclosure by November 24, 1999.

**(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 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. 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.**

In compliance with Executive Order 1996-1, the Commission extended an invitation to the following boards and associations to preliminarily review and comment on the Commission's draft regulatory proposal: Pennsylvania Association of Realtors; Realtors Educational Institute; Institute of Real Estate Studies; Polley Associates; Pennsylvania Cemetery & Funeral Association; Pennsylvania Bar Association; Allegheny Highland Association; Greater Allegheny-Kiski Area Board; Allegheny Valley Board; Beaver County Association; Bradford-Sullivan County Association; Bucks County Board;

(Continued on page 9)

**(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.**

The only costs associated with this regulation would be in reproducing the disclosure. Licensees would be required to retain a signed acknowledgment and give a copy of the disclosure to the consumer.

## 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.**

Not applicable.

**(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.**

The costs to the State Real Estate Commission associated with implementation of this regulation is minimal. The Commission would be required to print disclosure forms and make them available upon request to licensees. Since only the form of the disclosure summary is proscribed by regulation, licensees would be permitted to duplicate the form for their use. In addition, the Commission also intends to post the disclosure summary on the internet so that it may be downloaded by licensees.

### 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	N/A	N/A	N/A	N/A	N/A	N/A
Local Government						
State Government						
Total Costs						
<b>REVENUE LOSSES:</b>						
Regulated	N/A	N/A	N/A	N/A	N/A	N/A
Local Government						
State Government						
Total Revenue Losses						

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

Not applicable.

## Regulatory Analysis Form

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

Program	(1995-96) FY -3	(1996-97) FY -2	(1997-98) FY -1	(Budgeted 1998-99) Current FY
Not applicable.				

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

There should be 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 amendments were not considered because Section 608 of the Act, 63 P.S. §455.608, specifically requires that the Commission adopt the disclosure summary by regulation.

**(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. See 22 above.

## 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.**

Not applicable.

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

Numerous other states with agency laws require similar disclosures to be provided to consumers and utilize a similar form.

**(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 does not affect existing or proposed regulations.

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

The Commission has had numerous public meetings to discuss the disclosure notice as proposed. The Commission will have additional meetings to discuss the disclosure notice during the regulatory review process. The scheduled meeting dates for 1999 are as follows:

- May 11-12, 1999 (Harrisburg)
- June 22-23, 1999 (Pittsburgh)
- July 20-21, 1999 (Harrisburg)
- August 17-18, 1999 (Harrisburg)
- September 28-29, 1999 (Philadelphia)
- October 19-20, 1999 (Harrisburg)
- November 16-17, 1999 (Harrisburg)
- December 7-8, 1999 (Harrisburg)

## 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.**

The regulation will not change existing reporting requirements. Record keeping/paperwork requirements will change minimally in that licensees will be required to keep a copy of the signed acknowledgment.

**(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 has perceived no special needs of any subset of its applicants or licensees for whom special accommodations should be made.

**(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?**

Act 112 of 1998 requires that the regulations be promulgated by the Commission on November 24, 1999. The regulation will be effective upon publication in the Pennsylvania Bulletin as final rulemaking.

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

The Commission reviews the effectiveness of its regulations on an ongoing basis.



**(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.**

**(Continued from page 3)**

Butler County Association; Cambria-Somerset Association; Carbon County Association; Carlisle Association; Central Montgomery County Association; Central Susquehanna Valley Board; Central Westmoreland Board; Centre County Association; Chester County Association; Clearfield-Jefferson Association; Delaware Valley Realtors Association; East Montgomery County Association; Elk-Cameron County Board; Greater Erie Board; Fayette County Board; Franklin County Association; Greenville Area Board; Hanover-Adams County Association; Greater Harrisburg Association; Greater Hazleton Association; Huntingdon County Board; Indiana County Board; Lancaster County Association; Lawrence County Board; Lebanon County Association; Lehigh Valley Association; McKean County Association; Greater Meadville Board; Greater Mercer County Board; Mifflin-Juniata County Board; Mon Yough Association; Monongahela Valley Board; Greater Philadelphia Association; North Central Penn Board; Pike/Wayne Association; Pocono Mountains Association; Reading-Berks Association; Realtors Association of Metropolitan Pittsburgh; Schuylkill County Board; Greater Scranton Association; Tri-State Commercial and Industrial Association; Warren County Board; Washington-Greene Association; West Branch Valley Association; Westmoreland West Association; Greater Wilkes-Barre Association; York County Association; The Pennsylvania Federation of Housing Counselors and Agencies; and, The Real Estate Consumer Council.

