

Garner, Kim

Original: 2051  
Coccodrilli

**From:** Judy Schulder [JSCHULDE@dos.state.pa.us]  
**Sent:** Friday, October 29, 1999 12:36 PM  
**To:** irrc@irrc.state.pa.us; TGOLDEN@PAHOUSEGOP.com  
**Cc:** STURNER@dos.state.pa.us; bharr@pahouse.net; amattthew@pasen.gov  
**Subject:** 16a-567 Disclosure Summary Regulation

cc: Sandusky  
Coccodrilli  
Wilmarth  
Jewett  
Sandusky, Legal



Per our discussions, attached is the Preamble,

Annex and RAF which the State Real Estate Commission approved on October 27, 1999. As I indicated, OGC approved on the same day.

Alexandra Matthews advised me that since the Senate Consumer Protection and Professional Licensure Committee does not meet until December 1, 1999, she would be willing to accept these final form regulations only if both the House and IRRC analysts would advise her that they have no problem with the revisions. As we discussed, the Commission made all of the House and IRRC revisions with a modification to the address/telephone requirement in the Acknowledgment.

Thank you for agreeing to review these documents. Please advise Zan following your review. I look forward to delivering them as soon as possible.

RECEIVED  
1999 OCT 29 PM 1:33  
HOUSE OF REPRESENTATIVES  
LEGISLATIVE REVIEW COMMISSION

RECEIVED  
1999 OCT 29 PM 1:33  
INDEPENDENT REGULATORY  
COMMISSION

October 27, 1999  
Disclosure Summary  
16A-567

The State Real Estate Commission (Commission) amends 49 Pa. Code, Chapter 35 by amending Section 35.201 and adding Section 35.336 as set forth in Annex A.

This regulation 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, containing eleven enumerated provisions, to be provided to the consumers at the initial interview.

Notice of proposed rulemaking was published at 29 Pa. B. 4451-4454 (August 21, 1998). Publication was followed by a 30-day public comment period during which the Board received comments from the Pennsylvania Association of Realtors (PAR) and Dino Bello, a broker. 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 amendments reflected in Annex A are responsive to the comments and suggestions received by all commentators.

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

#### Subsection (a)

Subsection (a) requires the Consumer Notice be in the form set forth in the regulation. IRRC recommended that the regulation include specific minimum standards for typeset size and format. The Commission acknowledges IRRC's concern and modified the subsection to indicate that licensees must use the form the Consumer Notice developed by the Commission. Licensees will be able to obtain the form by fax or mail from the Commission office, or from the Commission's web page at realesta@pados.dos.state.pa.us. Licensees may reproduce the form provided it remains in the same format as the original.

The Commission believes that requiring all licensees to use the same form will ensure that every consumer receives the same information. It also places licensees on equal footing with regard to use of the form.

#### Paragraph 1

IRRC raised the concern that the term "licensee" in the Consumer Notice refers only to brokers and salespersons while Section 301 of the Act, 63 P.S. §455.301, defines licensee as including all individuals licensed by the Commission. IRRC recommended that the term "licensee" be defined in the Notice. The Commission agrees with this suggestion and has inserted a definition as requested.

#### Paragraph 2

The HPLC, IRRC and PAR recommended that paragraph 2 be amended to clarify that in order to enter into an agency relationship there must be a written agreement between the consumer and the broker. Additionally they recommended that the Commission clarify that in the absence of a written agreement, no business relationship will be presumed. The Commission agrees with this suggestion and amended the provision to reflect the suggested language.

#### Paragraph 3

IRRC suggested that the duties of licensees generally contained in paragraph 3 of the Notice should mirror Section 606.1 of the Act, 63 P.S. §455.606a, rather than summarize the provision. The Commission has amended this paragraph accordingly.

