

Regulatory Analysis Form		This space for use by IRRC	
(1) Agency Department of State, Bureau of Professional and Occupational Affairs, State Real Estate Commission		IRRC Number: 2084	
(2) I.D. Number (Governor's Office Use) 16A-568			
(3) Short Title Agency			
(4) PA Code Cite 49 Pa. Code §35.201, 35.281, 35.283-35.284, 35.286-35.287, 35.292, 35.311-35.316, 35.331-35.333 and 35.336-35.340		(5) Agency Contact 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) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Policy Statement		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No Yes: By the Attorney General Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. The regulation implements Act 112 of 1998 and Act 47 of 2000, by delineating duties of licensees generally, the relationships which licensees may have with consumers and mandatory provisions in written agreements and sales contracts and mandatory oral and written disclosures.			
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. The amendments are authorized under Sections 404, 608, 608.1 and 608.2 of the Real Estate Licensing and Registration Act, Act of February 19, 1980, P.L. 15, No. 9, as amended, 63 P.S. §§ 455.404, 455.608, 455.608a and 455.608b.			

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(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. Sections 608.1-608.2 of Act 112 of 1998 requires the Commission to promulgate regulations delineating mandatory provisions in written agreements and contracts.

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

In addition to the provisions mandated by the Act, the regulation will assist licensees by explaining and interpreting the various agency relationships and the duties required of licensees generally and when involved in agency relationships. Many of those provisions are scattered throughout the amendments to the Act.

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

Nonregulation is not an option as Sections 608.1-608.2 require the Commission to promulgate regulations delineating mandatory provisions in written agreements and contracts.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The regulated community, excluding cemetery companies, cemetery brokers and cemetery salespersons, including nonresident licensees, will benefit from the guidance to be provided by the proposed regulations. Approximately 48,164 licensees of the total 49,000 licensees fall within this category.

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(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, except for cemetery companies, cemetery brokers and cemetery salespersons will be required to comply with various portions of the regulation. Approximately 48,164 licensees fall within this category.

(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 30 Pa.B. 641 (February 5, 2000). Publication was followed by a 30-day public comment period during which the Commission received public comments from several public commentators, including the Pennsylvania Association of Realtors (PAR). Following the close of the public comment period, the Commission received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment.

(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 amending written agreements and sales contracts and copying the various written disclosures.

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(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.

There is no cost/saving to the Commission associated with implementation of this regulation.

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(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	FY +1	FY +2	FY +3	FY +4	FY +5
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated	N/A	N/A	N/A	N/A	N/A	N/A
Local Government						
State Government						
Total Savings						
COSTS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated						
Local Government						
State Government						
Total Revenue Losses						

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

Not applicable.

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(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 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 608.1 and 608.2 of the Act, 63 P.S. § 455.608a-455.608b, specifically requires that the Commission promulgate regulations delineating mandatory provisions in written agreements and sales contracts. The other provisions assist licensees' compliance with the Act by consolidating like-provisions.

(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.

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(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?

Other states with agency laws have similar regulations. Therefore, Pennsylvania licensees will not be at a competitive disadvantage with other states.

(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 amends current Sections 35.201, 35.281, 35.283-35.284, 35.286-35.287, 35.292, 35.331-35.333, 35.336 and 35.340 so that the provisions comply with Sections 606-606.6 and 608.1-608.4 of the Act (63 P.S. §§455.606-455.606f and 455.608a-455.608d).

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

The Commission reviews its regulatory proposals at regularly scheduled public meetings each month.

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(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.

Paperwork requirements will change in that licensees will amend written agreements and sales contracts.

(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?

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.

CAL-1

FACE SHEET
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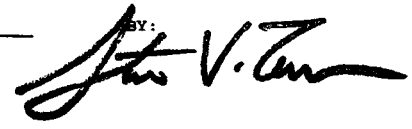
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BY: _____
(DEPUTY ATTORNEY GENERAL)

State Real Estate Commission
(AGENCY)

BY: 

DOCUMENT/FISCAL NOTE NO. 16A-568

DATE OF APPROVAL

DATE OF ADOPTION: _____

BY: 
Coleen Christy

DATE OF APPROVAL
1/2/02
(Deputy General Counsel
Chief Counsel,
~~Independent Agency~~
(Strike inapplicable title)

TITLE: Chairman
(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.