In formulating this proposal, the Commission reviewed and considered all comments and suggestions received by these and other interested parties during the regulatory development process.

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

99 AUG -9 PM 2:22

(Pursuant to Commonwealth Documents Law)

# 2051

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Copy below is approved as to form and legality. Executive or Independent Agencies

*Cristina P. ...*  
(DEPUTY ATTORNEY GENERAL)

State Real Estate Commission  
(AGENCY)

*Margy E. Dunlop*

AUG 09 1999.

DOCUMENT/FISCAL NOTE NO. 16A-567

DATE OF APPROVAL

DATE OF ADOPTION:

7/1/99  
DATE OF APPROVAL

BY: *Rita Halverson*  
Rita Halverson

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

TITLE: Chairperson  
(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.

PROPOSED RULEMAKING

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

The State Real Estate Commission (Commission) proposes to amend 49 Pa. Code, Chapter 35 by adding Section 35.336 as set forth in Annex A.

A. Effective Date

The amendments will be effective upon publication of the final form regulation in the Pennsylvania Bulletin.

B. Statutory Authority

The amendments are proposed under the authority of Section 608 of the Act (63 P.S. §455.608).

C. Background and Purpose

This proposal implements Section 608 of Act 112 of 1998, which was added to the Real Estate Licensing and Registration Act on November 24, 1998. Act 112 permits licensees to enter into various agency relationships with consumers. Section 608 requires the Commission to adopt a disclosure summary to be provided to the consumers at the initial interview. Section 608 delineates eleven items which must be disclosed:

1. The relationships in which the consumer may engage the broker.
2. A statement informing sellers and buyers of their option to have an agency relationship with a broker, that an agency relationship is not to be presumed and that it will exist only as set forth in a written agreement between the broker and the consumer.
3. A statement that a consumer has the right to enter into a negotiated agreement with the broker limiting the activities or practices that the broker will provide for on behalf of the consumer, and that the fees and services to be provided are to be determined by negotiations between the consumer and the broker.
4. A statement identifying any possibility that the broker may provide services to another consumer who may be party to the transaction and, if so, an explanation of the duties the broker may owe the other party and whether the broker may accept a fee for those services.
5. A statement identifying any possibility that the broker may designate one or more licensees affiliated with the broker to represent the separate interest of the parties to the transaction.
6. A statement of the broker's policies regarding cooperation with other brokers, including the sharing of fees.

7. A statement that a buyer's broker may be paid a fee that is a percentage of the purchase price and the buyer's broker, even if compensated by the listing broker, will represent the interests of the buyer.
8. A statement that the duration of the broker's employment and the broker's fees are negotiable.
9. The purpose of the Real Estate Recovery Fund and the telephone number of the Commission at which further information about the fund may be obtained.
10. A statement that the duration of the listing agreement or contract and the broker's commission are negotiable.
11. A statement that any sales agreement must contain zoning classification of a property except in cases where the property (or each parcel thereof, if subdivided) is zoned solely or primarily to permit single-family dwellings.

D. Description of Proposed Amendments

Proposed subsection (a) would contain the form disclosure summary. The disclosure summary is divided into four parts: introduction, duties of licensees generally, a description of the business relationships and other information about real estate transactions.

In the first part of the disclosure, the Commission attempts to make consumers aware that in order to be represented by a licensee, they need to enter into a written agreement. The disclosure is also intended to caution consumers that until they have entered into such an agreement, they should not disclose any confidential information to the licensee.

The second part of the disclosure lists the duties required of all licensees by Section 606.1 of the Act.

The third part of the disclosure describes the business relationships delineated in Act 112 of 1998: seller agency, buyer agency, dual agency, designated agency and transaction licensee. The proposed regulation explains that under seller agency, the licensee and all licensees in the real estate company (except where there is designated agency) work only for the seller/landlord. Associated with this relationship are the additional duties of loyalty, confidentiality, continuous good faith effort to find a buyer, and disclosure. As a seller's agent, the licensee may compensate subagents, who, with the consumer's written approval, act in the same capacity as a seller's agent, and buyer's agents and transaction licensees, who with their agreement, other licensees may serve and be paid as subagents.