PAR recommended that the Commission delete the list of duties. PAR suggested that this information is redundant since it is contained in agreements of sale and other real estate-related standard forms. The Commission disagrees. Section 608, 63 P.S. §455.608 requires that consumers to be advised about the various agency relationships. As part of that advice, consumers are informed of the additional duties imposed under seller's agency, buyer's agency, dual agency, designated agency and transaction licensee. In order for consumers to understand the additional duties, the Commission believes it is necessary to explain the general duties. Accordingly, the Commission had not amended paragraph 3.

#### Various Agency Relationships

\_\_\_\_\_IRRC recommended that the exceptions to the additional duties on licensees arising from an agency relationship found in Sections 606.2(2), 606.3(2), 606.4(b)(3) and 606.5(b)(2), 63 P.S. §§455.606b(2), 455.606c(2), 455.606d(b)(3) and 455.606e(b)(2) be added to the Consumer Notice. The Commission has made this change to the seller agency, buyer agency and dual agency sections.

#### Paragraph 6 - Dual Agency

\_\_\_\_\_IRRC recommended that the second sentence in paragraph 6 be deleted in that it repeats the notice requirement in the first sentence. The Commission agrees with this recommendation and has deleted the second sentence.

#### Paragraph 7--Designated Agency

PAR suggested that paragraph 7, relating to designated agency, be amended by deleting the phrase "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" be deleted and replaced with "to represent you." The Commission finds this suggestion acceptable since it clarifies the provision without changing the original provision.

PAR also suggested that the second sentence be amended by deleting "may represent another party and should not be provided with any confidential information" and replacing it with "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." Given the amendment to the first sentence, the Commission does not believe that PAR's second amendment is warranted. However to improve clarity, the Commission has removed the words "who are not designated" from the second sentence and "to the seller/landlord or buyer/tenant" from the third sentence.

IRRC suggested that the first word of the clause regarding confidential information be changed from "should" to "shall." The Commission agrees and has replaced the word should in this paragraph as well as in paragraph 8 regarding transaction licensees.

#### Other information about real estate transactions

\_\_\_\_\_IRRC recommended that the first paragraph regarding negotiability be amended to remove the words "are negotiable" from each of the bulleted paragraphs. IRRC also recommended that the fourth bulleted paragraph include a reference to sharing of fees. The Commission has made both recommended changes.

#### Acknowledgment

Both the HPLC and PAR recommended that the consumer print as well as sign the acknowledgment section of the form and include the address and phone number. IRRC has questioned the rationale for requiring the address and phone number. The Commission believes that the addition of

the printed name will ensure more accurate documentation for licensees and consumers. However, the Commission believes that the addition of the address and telephone number should be optional instead of mandatory. In the Commission's collective experience, consumers engaged in initial discussions with licensees are reluctant and wary of providing personal information. The Commission believes that making such information optional will help ensure consumer compliance.

#### Subsection (b)

IRRC raised the concern that Subsection (b) requires licensees to provide the Consumer Notice at the initial interview, but the regulations do not define initial interview. The Commission believes this suggestion has merit and has added a definition for "initial interview" in Section 201 of the regulations, 49 Pa. Code §35.201, relating to definitions. The definition clarifies that where conversations extend beyond objective data about the property, the Consumer Notice, in Section 336 of the regulations, 49 Pa. Code §35.336, must be provided to and be acknowledged by consumers. These discussions may take place at open houses, in e-mail requests and during phone calls to licensees.

IRRC also suggested that Subsection (b) should be amended to guide licensees where consumers refuse to sign the acknowledgment. In response to this suggestion, the Commission has added Subsection (d). The new provision advises that the licensee shall note the refusal on the Consumer Notice and retain a copy of the acknowledgment for their records as specified in Subsection (c).

#### Subsection (c)

IRRC questioned the need for licensees to retain the signed acknowledgments. Section 608 of the Act, 63 P.S. §455.608, requires licensees to give the Consumer Notice to all consumers. The Notice is the first document in a real estate transaction. As such, the acknowledgment would be one of the records of a real estate office subject to inspection under 49 Pa. Code §35.246. The Commission believes that retention of the signed acknowledgments evidences compliance with Section 608 of the Act and therefore will assist both licensees and inspectors on behalf of the Commission during these inspections.