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

The State Real Estate Commission (Commission) hereby amends its regulations as set forth in Annex A. These regulations incorporate the changes necessitated by the Act of November 25, 2998, P.L. 908, No. 112 (Act 112) and the Act of June 22, 2000, P.L. 371, No. 47 (Act 47), pertaining to business relationships.

Statutory Authority

The amendments are authorized under Sections 404, 606-606.6, and 608-608.3 of the Real Estate Licensing and Registration Act (RELRA), Act of February 19, 1980, P.L. 15, as amended, 63 P.S. §§ 455.404, 455.606-455.606f and 455.608-455.608c.

Response to Public Comments and Regulatory Review and Amendments in Final Form Rulemaking

Notice of the proposed rulemaking was published at 30 Pa.B. 641 (February 5, 2000). Publication was followed by a 30-day public comment period during which the Commission received comments from three public commentators, including the Pennsylvania Association of Realtors (PAR). Following the close of the public comment period, the Commission received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment.

In final rulemaking, the Commission's has made changes to the proposal.¹ Part A will address the comments to the proposed rulemaking. Part B will address amendments to the proposed rulemaking necessitated by Act 47.

A. The following is a response to the comments to proposed ruemaking.

Section 35.201—Definitions

The HPLC and IRRC questioned why the definitions of "agency relationship," "buyer agent," "designated agent," "dual agent," "listing broker," "principal," "salesperson," "seller agent," and "transaction licensee" differ from the definitions in Section 201 of the RELRA, 63 P.S. § 455.201. In formulating this regulation, the Commission shortens the definitions in the RELRA without changing their meaning.

An "agency relationship," as defined under Section 201 of the RELRA, 63 P.S. § 455.201, requires brokers and licensees in their employ to "act as fiduciaries for a consumer of real estate services by the express authority of the consumer of real estate services." Thus, in order for the licensee to have a fiduciary relationship with a consumer, the consumer must enter into a written agreement thereby becoming a principal under the definition.

¹ A cross-reference of the statutory provisions, subject matter and amendments are charted in the preamble to proposed rulemaking at 30 Pa.B. 641-42.

The definition for "buyer agent" in the regulation includes "tenant", "seller agent" includes "landlord" and "dual agent" includes "landlord and tenant." Although "landlord" and "landlord and tenant" are not used in Sections 201, 606.2, 606.3 or 606.4 of the RELRA, 63 P.S. §§ 455.201, 455.606b, 455.606c, 455.606d, these definitions incorporate the language in Section 606 of the RELRA which characterizes the "buyer agent" relationship as "buyer/tenant" and the "seller agent" relationship as "seller/landlord." In order to provide meaning to each Section of the RELRA and read the provisions in pari materia, the definitions in the regulation include landlords and tenants along with sellers and buyers. Similarly, although Sections 201 and 606 of the RELRA, 63 P.S. §§ 455.201 and 455.606, do not use the terms "buyer's agent" and "seller's agent," these terms are used in Sections 606.2 and 606.3 of the RELRA, 63 P.S. §§ 455.606b and 455.606c.

As proposed, the definition of "designated agent" referred to the "licensees employed by the broker of record." The Commission concurs with IRRC and a public commentator that the proposed definition should be modified. Accordingly, the Commission has replaced "broker of record" with "broker" and "employed by the broker" with "within the broker's employ" throughout the regulation.

IRRC suggested that the definition of "principal" be amended since the RELRA defines it as "a consumer who enters into an agency relationship with a broker." The definition of "agency relationship" in the RELRA includes both brokers and licensees. Reading these definitions in pari materia, the Commission has defined "principal" to include agency relationships with brokers and licensees in the brokers' employ.

IRRC opined that paragraph (vii) in the definition of "salesperson" is inconsistent with Section 201 of the RELRA, 63 P.S. § 455.201, because it does not include the phrase "managing of property." The revisions recommended in proposed form to this paragraph were included in the Commission's General Revisions regulations, published at 30 Pa. B. 5954 on November 18, 2000 and are therefore not reflected in the annex. The Commission has retained the phrase "managing of property" since the definition of salesperson in Section 201 contains authorization for a salesperson to negotiate, lease, rent and collect rent, all of which relate to property management.

The proposed definition of "subagent" stated that the subagent acts or cooperates in selling the property as the seller's/landlord's agent. Upon further review, the Commission agrees with IRRC that the definition should be amended to specify that in addition to acting or cooperating as a seller's agent, by law, the subagent is deemed to have an agency relationship with the seller. As such, the definition was amended accordingly.

