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

October 22, 1999

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

Re: IRRC Regulation #16A-567 (#2051)  
State Real Estate Commission  
Disclosure Summary

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 John Jewett at 783-5475.

Sincerely,

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

Robert E. Nyce  
Executive Director

REN:wbg  
Enclosure

cc: Judith Pachter Schulder  
Joyce McKeever  
Dorothy Childress  
Honorable Kim Pizzingrilli  
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-567**

**DISCLOSURE SUMMARY**

**OCTOBER 22, 1999**

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

**1. Subsection 35.336(a). Disclosure summary. -- Consistency with statute, Need, Reasonableness and Clarity.**

This regulation consists of one section divided into three subsections. Subsection (a) is the largest of the three. It contains the required contents for the disclosure summary that is entitled "Consumer Notice" (Notice). The following paragraphs address concerns or questions with the language of Subsection (a) and the Notice.

*First sentence of Subsection (a)*

The first sentence of the subsection states that the Notice is required to match the form provided by the regulation. However, the regulation contains no directives for legibility. Other agencies set specific minimum standards in regulations for public notices including typeset size. This proposed regulation should include specific minimum standards for typeset size and format.

*Terminology of Notice*

Section 608 of the Real Estate Licensing and Registration Act as amended by Act 112 of 1998 (Act) (63 P.S. § 455.608) relating to information to be given at an initial interview, uses the term "broker." However, the Notice uses "licensee," "salesperson" and "broker." The term could encompass more than a broker or salesperson according to Section 301 of the Act. Since neither the Act nor the regulation defines "licensee," this regulation should include a definition of "licensee" for the Notice.

*Second paragraph of Notice*

The House Professional Licensure Committee (House Committee) and Pennsylvania Association of Realtors (PAR) suggested changes in the second paragraph of the Notice. This paragraph's statement is required by Subsection 608(2) of the Act. The use of the language suggested by the House Committee and PAR would improve the clarity of the Notice.

*First, third, sixth and eighth bulleted paragraphs of Notice*

The bullet points in the third paragraph of the Notice are based upon Section 606.1 of the Act. These bullets should more closely track the Act. The following are four examples:

The first bullet states that the licensee shall exercise reasonable professional skill and care. It should also include language from Section 606.1(a)(1) of the Act that states a licensee must exercise reasonable professional skill and care “**which meets the practice standards required by the act** [Real Estate Licensing and Registration Act].”

The third bullet should mirror the Act by specifying that the waiver must be in writing. It should also reference counteroffers.

The sixth bullet states that licensees should disclose all conflicts of interest and financial interest “in a timely manner.” However, Section 606.1(a)(13) of the Act requires that these disclosures be made when the licensee **first recommends** a purchase, or **first learns** that the consumer will purchase a service in which the licensee or an affiliated licensee has a financial interest. Instead of using “in a timely manner,” the Notice should use the specific language of the Act.

The eighth bullet should more closely track Section 606.1(a)(11) of the Act. It should specify that the licensee must provide assistance with document preparation and advice on compliance with real estate laws.

*Descriptions of different “Agency” relationships*

Under the descriptions of the four different types of agency relationships, the Notice does not include language from the Act relating to exceptions to the licensee’s obligation to seek additional offers, properties for purchase, or buyers for the property. These exceptions are found in Sections 606.2(2), 606.3(2), 606.4(b)(3) and 606.5(b)(2) of the Act. The SREC should include these exceptions in the Notice.

*Dual Agency*

In the first paragraph under the heading “Dual Agency,” the first sentence mirrors the Act by indicating that dual agency requires the written consent of all parties involved. However, the second sentence is confusing. It states that if dual agency should occur in a consumer’s transaction, the consumer will be informed. The SREC should delete the second sentence.

*Designated Agency*

Under “Designated Agency,” the Notice provides that “... licensees in the company who are not designated may represent another party and *should* not be provided with any confidential information” (emphasis added). The use of the term “should” implies that the employing broker can decide whether to give a licensee, who is representing another party, confidential information. If this is the intent, we request the SREC explain when it would be appropriate to divulge confidential information. If this is not the SREC’s intent, the term “should” should be replaced with “shall.”

*Other Information About Real Estate Transactions*

This section of the Notice lists items that are negotiable and are addressed in an agreement or disclosure statement with the licensee. There are two concerns.

First, the first sentence states that the following are **negotiable**. However, the following three bulleted sentences end with the phrase “are negotiable.” This repetition is unnecessary.

Second, the fourth bullet point addresses the broker’s cooperation with other brokers. To be consistent with Section 608(6) of the Act, it should include a broker’s sharing of fees.

### *Acknowledgement*

Under the word “Acknowledgement,” the Notice includes space for the consumer’s signature. The House Committee and PAR suggest that the Notice also include space for the printed name, address and telephone number of the consumer. The Notice should include space for printing the consumer’s name. However, what is the need for adding lines for the consumer’s address and telephone number?

### **2. Section 35.336(b). Disclosure summary. -- Implementation procedure and Clarity.**

There are two concerns with Subsection (b). First, the subsection directs licensees to provide the Notice to all consumers at the initial interview. Yet, the regulation contains no definition of “initial interview.” This subsection should reference the statutory definition of “initial interview” in Section 608 of the Act.

Second, Subsection (b) should provide that if consumers opt not to sign, licensees shall note the refusal on the records that they retain as required by Subsection (c).

### **3. Section 35.336(c). Disclosure summary. -- Fiscal impact, Reasonableness and Need.**

Subsection (c) requires licensees to retain the Notice signed by the consumer. Retention and storage of documents is an expense. The SREC should review and explain the need for retaining these documents. If retention is necessary, then the regulation should set a retention period.