The proposal further explains that under buyer agency, the licensee and all licensees in the real estate company (except where there is designated agency) work only for the buyer/tenant, regardless of by whom the licensee is paid. Buyer's agents have the same additional duties to buyers as seller's agents have to sellers.

The proposal also explains that under dual agency, the licensee acts as the agent for both the buyer and the seller in the same transaction with the written consent of all of the parties. Dual agents have the additional duties of taking no action that is detrimental to either party, making a continuous and good faith effort to find a buyer for the property and a property for the buyer, and confidentiality.

In designated agency the employing broker designates one or more licensee to exclusively represent the interests of one party and other licensees to exclusively represent the interests of the other party. Designation may take place at the time the parties enter into a written agreement or when the employing broker learns that a dual agency relationship exists. Regardless of when the designation occurs the employing broker is responsible for ensuring that confidential information is not disclosed. In addition, the employing broker must take responsibility to direct and supervise the business activities of the licensees who represent the buyer and the seller while taking no action that is adverse or detrimental to either party's interest in the transaction.

The regulation also explains that a transaction licensee is not an agent or advocate for the consumer. Unlike a buyer's agent, seller's agent or dual agent, the transaction licensee only has the additional duty of limited confidentiality. Confidential information should not be divulged other than the fact that the seller will accept a price lower than the asking price, that the buyer will pay a price greater than the price submitted in a written offer, or that the seller or buyer will agree to terms other than those offered.

The last part of the disclosure delineates the four items which are negotiable in a written agreement/disclosure statement, the requirements that the sales agreement contain the zoning classification of the property, and information about the Real Estate Recovery Fund.

Proposed subsection (b) would require licensees to provide all consumers with the disclosure at the initial interview.

Proposed subsection (c) would require licensees to retain the signed acknowledgment in their files and provide a copy to the consumer. The Commission believes it is prudent to require licensees to maintain a copy of the acknowledgment as

evidence that the licensee complied with Section 606.1(a)(6) of the Act (63 P.S. §455.606.1(a)(6)).

E. Compliance with Executive Order 1996-1

In compliance with Executive Order 1996-1, the Commission extended an invitation to the following boards and associations to preliminarily review and comment on the Commission's draft regulatory proposal: Pennsylvania Association of Realtors; Realtors Educational Institute; Institute of Real Estate Studies; Polley Associates; Pennsylvania Cemetery & Funeral Association; Pennsylvania Bar Association; Allegheny Highland Association; Greater Allegheny-Kiski Area Board; Allegheny Valley Board; Beaver County Association; Bradford-Sullivan County Association; Bucks County Board; Butler County Association; Cambria-Somerset Association; Carbon County Association; Carlisle Association; Central Montgomery County Association; Central Susquehanna Valley Board; Central Westmoreland Board; Centre County Association; Chester County Association; Clearfield-Jefferson Association; Delaware Valley Realtors Association; East Montgomery County Association; Elk-Cameron County Board; Greater Erie Board; Fayette County Board; Franklin County Association; Greenville Area Board; Hanover-Adams County Association; Greater Harrisburg Association; Greater Hazleton Association; Huntingdon County Board; Indiana County Board; Lancaster County Association; Lawrence County Board; Lebanon County Association; Lehigh Valley Association; McKean County Association; Greater Meadville Board; Greater Mercer County Board; Mifflin-Juniata County Board; Mon Yough Association; Monongahela Valley Board; Greater Philadelphia Association; North Central Penn Board; Pike/Wayne Association; Pocono Mountains Association; Reading-Berks Association; Realtors Association of Metropolitan Pittsburgh; Schuylkill County Board; Greater Scranton Association; Tri-State Commercial and Industrial Association; Warren County Board; Washington-Greene Association; West Branch Valley Association; Westmoreland West Association; Greater Wilkes-Barre Association; York County Association; The Pennsylvania Federation of Housing Counselors and Agencies; and The Real Estate Consumer Council.

In formulating this proposal, the Commission reviewed and considered all comments and suggestions received by these and other interested parties during the regulatory development process.

F. Fiscal Impact and Paperwork Requirements

The proposed amendments should have minimal fiscal impact on the Commonwealth. The proposed amendment would require the Commission to print the disclosure summary and make it available to all licensees. In addition to obtaining a copy

from the Commission staff, the disclosure summary would be available on the internet for downloading. This regulation would also have a minimal fiscal impact on the regulated community in that licensees would incur the cost of reproducing the disclosure summary.