IRRC recommended that "licensee" be changed to "broker" in the definitions of "buyer agent," "seller agent," "dual agent," "subagent," and "transaction licensee." While the Commission understands that a salesperson may work only through a broker, salespersons have repeatedly informed the Commission that they do not understand

when they are obligated under the RELRA and regulations where the reference is made solely to a broker. As such the Commission has not replaced "licensee" with "broker" where the provision applies to both brokers and salespersons as in § 35.281.

The definition of "transaction licensee" in the regulation includes the clause "without entering into an agency relationship with the consumer" rather than "without being an agent or advocate of the consumer" as described in the RELRA. The Commission believes that these definitions are synonymous. In order to have an agency relationship with a consumer, applying the definition of "agency relationship," the broker must be an agent or advocate for that consumer.

On final rulemaking, the Commission has also added the definition of "comparative market analysis" in Section 201 of the RELRA, 63 P.S. § 455.201, since it is used in § 35.340.

Section 35.281—Putting contracts, commitments and agreements in writing

IRRC suggested that the Commission should define "valuable consideration" and "open listing agreement." The term "valuable consideration" is commonly used in regulations in this Commonwealth. Black's Law Dictionary defines the term as "consideration that is valid under law; consideration that either confers a pecuniary measurable benefit on one party or imposes a pecuniary measurable detriment on the other." The term is commonly employed and used in real estate transactions. Therefore, the Commission has not included a definition in this section. Conversely, "open listing agreement" is a term of art in the real estate industry. As such, the definition taught to real estate students in the Fundamentals of Practice course has been added to § 35.201.

IRRC also suggested that subsection (b)(3) should be amended to cross reference the materials required in § 35.331. Subsection (b)(3) conforms to Section 606.1(b)(4) of the RELRA, 63 P.S. § 455.606a(b)(1), which requires that the written disclosure statement contain a description of the services to be performed by the subagent or transaction licensee and the information required by Section 608 of the RELRA, 63 P.S. § 455.608. Since Section 608.1 of the RELRA, 63 P.S. § 455.608a, and not 608 of the RELRA, 63 P.S. § 455.608, conforms to § 35.331, the Commission has not cross-referenced these sections, but has added a cross-reference to Section 608 of the RELRA, 63 P.S. § 455.608.

Section 35.283—Disclosure of interest

In proposed form, this Section was titled "conflict of interest." One commentator recommended that since this provision includes more than just conflicts, it be renamed "disclosure of interest." The Commission agrees with this suggestion and has renamed the provision accordingly.

Proposed subsections (d) and (e) required licensees to provide a written disclosure of financial interests to consumers for deed or document preparation services. PAR suggested that this requirement was too broad. Owing to this concern, the Commission amended subsection (d) to better conform with the requirements of Section 606.1(a)(13) of the RELRA, 63 P.S. § 455.606a(a)(13).

The Commission has also corrected the typographical error in subsection (d) by changing the term "service" to "services," as recommended by PAR.

Section 35.284—Disclosures of business relationships

PAR sought clarification of the requirement in current subsection (a) that the Consumer Notice be provided to "all" consumers. It questioned whether the Consumer Notice must be provided to consumers of commercial property, both spouses, and numerous representatives of a corporation. With regard to commercial transactions, Section 608, like all other provisions in the RELRA, does not differentiate between commercial and residential transactions. As such, the Consumer Notice requirement applies equally to both. In order to insure that licensees are aware of its applicability, the Commission has expressly included residential and commercial property in the titles of §§ 35.336 and 35.337.

With regard to groups of individuals, the Commission notes that the purpose of the Consumer Notice is to inform parties seeking to purchase, lease or sell property of the various business relationships they may have with a licensee. While the Commission believes that it is advisable for each spouse to understand the Consumer Notice, it does not believe that it is practicable to require both spouses to participate in the initial interview or sign the Consumer Notice. Similarly, the Commission believes that it is not practicable to require each member of the Board of Directors of a corporation to attend the initial interview and sign the Consumer Notice. Rather, the Commission believes that it is sufficient for one spouse or one representative of a company to sign the Consumer Notice.

PAR also questioned whether a designated buyer's agent who takes a buyer to a property to meet the seller must provide a Consumer Notice to the seller. The Commission does not believe that this is required under the regulation since the seller, by listing the property, has received the Consumer Notice and entered into a business relationship with a licensee. However, in light of PAR's questions, the Commission has deleted "all" from subsection (a).

