



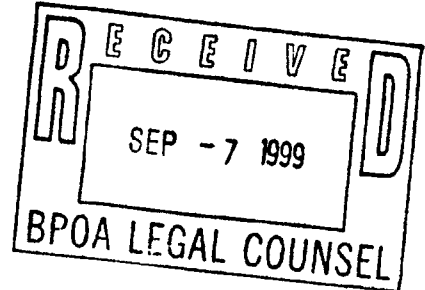
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ORIGINAL: 2051 September 1, 1999

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TO: Judith Pachter Schulder, Counsel
State Real Estate Commission
16 Pine Street
P.O. Box 2649
Harrisburg, PA 17105-2649

SUBJECT: No. 16A-567 (Disclosure Summary)

Act 112 clearly states certain things that the Real Estate Commission ignored on the consumer form that needs to be explained, on the Agency Disclosure form define, Agency, Fiduciary or all the fiduciary duties that make up Agency. Since the commission is made up of experienced realtors and citizens who have a prime duty to protect the consumer.

The big question is how can a consumer make a decision on their first meeting if we fail or refuse to disclose "all relevant facts without reservation, ambiguity or distortion so that a consumer can understand the options and weigh the risks and benefits in order to make a decision in his or her own best interest". If the form does not truthfully define them, what is a Fiduciary Relationship and that a Fiduciary Relationship is the back-bone of Agency and Agency can't exist without it.

The legislature didn't abrogate any of the common law when this act was passed including agency, contracts, or misrepresentation. Therefore, hundreds of years of the common law is alive and in full affect. So the question is, if we know, even if we don't know, we must disclose enough information for consumers to make intelligent decisions (see my letters of April 9, April 28 and August 16, 1999. I went into a lot of detail.

This becomes very similar to the tobacco recent litigation that is costing the tobacco industry hundreds of billions of dollars in which the industry had some disclosure on all cigarette packages, but intentionally hid the risks of not explaining all the facts and a consumer who is entitled to full fidelity as we must give in agency is going to be damaged by licensee, agents, brokers and companies who in most cases unintentionally has misled them. This causes them to take risks they would not have taken if they had been told all the facts.

It is possible that one may not understand why the legislature used the words "all the facts" or they may not understand that "all" does not mean to only disclose what we like or understand. We must disclose everything that we know or should know.

President Clinton had trouble understanding the word "is" and "all" is 50% longer so here are the dictionary versions. Attached are from Funk & Wagnalls new comprehensive international dictionary the words "all" and "revelant" and from Black's dictionary, the word "Fiduciary".

To advocate our clients interest in a fiduciary relationship, we must be honest. How can we argue on honesty, if we don't reveal "all". Sooner or later this will come up, so why not address the issue now.

Respectfully

Dino Bello/Broker

cc: Rita Halverson, Chairperson, R.E. Commission
Jim Goldsmith, Council, PAR
Mary Busey Harris, Exec. VP, PAR
Dennis McClelland, Exec. VP, RAMP
Each Office is Independently Owned And Operated

Funk & Wagnalls

[<ALKY(L) + -INE]

all (ôl) *adj.* 1 The entire substance or extent of: *all Europe; all wisdom.* 2 The entire number of; the individual components of, without exception: to be known to *all men.* 3 The greatest possible: in *all haste.* 4 Any whatever: beyond *all doubt.* 5 Every: used in phrases with *manner, sorts, and kinds: all manner of men.* 6 Nothing except: He was *all skin and bones.* See synonyms under EVERY. —*n.* 1 Everything that one has: entire interest or possession: to give one's *all.* 2 Whole being; totality. —*pron.* 1 Everyone: *All are condemned.* 2 Each one: When he questioned his students, *all* were ready with an answer. 3 Everything: *All is in readiness.* 4 Every part, as of a whole: *All of it is gone.* ♦ Homophone: *awl.* [OE] —*above all* Primarily; of the first importance. —*after all* 1 On the other hand. 2 In the long run; in spite of everything. —*all in all* All things considered; taken as a whole. —*at all* 1 In any way: I can't come *at all.* 2 To any degree or extent: no luck *at all.* —*for all* To the degree that: *For all I care,* you can go without me. —*for all of (me, you, him, her, or us)* As for: You can leave now, *for all of me.* —*In all* Including everything; all told. —*once and for all* Once and no more; finally. —*adv.* 1 Wholly; entirely: fallen *all* to bits; running *all* the way; traveling *all* through the night. 2 Exclusively; only: That portion is *all* for me. 3 For each; on each side: a score of