IRRC also noted that if retention is required the regulation should set a retention period. The regulations at 49 Pa. Code §35.286(a) requires brokers to retain copies of records *pertaining to real estate transactions* for at least 3 years following consummation of the transaction. Owing to concerns regarding the expense of retention and storage, the Commission has determined that where the broker and the consumer have not entered into a business relationship, a licensee need only keep the signed acknowledgments for six months. Where the consumer and the broker have entered into a business relationship, the three year requirement in Section 35.286(a) of the regulations, 49 Pa. Code §35.286(a), would apply inasmuch as the Consumer Notice is a record of the transaction.

#### Generally

Mr. Bello suggested that the Consumer Notice is insufficient as drafted because of does not define the term "fiduciary" and does not provide an explanation of the fiduciary duties owed to consumers who enter into agency relationships. The Commission believes that further amendment is not necessary because the amendments to the Act do not contain a definition of the term "fiduciary." Fiduciary duties encompass the general duties plus the additional agency duties as appropriate.

#### 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 minimal fiscal impact on the Commonwealth. The proposed amendment will 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 will be available on the Internet for downloading. This regulation will also have a minimal fiscal impact on the regulated community in that licensees will incur the cost of reproducing the disclosure summary.

Additional paperwork requirements for the Commission will be limited to having copies of the disclosure summary available. Licensees will 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 will not necessitate any legal, accounting, or reporting requirements on the regulated community.

Statutory Authority

\_\_\_\_\_ The amendments are authorized by Section 608 of the Act (63 P.S. §455.608).

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. 4451-4454, on August 21, 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 (deemed) approved by the HPLC on \_\_\_\_\_ and (deemed) approved by the SCP/PLC on \_\_\_\_\_. The IRRC met on \_\_\_\_\_ and (deemed) 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. 4451-4454.

(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.

<b>Regulatory Analysis Form</b>		This space for use by IRRC <b>RECEIVED</b> 1999 OCT 29 PM 1:33 INDEPENDENT REGULATORY REVIEW COMMISSION IRRC Number:
(1) Agency Department of State, Bureau of Professional and Occupational Affairs, State Real Estate Commission		
(2) I.D. Number (Governor's Office Use) 16A-567		
(3) Short Title Disclosure Summary		
(4) PA Code Cite 49 Pa. Code §§35.201 and 35.336	(5) Agency Contacts & Telephone Numbers Primary Contact: Judith Pachter Schulder, Counsel State Real Estate Commission 783-7200 Secondary Contact: Joyce McKeever, Deputy Chief Counsel, Department of State 783-7200	
(6) Type of Rulemaking (check one) Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation Policy Statement	(7) Is a 120-Day Emergency Certification Attached? X No Yes By the Attorney General Yes By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language.  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 initial interview in a real estate transaction and retain a copy of the acknowledgment following disclosure. The regulation also defines "initial interview."		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions.  The regulation is authorized under Section 608 of the Real Estate Licensing and Registration Act, 63 P.S. §455.608.		
<b>Regulatory Analysis Form</b>		
(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 25, 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 25, 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

**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.**

Notice of proposed rulemaking was published at 29 Pa B 4451-4454 (August 21, 1999). Publication was followed by a 30-day public comment period during which the Board received comments from the Pennsylvania Association of Realtors and Dino Bello. Following the close of the public comment period, the Board received comments from the House Professional Licensure Committee and the Independent Regulatory Review Commission.



**(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 will be in reproducing the disclosure. Licensees will 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 will 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>	\$	\$	\$	\$	\$	\$
<b>Regulated</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>						
<b>COSTS:</b>						
<b>Regulated Community</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>						

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

Not applicable

<b>Regulatory Analysis Form</b>				
<b>(20b) Provide the past three year expenditure history for programs affected by the regulation.</b>				
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 will 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 alternatives 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 will 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.**

In light of the statutory mandate, the Board has scheduled no public hearings or informational meetings regarding this regulation

### **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.**

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 becomes effective on November 25, 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

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:

...