Additionally, the HPLC pointed out that in proposed form, subsection (a) contained a typographical error and incorrectly cross-referenced the Disclosure Summary to § 33.336. The reference has been corrected to § 35.336.

Section 35.287—Supervised property management assistance by salespersons

Current § 35.287² permits a salesperson to assist in real estate management provided that the salesperson's work is directly supervised and controlled by the employing broker. PAR recommended that the terms "employing broker" be replaced with "controlled by the broker or associate broker charged with the responsibility of directing and supervising the office," to better reflect the realities of a real estate office. The Commission agrees with PAR that an associate broker may be responsible for a particular office, however, the broker retains the ultimate responsibility under the RELRA for supervising the licensees in his/her employ. As such, the Commission has removed the term "directly" from the provision.

Section 35.292—Duties of licensees generally

The HPLC questioned why "in a timely manner" was used in § 35.292(a)(7), but "in a reasonably practicable period of time" was used in § 35.283. IRRC recommended that the Commission provide a "definitive standard" for what would be considered timely. In order to satisfy both concerns, the Commission has used the phrase "in a reasonably practicable period of time", which is commonly used throughout the regulations, including §§ 35.283, 35.292(a)(7) and 35.336.

Another commentator suggested that § 35.292(a) should be amended to advise licensees how to satisfy the duties of licensees generally where the consumer or principal hires an attorney or another licensee to perform some of the duties in a transaction. He provides the example of an attorney who is hired by the consumer or principal to prepare the documents and represent the consumer or principal at settlement. The RELRA does not impose any responsibility on a licensee for the actions of an attorney hired by the consumer or principal to perform document or deed preparation services. Subsection (a)(11) merely requires the licensee to provide assistance with document preparation where requested.

Section 35.311—Generally

IRRC recommended that the Commission amend subsection (d) to state that a licensee may not reveal or use confidential information during or following "the termination of the agency relationship." The Commission finds this recommendation reasonable and has amended the provision accordingly.

Section 35.312-Seller agency

Section 35.313-Buyer agency

IRRC recommended that the title for the various agency relationships track the statutory language. In order to be consistent with the statutory definitions, the Commission has changed the titles of § 35.312 to "Duties of Seller's Agent," § 35.313 to "Duties of Buyer's Agent," § 35.314 to "Duties of Dual Agent," § 35.315 to "Duties of Designated Agent," and § 35.316 to "Duties of Transaction Licensee."

² In proposed form, this provision included two subsections. Subsection (a) was deleted in final rulemaking at 30 Pa. B. 5954 on November 18, 2000, and is therefore not reflected in the annex.

Additionally, PAR recommended that §§ 35.312(e) and 35.313(d) be amended to replace “become” with “will act as.” The Commission finds this suggestion reasonable and has replaced “become” in both provisions.

Section 35.314—Dual agency

Proposed subsection (b)(2) required that of the duties owed by a dual agent, the licensee make a continuous and good faith effort to find a buyer/tenant for the property and a property for the buyer/tenant unless otherwise agreed. IRRC recommended that the Commission incorporate the exception in Section 606.4(b)(2) of the RELRA, 63 P.S. § 455.606d(b)(2), that a dual agent is not obligated to seek additional offers to purchase the property while it is subject to an existing contract of sale. The Commission has amended the regulation accordingly.

Section 35.315—Designated agency

Subsection (b) embodies the Commission’s understanding that Section 606 of the RELRA, 63 P.S. § 455.606, would permit designation to take place at any time in the transaction—at the time of initial designation or after the parties have entered into a written agreement. In proposed form, subsection (b)(1) stated the Commission’s preference that designation would take place at the time the parties enter into a written agreement, as well as the Commission’s acknowledgement that designation may take place after the agreement is executed. IRRC expressed concern that the proposed regulation used the “nonregulatory” term “should.” It recommended that the Commission replace “should” with “shall” or delete the provision. Owing to IRRC’s concern, the Commission replaced the term “should” with “may.” Because the statute allows designation at any time, the Commission believes that, despite its preference for up-front designation, it cannot use the term “shall” or delete the provision as recommended.

Subsection (b)(1) specifies that if the designation takes place after the initial designation or after a written agreement has been entered into, the principal must consent in writing to the newly designated licensee. The HPLC, IRRC and a public commentator suggested that the Commission amend the provision to require specific consent to the broker’s designation of the agent, the identity of the agent, and the date on which the designation occurs.