Additional paperwork requirements for the Commission would be limited to having copies of the disclosure summary available. Licensees would also have the additional paperwork requirement of keeping the signed acknowledgment and providing a copy of the entire disclosure to the consumer. The proposed amendments should not necessitate any legal, accounting, or reporting requirements on the regulated community.

G. Sunset Date

The Commission reviews the effectiveness of its regulations on an ongoing basis. Therefore, no sunset date has been assigned.

H. Regulatory Review

Pursuant to Section 5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19), as amended, 71 P.S. §745.5(a), the agency submitted a copy of this proposed regulation on AUG. 09 1999 to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the regulation, the agency has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulation, it will notify the agency within ten days after the expiration of the Committee review period. Such notification shall specify the regulatory review criteria which have not been met by that portion. The Act specifies detailed procedures for review, prior to final publication of the regulation, by the agency, the General Assembly and the Governor of objections raised.

I. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Judith Pachter Schulder, Counsel, State Real Estate Commission, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking. Please reference No. 16A-567 (Disclosure Summary), when submitting comments.

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

REAL ESTATE DOCUMENTS

\* \* \*

**§35.336. Disclosure Summary.**

(a) The Disclosure Summary shall be entitled "Consumer Notice" and shall be in the following form:

**CONSUMER NOTICE**  
**THIS IS NOT A CONTRACT**

Pennsylvania Law requires real estate brokers and salespersons (licensees) to advise consumers of the business relationships that a consumer may have with a licensee. This notice must be provided to the consumer at the first contact where a substantive discussion about real estate occurs.

**Before you disclose any information to a licensee, be advised that unless you select a business relationship by signing a written agreement, the licensee is NOT representing you. A business relationship will NOT be presumed.**

Any licensee who provides you with real estate services owes you the following duties:

- Exercise reasonable professional skill and care.
- Deal honestly and in good faith.
- Present, in a timely manner, all offers, notices, and communications to and from the parties in writing, unless waived.
- Comply with Real Estate Seller Disclosure Act.
- Account for escrow and deposit funds.
- Disclose, in a timely manner, all conflicts of interest and financial interests.
- Advise the consumer to seek expert advice on matters about the transaction that are beyond the licensee's expertise.



- Keep the consumer informed about the transaction and the tasks to be completed.

A licensee may have the following business relationships with the consumer:

**Seller Agency:**

Seller agency is a relationship where the licensee, upon entering into a written agreement, works only for a seller/ landlord. Seller's agents owe the additional duties of:

- Loyalty to the seller/landlord by acting in the seller's/landlord's best interest.
- Confidentiality, except that a licensee has a duty to reveal known material defects about the property.
- Making a continuous and good faith effort to find a buyer for the property.
- Disclosure to other parties in the transaction that the licensee has been engaged as a seller's agent.

A seller's agent may compensate other brokers as subagents if the seller/landlord agrees in writing. Subagents have the same duties and obligations as the seller's agent. Seller's agents may also compensate buyer's agents and transaction licensees who do not have the same duties and obligations as seller's agents.

If you enter into a written agreement, all the licensees in the real estate company owe you the additional duties identified above under seller agency. The exception is designated agency. See the designated agency section in this notice for more information.

**Buyer Agency:**

Buyer agency is a relationship where the licensee, upon entering into a written agreement, works only for the buyer/tenant. Buyer's agents owe the additional duties of:

- Loyalty to the buyer/tenant by acting in the buyer's/tenant's best interest.
- Confidentiality, except that a licensee is required to disclose known material defects about the property.
- Making a continuous and good faith effort to find a property for the buyer/tenant.
- Disclosure to other parties in the transaction that the licensee has been engaged as a buyer's agent.

A buyer's agent may be paid fees, which may include a percentage of the purchase price, and, even if paid by the seller/landlord, will represent the interests of the buyer/tenant.

If you enter into a written agreement, all the licensees in the real estate company owe you the additional duties identified above under buyer agency. The exception is designated agency. See the designated agency section in this notice for more information.

### **Dual Agency:**

Dual agency is a relationship where the licensee acts as the agent for both the seller/landlord and the buyer/tenant in the same transaction with the written consent of all parties. Should dual agency occur in your transaction, you will be informed. Dual agents owe the additional duties of:

- Taking no action that is *adverse or detrimental* to either party's interest in the transaction.
- Making a *continuous and good faith* effort to find a buyer for the property and a property for the buyer.
- *Confidentiality*, except that a licensee is required to disclose known material defects about the property.