INITIAL INTERVIEW - THE FIRST COMMUNICATION BETWEEN A BROKER OR SALESPERSON AND A CONSUMER INVOLVING THE PERSONAL/BUSINESS OR FINANCIAL NEEDS AND MOTIVATIONS OF THE CONSUMER. A DISCUSSION OF THE OBJECTIVE FACTS ABOUT THE PROPERTY, INCLUDING DIMENSIONS, ZONING CLASSIFICATION, AGE, DESCRIPTION OR LIST PRICE/LEASE AMOUNT, IS NOT BY ITSELF A SUBSTANTIVE DISCUSSION.  
LICENSEE - AN INDIVIDUAL OR ENTITY LICENSED UNDER THE ACT. FOR PURPOSES OF THE CONSUMER NOTICE IN SECTION 35.336(A) (RELATING TO DISCLOSURE SUMMARY) THE TERM LICENSEE SHALL MEAN BROKER OR SALESPERSON.

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**REAL ESTATE DOCUMENTS**

**§35.336. Disclosure Summary.**

(a) The Disclosure Summary shall be entitled "Consumer Notice" and shall be in the following format AVAILABLE FROM THE COMMISSION OFFICE UPON REQUEST BY PHONE, FAX OR INTERNET:

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

RECEIVED  
1999 OCT 29 PM 1:34  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

Pennsylvania Law requires real estate brokers and salespersons (licensees) to advise consumers of the business relationships that a consumer may have with a licensee PERMITTED BY THE REAL ESTATE LICENSING AND REGISTRATION ACT. 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 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.

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

- Exercise reasonable professional skill and care WHICH MEETS THE PRACTICE STANDARDS REQUIRED BY THE ACT.
- Deal honestly and in good faith.
- Present, in a timely manner, all offers, COUNTEROFFERS, notices, and communications to and from the parties in writing, unless waived. THE DUTY TO PRESENT WRITTEN OFFERS AND COUNTEROFFERS MAY BE WAIVED IF THE WAIVER IS IN WRITING.
- 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 IN A TIMELY MANNER.
- PROVIDE ASSISTANCE WITH DOCUMENT PREPARATION AND ADVISE THE CONSUMER REGARDING COMPLIANCE WITH LAWS PERTAINING TO REAL ESTATE TRANSACTIONS.
- 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.
- DISCLOSE FINANCIAL INTEREST IN A SERVICE, SUCH AS FINANCIAL, TITLE TRANSFER AND PREPARATION SERVICES, INSURANCE, CONSTRUCTION, REPAIR OR INSPECTION, AT THE TIME SERVICE IS RECOMMENDED OR THE FIRST TIME THE LICENSEE LEARNS THAT THE SERVICE WILL BE USED.

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, EXCEPT WHILE THE PROPERTY IS SUBJECT TO AN EXISTING AGREEMENT.
- 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, EXCEPT WHILE THE BUYER/TENANT IS SUBJECT TO AN EXISTING CONTRACT.
- 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, UNLESS EITHER ARE SUBJECT TO AN EXISTING CONTRACT.
- 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 REPRESENT YOU. Other licensees in the company who are not designated may represent another party and should SHALL 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:





\_\_\_\_\_  
SIGNED (CONSUMER) SIGNED (CONSUMER)  
\_\_\_\_\_  
ADDRESS (OPTIONAL): ADDRESS (OPTIONAL):  
\_\_\_\_\_  
PHONE NUMBER (OPTIONAL): PHONE NUMBER (OPTIONAL):  
\_\_\_\_\_

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

Date: \_\_\_\_\_  
PRINT (Licensee)

\_\_\_\_\_  
SIGNED (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 PROVIDE A COPY OF THE ENTIRE DISCLOSURE TO THE CONSUMER AND SHALL retain the signed Acknowledgment for their records FOR SIX MONTHS, UNLESS THE CONSUMER AND THE BROKER HAVE ENTERED INTO A BUSINESS RELATIONSHIP WHEREBY THE RECORDS SHALL BE RETAINED PURSUANT TO §35.286 (RELATING TO RETENTION AND PRODUCTION OF RECORDS) and shall provide a copy of the entire disclosure to the consumer.