The Commission believes that further modification is not necessary. Where designation takes place at the time the parties enter into the original contract, the designated licensee(s) is (are) named. The designation date is the date of the contract signed by the licensee and the consumer/principal. Where designation occurs after the contract has been executed, subsection (b)(1) requires that consent be given to the newly designated licensee(s). As such, the principal is informed of, and must give written consent to, the designation and the licensees being designated.

In proposed form, subsection (b)(2) required the principal to renounce any previous agency relationship with the other licensees employed by the broker "to the exclusion of the other designated agents." The Commission agrees with the HPLC and IRRRC that this last clause is unnecessary because the renunciation would cover all licensees. Accordingly, it has been removed in final form.

Subsection (d) provides that all licensees employed by the broker who have not been designated have no agency relationship with either party in the transaction. Both the HPLC and IRRRC questioned whether the proposed subsection conflicts with Section 606 of the RELRA, 63 P.S. § 455.606. The HPLC reasoned that while Section 606 permits the broker to designate agents to act exclusively for either party, it "does not expressly negate any duties on the part of the other employees of the broker to consumers who have entered into an agency relationship with the employing broker."

The Commission relies upon the express language in the definition of "designated agent" in Section 201 of the RELRA, 63 P.S. § 455.201, which specifies that the real estate services are to be provided by the designated licensees "to the exclusion of all other licensees within the broker's employ." In the Commission's view, unlike dual agency where all of the licensees employed by the broker represent both parties to the transaction, in designated agency *only* those licensees who have been designated have an agency relationship with a principal and are parties to the transaction. The Commission's construction is consistent with the purpose of designated agency--to insulate the transaction from the licensees in the real estate company who are not involved in the transaction. It ensures that the confidential information that the designated licensees have with the respective principals remains confidential with those licensees. Because of the broker's supervisory role over the designated licensees, only the broker becomes a dual agent in the transaction.

Also, in the Commission's view, characterizing members of the real estate company who have had no involvement in the real estate transaction as dual agents, simply because the broker is bound into a dual agency relationship, would reduce the benefit of designated agency to the consumer. In a typical transaction, one or more licensees in a real estate company are designated to act as the buyer's agent. Others are designated to act as seller's agents. At that point, the broker is a dual agent. If for some reason, one principal would withdraw from the transaction, and, as suggested, all of the remaining members of the real estate company would be considered dual agents, the consumer would not be able to receive real estate services from the company except in a dual agency relationship. Under that scenario, the licensee representing the new party would not have a duty to be loyal and act on behalf of that party, but rather, would only have the duty to take no action that is adverse or detrimental to either party's interest in the transaction. Conversely, if the remaining licensees in the real estate company did not assume any agency status until they became involved in the transaction by becoming designated, they would be available to find another buyer for the seller and can, once designated, act as a buyer agent since the licensee would not possess any confidential information about the seller.

PAR questioned whether subsection (d) permanently bars a licensee who was not designated from representing a party in the transaction. The Commission does not believe that this subsection acts as a permanent bar to non-designated licensees. Rather, the Commission agrees with PAR, that non-designated licensees may play a role in the transaction after the initial designation, *once* the licensee is designated by the broker and receives written approval from the principal.

One commentator also questioned whether a licensee who is not designated may serve in the capacity of a transaction licensee in an in-house transaction. Since the licensee has not been designated in the transaction, and as indicated above, does not possess any confidential information about the transaction, the licensee is available to represent or provide services to other parties in other capacities.

In proposed form, subsection (e) permitted employees of the broker to designate themselves or affiliated licensees who are employed by the broker as designated agents. The HPLC maintained that the RELRA does not authorize licensees, other than brokers, to designate themselves, regardless of written company policy. The Commission agrees with the HPLC that only the broker may designate licensees and has removed the provision.

In final form, the Commission also renumbered the paragraphs in subsection (e) and replaced the word "renunciate" with "renounce" in subsection (b)(2).

One commentator questioned the status of the employing broker where the real estate company does not represent both parties in the transaction. Designated agency permits one real estate company to represent both parties in a transaction without being in a dual relationship so long as the employing broker designates one or more licensees to act as an agent on behalf of the seller and one or more licensees to act as an agent on behalf of the buyer.