### **Designated Agency:**

In designated agency, the employing broker may, with your consent, designate one or more licensees from the real estate company to act exclusively as the agent for the seller/landlord and one or more licensees to act exclusively as the agent for the buyer/tenant. Other licensees in the company who are not designated may represent another party and should not be provided with any confidential information. The designated agent(s) shall have the duties to the seller/landlord or buyer/tenant as listed above under seller agency and buyer agency.

In designated agency, the employing broker will be a dual agent and have the additional duties of:

- Taking reasonable care to protect any confidential information disclosed to the salesperson.
- Taking responsibility to direct and supervise the business activities of the licensees who represent the seller and buyer while taking no action that is *adverse or detrimental* to either party's interest in the transaction.

The designation may take place at the time that the parties enter into a written agreement, but may occur at a later time. Regardless of when the designation takes place, the broker is responsible for ensuring that confidential information is not disclosed.

### Transaction Licensee:

A transaction licensee is a broker or salesperson who provides communication or document preparation services or performs other acts for which a license is required WITHOUT being the agent or advocate for either the seller/landlord or the buyer/tenant. Upon signing a written agreement or disclosure statement, a transaction licensee has the additional duty of limited confidentiality in that the following information may not be disclosed:

- the seller/landlord will accept a price less than the asking/listing price.
- the buyer/tenant will pay a price greater than the price submitted in a written offer.
- the seller/landlord or buyer/tenant will agree to financing terms other than those offered.

Other information deemed confidential by the consumer should not be provided to the transaction licensee.

## Other Information about Real Estate Transactions

The following are negotiable and shall be addressed in an agreement/disclosure statement with the licensee:

- The duration of the licensee's employment, listing agreement or contract are negotiable.
- The licensee's fees or commission are negotiable.
- The scope of the licensee's activities or practices are negotiable.
- The broker's cooperation with other brokers.

Any sales agreement must contain the zoning classification of a property except in cases where the property is zoned solely or primarily to permit single family dwellings.

Real Estate Recovery Fund exists to reimburse any person who has obtained a final civil judgment against a Pennsylvania real estate licensee owing to fraud, misrepresentation, or deceit in a real estate transaction and who has been unable to collect the judgment after exhausting all legal and equitable remedies. For complete details about the Fund, call (717) 783-3658.

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**ACKNOWLEDGMENT**

I acknowledge that I have received this disclosure.

Date:

\_\_\_\_\_

(Consumer)

\_\_\_\_\_

(Consumer)

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I certify that I have provided this document to the above consumer during the initial interview.

Date:

\_\_\_\_\_

(Licensee)

**Adopted by the State Real Estate Commission at 49 Pa. Code §35.336.**

(b) Licensees shall provide the disclosure summary to all consumers at the initial interview.

(c) Licensees shall retain the signed Acknowledgment for their records and shall provide a copy of the entire disclosure to the consumer.



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

August 9, 1999

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

RE: **Proposed Regulation**  
**State Real Estate Commission**  
**Disclosure Summary: 16A-567**

Dear Chairman McGinley:

Enclosed is a copy of a proposed rulemaking package of the State Real Estate Commission pertaining to disclosure summary.

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

Sincerely,

Rita Halverson, Chairperson  
State Real Estate Commission

RH:JPS:bjd

Enclosures

cc: Hon. Kim Pizzigrilli, Secretary of the Commonwealth  
Department of State  
C. Michael Weaver, Deputy Secretary of Regulatory Programs  
Department of State  
Steven V. Turner, Chief Counsel  
Department of State  
Joyce McKeever, Deputy Chief Counsel  
Department of State  
Dorothy Childress, Commissioner  
Bureau of Professional and Occupational Affairs  
Herbert Abramson, 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-567

SUBJECT: State Real Estate Commission - Disclosure Summary

99 AUG -9 PM 2: 22

AGENCY: DEPARTMENT OF STATE

TYPE OF REGULATION

X Proposed Regulation

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

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

8-9-99

Louie Clark

HOUSE COMMITTEE ON PROFESSIONAL LICENSURE

8-9-99

Marlene Farnon

SENATE COMMITTEE ON CONSUMER PROTECTION &  
PROFESSIONAL LICENSURE

8-9-99

Therese E. Kent

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL

8/9/99

Maryann Garas

LEGISLATIVE REFERENCE BUREAU

August 9, 1999