(D) IF A CONSUMER REFUSES TO SIGN THE ACKNOWLEDGMENT, LICENSEES SHALL NOTE THE REFUSAL ON THE ACKNOWLEDGMENT AND RETAIN IT FOR THEIR RECORDS AS SPECIFIED IN SUBSECTION (C).



INDEPENDENT REGULATORY REVIEW COMMISSION  
COMMONWEALTH OF PENNSYLVANIA  
333 MARKET STREET  
14TH FLOOR  
HARRISBURG, PA 17101

(717) 783-5417  
Fax (717) 783-2664

October 4, 1999

Honorable Mario J. Civera, Jr.  
Pennsylvania House of Representatives  
315D Main Capitol  
Harrisburg, PA 17120

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

Dear Representative Civera: *Mario*

We are currently reviewing this proposed rulemaking. Since you were the prime sponsor of the bill which gives the Department the authority for this rulemaking, this might be of interest to you.

Notice of this regulation was published in the *Pennsylvania Bulletin* on August 21, 1999. If you want to comment on this proposal, please do so before October 22, 1999.

If you or your staff have any questions, contact Fiona Wilmarth at 783-5438.

Sincerely,

A handwritten signature in black ink, appearing to read "Re".

Robert E. Nyce  
Executive Director

REN:wbg



INDEPENDENT REGULATORY REVIEW COMMISSION  
COMMONWEALTH OF PENNSYLVANIA  
333 MARKET STREET  
14TH FLOOR  
HARRISBURG, PA 17101

(717) 783-5417  
Fax (717) 783-2664

October 4, 1999

Honorable Robert J. Flick  
Pennsylvania House of Representatives  
312 Main Capitol  
Harrisburg, PA 17120

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

Dear Representative Flick 

We are currently reviewing this proposed rulemaking. Since you were one of the cosponsors of the bill which gives the Department the authority for this rulemaking, this might be of interest to you.

Notice of this regulation was published in the *Pennsylvania Bulletin* on August 21, 1999. If you want to comment on this proposal, please do so before October 22, 1999.

If you or your staff have any questions, contact Fiona Wilmarth at 783-5438.

Sincerely,

Robert E. Nyce  
Executive Director

REN:wbg

HB 1169 By Representatives SERAFINI, HUTCHINSON, WAUGH, BLAUM, DALEY and LEH.

Printer's No. 1325.

An Act prohibiting the sale or serving of any beverage or other product containing caffeine in prisons.

Referred to JUDICIARY, April 3, 1997

HB 1170 By Representatives SERAFINI, HUTCHINSON, DALEY and LEH.

Printer's No. 1326.

An Act prohibiting the sale or serving of coffee in prisons.

Referred to JUDICIARY, April 3, 1997

HB 1171 By Representatives SCHULER, ITKIN, COWELL, NICKOL, ROONEY, MELIO, TULLI, CAPPABIANCA, ZIMMERMAN, TRELLO, HESS, WALKO, McCALL, BATTISTO, DALEY, SHANER, STURLA, HORSEY, STEELMAN, RAMOS, SEMMEL and YOUNGBLOOD.

Printer's No. 1327.

An Act amending the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, further providing for State reimbursement for health services.