three *all.* —*all along* All the time: I knew it *all along.* —*all but* 1 Almost; on the verge of: I was *all but* exhausted by my trip. 2 Every one except: He took *all but* six. —*all in Colloq.* Wearied, as from exertion. —*all of* No less than; quite: It's *all of* ten miles. —*all out* Making every effort: They went *all out* for victory. —*all over* 1 Finished; past and gone: The love affair is *all over* between us. 2 Everywhere; in all parts: He's been *all over.* 3 Typically; in every way: That's George *all over.* —*all the (better, more, etc.)* So much the (better, more, etc.) —*all up with Colloq.* Ended; without power to continue: It's *all up with him.*

rel'e-vant (rel'ə-vənt) *adj.* 1 Fitting or suiting given requirements; pertinent; applicable: com-

monly with *to.* 2 *Ling.* Designating those features of a phoneme which function to distinguish it from other phonemes in a language, as place of articulation in English consonants. [<Med. L *relevans, -antis*, ppr. of *relevare* bear upon <L. raise up. See RE-LIEVE.] —*rel'e- Vance, rel'e- van- cy n.* —*rel'e- vant- ly adv.*

FIDUCIARY. The term is derived from the Roman law, and means (as a noun) a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires. *Svane v. Jurgens*, 144 Ill. 507, 33 N.E. 955; *Stoll v. King*, 8 How. Prac., N.Y., 299. A person having duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking. *Haluka v. Baker*, 66 Ohio App. 308, 34 N.E.2d 68, 70. As an adjective it means of the nature of a trust; having the characteristics of a trust; analogous to a trust; relating to or founded upon a trust or confidence.

FIDUCIARY OR CONFIDENTIAL RELATION. A very broad term embracing both technical fiduciary relations and those informal relations which exist wherever one man trusts in or relies upon another. *State v. Gautier*, 108 Fla. 390, 147 So. 240, 242. One founded on trust or confidence reposed by one person in the integrity and fidelity of another. *Kerrigan v. O'Meara*, 71 Mont. 1, 227 P. 819, 821.

The origin of the confidence and the source of the influence are immaterial. *Quinn v. Phipps*, 93 Fla. 805, 113 So. 419, 420, 54 A.L.R. 1173. The relations and duties involved need not be legal but may be moral, social, domestic, or merely personal. *Trustees of Jesse Parker Williams Hospital v. Nisbet*, 191 Ga. 821, 14 S.E.2d 64, 76. See also *Fiduciary Relation.*

FIDUCIARY RELATION. An expression including both technical fiduciary relations and those informal relations which exist whenever one man trusts and relies upon another. *Peckham v. Johnson*, Tex. Civ. App., 98 S.W.2d 408, 416. It exists where there is special confidence reposed in one who in equity and good conscience is bound to

act in good faith and with due regard to interests of one reposing the confidence. *Neagle v. McMullen*, 334 Ill. 168, 165 N.E. 605, 608. A relation subsisting between two persons in regard to a business, contract, or piece of property, or in regard to the general business or estate of one of them, of such a character that each must reposit trust and confidence in the other and must exercise a corresponding degree of fairness and good faith.

Out of such a relation, the law raises the rule that neither party may exert influence or pressure upon the other, take selfish advantage of his trust, or deal with the subject-matter of the trust in such a way as to benefit himself or prejudice the other except in the exercise of the utmost good faith and with the full knowledge and consent of that other, business shrewdness, hard bargaining, and astuteness to take advantage of the forgetfulness or negligence of another being totally prohibited as between persons standing in such a relation to each other. Examples of fiduciary relations are those existing between attorney and client, guardian and ward, principal and agent, executor and heir, trustee and *cestui que trust*, landlord and tenant, etc. *Robins v. Hope*, 57 Cal. 497; *Thomas v. Whitney*, 186 Ill. 225, 57 N.E. 808; *Central Nat. Bank v. Connecticut Mut. L. Ins. Co.*, 104 U.S. 68, 26 L.Ed. 693. The relation need not be legal, but may be moral, social, domestic, or merely personal. *Miranovitz v. Gee*, 163 Wis. 246, 157 N.W. 790, 792; *Higgins v. Chicago Title & Trust Co.*, 312 Ill. 11, 143 N.E. 482, 494. It is one in which, if a wrong arise, the same remedy exists against the wrongdoer on behalf of the principal as would exist against a trustee on behalf of a *cestui que trust*. *Smith v. Smith*, 222 Mass. 102, 109 N.E. 830, 832. Sometimes confidential and fiduciary relations are regarded as synonymous; in *re Cover's Estate*, 188 Cal. 133, 204 P. 583, 588; but on the other hand, a technical distinction may be taken between a "fiducial relation" which is more correctly applicable to legal relationships between parties, such as guardian and ward, administrator and heirs, and other similar relationships, and a "confidential relation" which includes the legal relationships, and also every other relationship wherein confidence is rightfully reposed and is exercised. *Roberts v. Parsons*, 195 Ky. 274, 242 S.W. 594, 596.