Referred to EDUCATION, April 3, 1997

HB 1172 By Representatives CIVERA, FLICK, RAYMOND, MAYERNIK, TRUE, ADOLPH, DeLUCA, BOYES, PRESTON, EACHUS, WALKO, COLAFELLA, LUCYK, O'BRIEN, S. H. SMITH, BUNT, KENNEY, DALEY, FARGO, WILT, HENNESSEY, MILLER, DRUCE, HESS, SEMMEL, SATHER, STAIRS, GODSKALL, HERSHEY, EGOLF, FLEAGLE, HERMAN, ~~WAGON~~, STETLER, ~~WAGON~~, ALLEN, B. SMITH, BUXTON, ~~WAGON~~, GRIEST, PISTELLA, LYNCH, MICHLOVIC, GLADECK, LESCOVITZ, LAUGHLIN, CLYMER, HANNA, CLARK, LEH, NICKOL, NAILOR, FICHTER, TIGUE, HABAY, ~~WAGON~~, ZUG, JADLOWIEC, TULLI, LAGROTTA, STERN, MARSICO, VEON, PETRONE, DERMODY, PETRARCA, SEYFERT and BENNINGHOFF.

Prior Printer's Nos. 1328, 2973. Printer's No. 3733.

An Act amending the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, further providing for definitions, for continuing education and for broker's disclosure to seller; providing for duties of licensees generally, for duties of seller's agent, for duties of buyer's broker, for duties of dual agent, for duties of designated agent and for duties of a transactional licensee; further providing for broker's disclosure to buyer and for information to be given at initial interview; providing for written agreement with broker and for mandatory provisions of sales contract; and further providing for cemetery broker's disclosure.

Referred to PROFESSIONAL LICENSURE, April 3, 1997  
Reported as amended, Feb. 11, 1998  
First consideration, Feb. 11, 1998  
Laid on the table, Feb. 11, 1998  
Removed from table, April 22, 1998  
Re-referred to APPROPRIATIONS, April 22, 1998  
Re-reported as committed, June 8, 1998  
Second consideration, June 8, 1998  
Third consideration, with amendments, June 9, 1998  
Final passage, June 9, 1998 (197-0)  
(Remarks see House Journal Page 1467-1470),  
June 9, 1998

In the Senate  
Referred to CONSUMER PROTECTION AND PROFESSIONAL LICENSURE, June 12, 1998  
Reported as committed, Sept. 29, 1998  
First consideration, Sept. 29, 1998  
Second consideration, Oct. 5, 1998  
Re-referred to APPROPRIATIONS, Oct. 5, 1998  
Re-reported as committed, Nov. 9, 1998  
Third consideration and final passage,  
Nov. 10, 1998 (47-0)  
Signed in House, Nov. 10, 1998  
Signed in Senate, Nov. 16, 1998  
In hands of the Governor, Nov. 17, 1998  
Last day for action, Nov. 27, 1998  
Approved by the Governor, Nov. 25, 1998  
Act No. 112

*Wanda -  
Here is the  
sponsor list for  
1 leg 2051. Thanks  
from*

Original: 71  
Coccodrilli -  
cc: Sandusky, Wilmarth, Jewett, Legal

**Gamer, Kim**

**From:** Judy Schulder [JSCHULDE@dos.state.pa.us]  
**Sent:** Wednesday, November 10, 1999 11:57 AM  
**To:** irrc@irrc.state.pa.us; TGOLDEN@PAHOUSEGOP.com; AMATTHEW@pasen.gov  
**Cc:** STURNER@dos.state.pa.us; bharr@pahouse.net  
**Subject:** Re: RE: 16a-567 Disclosure Summary Regulation

I too talked to Rocco Pugliese yesterday. While I understand your concern, I stand by my representation that at the time of our conversations about delivery (October 28-November 3, 1999) I did not know of any opposition to the regulation. As I explained, the Commission responded to every comment from the House, IRRC, and public commentators PAR and Dino Bello. In addition, both Tom Golden and Robert Nyce each advised about the acceptability of this regulation, per your request, prior to your granting me permission to deliver.

As to Mr. Pugliese's concerns, although the Commission has scheduled time for him to address the Commission at its November 16th meeting, it is my position that his construction of Act 112 is in error.

1. Act 112 does apply to landlord/tenant transactions. Section 606 of the Act delineates the relationships which a broker may have in a real estate transaction: "as a seller/landlord agent, buyer/tenant agent, as a dual agent for seller/landlord and buyer/tenant or as a transaction licensee." 63 P.S. §455.606, effective November 25, 1999. More importantly, Section 608, 63 P.S. §455.608, effective November 25, 1999, upon which the Disclosure Summary regulation is based, specifically requires the "disclosure of information to the prospective buyer/tenant or seller/landlord during the initial interview."

2. Mr. Pugliese/his association failed to participated in the regulatory review process on proposed. The Summary Disclosure regulation, published in the Pennsylvania Bulletin on August 21, 1999, contained repeated references to seller/landlord and buyer/tenant. Despite the opportunity to offer public comment, he and his group remained silent. They also remained silent to the House, Senate and IRRC.

3. Neither the House nor IRRC's comments on the regulation addressed Mr. Pugliese's opinion regarding lack of statutory authority its comments. Section 5(d) of the Regulatory Review Act requires that the comments/suggestions "include the lack of statutory authority of the agency to promulgate the proposed regulation and deviation of the proposed regulation from the intention of the General Assembly in the enactment of the statute upon which the proposed regulation is based."

4. Although you stated below that "they said they did not know about this until one week ago, " Mr. Pugliese indicated in his conversation with me yesterday that his association chose to take no position on HB 1172 at the time it was being discussed in the Legislature.

5. Despite his knowledge of the passage of the Bill, the publication of a regulatory agenda which indicated that the Commission was working on the Consumer Notice, neither Mr. Pugliese nor his association asked to be included as a pre-draft commentator in accordance with Executive Order 1996-1. Their actions are counter to those of other similarly situated licensees, such as C.B. Richard Ellis, Inc., who provided extensive comment on the regulation, including support for the landlord/tenant language.

Based on the foregoing, I would not expect that the Commission will

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withdraw its regulation. I would be happy to discuss this matter further with you if you desire.

>>> "Matthews, Alexandra" <AMATTHEW@pasen.gov> 11/09 4:27 PM >>>  
Judy, I am VERY, VERY aggravated right now; the only reason I accepted delivery of these regulations is because I was assured, by all concerned, that there was no controversy or problems; in the last hour, I have had two prof. lobbyists in here telling me that they have an extremely BIG problem with the regs., regarding their application to residential apartment tenants. They say they did NOT know about this until about A WEEK ago; they are going around to all the members making big noise against the regs. The  
are Rocco Pugliese /238-9078 and James Eichenlaub /412/231-1811. At this point, I just told them that they had to talk to IRRRC and the Real Estate Commission, that one possibility was that the Commission could withdraw the regs. I don't know where we stand on this, at the present. But, let me reiterate, I am VERY aggravated about this, in light of earlier assurances. I would appreciate hearing from you, Judy, and Tom, if you know how Rep. Civera feels about this, and Jim, if you have an idea about IRRRC's reaction to this late in the game problem.  
Zan  
Sen. Bell's Office

-----Original Message-----

From: Judy Schulder [SMTP:JSCHULDE@dos.state.pa.us]  
Sent: Friday, October 29, 1999 12:36 PM  
To: irrc@irrc.state.pa.us; TGOLDEN@PAHOUSEGOP.com  
Cc: STURNER@dos.state.pa.us; bharr@pahouse.net; amattthew@pasen.gov  
Subject: 16a-567 Disclosure Summary Regulation

Per our discussions, attached is the Preamble, Annex and RAF which the State Real Estate Commission approved on October 27, 1999. As I indicated, OGC approved on the same day.

Alexandra Matthews advised me that since the Senate Consumer Protection and Professional Licensure Committee does not meet until December 1, 1999, she would be willing to accept these final form regulations only if both the House and IRRRC analysts would advise her that they have no problem with the revisions. As we discussed, the Commission made all of the House and IRRRC revisions with a modification to the address/telephone requirement in the Acknowledgment.

Thank you for agreeing to review these documents. Please advise Zan following your review. I look forward to delivering them as soon as possible.

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