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September 8, 1999

The Honorable John R. McGinley, Jr., Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
Harristown 2, 14th Floor
333 Market Street
Harrisburg, Pennsylvania 17101

Re: Public Comment: Proposed Rulemaking (16A-567)
State Real Estate Commission
Disclosure Summary

Dear Chairman McGinley:

Pursuant to Section 5(b.1) of the Regulatory Review Act (71 P.S. §845/5(b.1)), enclosed is a copy of the written comment received by the State Real Estate Commission regarding Regulation 16A-567.

Very truly yours,

Rita Halverson, Chairman
State Real Estate Commission

RH/JPS:apm
Enclosure

c: Joyce McKeever, Deputy Chief Counsel
Department of State

Deborah Sopko, Board Administrator
State Real Estate Commission

Original: 2051

Cocodrilli

cc: Cocodrilli
Sandusky
Wilmarth
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Legal



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September 20, 1999

Julith Pachter Schuller, Counsel
State Real Estate Commission
116 Pine Street
P.O. Box 2649
Harrisburg, PA 17103-2649

Re: Disclosure Summary 16A - 567

Dear Ms. Schuller:

On behalf of the 26,000 members of the Pennsylvania Association of REALTORS® (PAR), we thank you for the opportunity to comment on the proposed rulemaking 16A - 567/Disclosure Summary. This Disclosure Summary, "Consumer Notice," is intended to fulfill the requirements of Section 608 of Act 112 of 1998. The proposed rulemaking was published in the August 21, 1999 edition of *The Pennsylvania Bulletin*.

PAR believes that the legislative intent of Section 608 of Act 112 was to provide consumers with a clear and concise statement that they have the option to have an agency relationship with a broker, that an agency relationship is not presumed and will exist only when selected by the consumer and agreed to by the broker in written agreement. Section 608 states:

"The Commission shall establish rules and regulations which shall set forth the manner and method of disclosure of information to the prospective buyer/tenant or seller/landlord during the initial interview. For the purposes of this section, the initial interview is the first contact between a broker and a consumer of real estate-related services where a substantive discussion about real estate needs occurs. Such disclosure shall be provided on a form adopted by the Commission by regulation."

PAR appreciates the Commission's work on the proposed form to date. In the spirit of cooperation between PAR and the Commission, PAR offers the following recommendations for the final draft of the "Consumer Notice."

- **Disclosure of Information** - The second paragraph of the form as currently written does not fully satisfy the requirement of Section 608(b) which states "A statement informing sellers and buyers of their option to have an agency relationship with a

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broker..." This paragraph should suggest to consumers that it may be inappropriate to disclose information once a business relationship has been established in writing; the establishment of a business relationship does not in and of itself justify a consumer disclosing confidential information. It is the nature of the business relationship that will determine whether it is advisable for the consumer to disclose information. PAR proposes the following language:

"Before you disclose any information to a licensee, be advised that unless you select an agency relationship by signing a written agreement providing for such a relationship, the licensee is NOT REPRESENTING YOU. A business relationship of any kind will NOT be presumed but must be established between the consumer and the licensee."

- **Designated Agency** – In place of the first paragraph under the definition of "designated agency," PAR offers the following language to more accurately reflect the legislative intent of Act 112:

"The rule of designated agency permits the employing broker to designate, with your consent, one or more licensees from the broker's company to represent you. In this event, the other licensees affiliated with the broker do not represent you and may in fact be designated by the broker to represent the party with whom you eventually enter into a real estate transaction."

- **Redundancy** – The third paragraph of the current draft lists the duties that licensees who provide real estate-related services owe to consumers. This paragraph, and the following eight bullet points, are an unnecessary duplication of duties already disclosed in agreements of sale and other real estate-related standard forms. Section 608 of Act 112 makes no mention of the disclosure form including this information. PAR appreciates the Commission's desire to provide consumers with needed information concerning real estate transactions, however, the inclusion of this material in the disclosure form is redundant and exceeds the legislative intent of Section 608.
- **Acknowledgement** – This section should contain space under the consumer signature section for the printed name, address and phone number of the consumer. PAR believes this will enable more accurate documentation for licensees and consumers.

PAR appreciates the opportunity of sharing our views on Act 112. Please contact Jim Goldsmith, PAR Legal Counsel, at 232-7661 if you have any questions about these recommendations.

Sincerely,

Melissa Sieg

Melissa Sieg, CRS, GRI, Chair
License Law Subcommittee

Derenda Updegrave

Derenda Updegrave, Director
Department of Government Affairs