At the time the seller enters into a listing agreement with the broker, the broker does not know whether his company will also represent the buyer. However, to ensure that the seller's information remains confidential, the broker, with the seller's consent, designates one or more licensees in his office to act as seller's agent(s). The same is true where the broker enters into an agency relationship with the buyer. Again, the broker, with the buyer's consent, designates one or more licensees to work on the buyer's behalf. *Only* when the broker represents both parties (having given their consent previously) is the broker a dual agent. Other licensees who have not been designated in the transaction continue, as provided in subsection (d), to have no agency relationship in the transaction.

Section 35.316—Transaction licensee

The definition of transaction licensee in §§ 35.201 and 35.316(a) emphasizes that a consumer should not provide a licensee working as a transaction licensee with any confidential information because that licensee is not acting as an agent or advocate

of the consumer and is not duty bound to keep the information confidential. Section 35.316(b) tracks the few areas in the statute where the transaction licensee has a limited duty of confidentiality.

One commentator suggested that the duty of limited confidentiality for transaction licensees should continue, like the confidentiality provisions in § 35.311(d), beyond the termination of the transaction licensee relationship. This suggestion is counter to the express language of Section 606.1(g) of the RELRA, 63 P.S. § 455.606a(g), which continues the confidentiality provisions only where there is an agency relationship. Since a licensee serving in the capacity of a transaction licensee does not have an agency relationship with the consumer, the RELRA does not authorize an extension of the confidentiality provision.

Section 35.331—Written agreements generally

IRRC recommended that the term “may” be replaced with “shall” in subsection (a). The Commission concurs with IRRC’s suggestion and has amended the provision accordingly.

Subsection (a) lists the provisions which must be included in a written agreement. IRRC and PAR suggested that this subsection be amended to track the notification requirement in Section 608.1 of the RELRA, 63 P.S. § 455.608a, rather than merely requiring that the agreement contain statements about each required provision. Owing to this concern, the Commission has modified subsection (a) throughout.

IRRC requested that the Commission renumber the paragraphs in subsection (a). As published, paragraph (4) was inadvertently omitted. In that it tracks the requirement in Section 608.1(2) of the RELRA, 63 P.S. § 455.608a(2), it has been reinserted in final form.

Section 35.332—Exclusive listing agreements

In the preamble to the proposed regulation, the Commission stated that the sample exclusive listing agreement in subsection (d) would be deleted. However, that deletion was omitted from the Annex. The Commission has corrected the typographical error in the Annex and deleted the agreement as indicated.

Section 35.333—Agreements of sale

Section 35.333 addresses agreements of sale. IRRC requested the Commission to explain “conspicuously.” Owing to IRRC’s concerns, the Commission has removed “conspicuously” from §§ 35.331(a) and 35.333(a).

IRRC asked the Commission to explain the difference between subsections (a) and (d). Subsection (a) contains the required provisions for all types of agreements of sale *other than* cemetery lots, mausoleum, cremation space or opening. Conversely,

subsection (d) contains the required provisions for agreements of sale involving cemetery lots, mausoleum, cremation space or opening.

Section 35.336—Disclosure Summary for the purchase or sale of residential or commercial real estate or for the lease of residential or commercial real estate where the licensee is working on behalf of the tenant

One commentator questioned whether “implied agency” exists where the consumer does not enter into a business relationship with the licensee, but provides the licensee with confidential information. Section 608(a)(2) of the RELRA, 63 P.S. § 455.608(a)(2), specifically rejects the application of the common law rule of “implied agency.” It states “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 of real estate services acknowledged by the consumer.” In order to insure that consumers are aware that an agency relationship will not be presumed, the last sentence in the second paragraph of the Disclosure Summary advises that:

“A business relationship of any kind will not be presumed but must be established between the consumer and the licensee.”

Section 35.340—Comparative market analysis

Section 35.340 addresses comparative market analyses. In the proposed regulation subsection (a) tracked the disclosure in Section 608.3 of the RELRA, 63 P.S. § 455.608c, and subsection (b) contained an exception for licensees who also hold a license under the Real Estate Appraisers Certification Act.

IRRC disagreed with the Commission’s interpretation in subsection (b). According to IRRC, a comparative market analysis is not an appraisal, and as such, regardless of who prepared it, a consumer must be notified that this is not an appraisal. The Commission agrees with IRRC that the comparative market analysis which the RELRA describes is not an appraisal because it is not performed in accordance with the Uniform Standards of Professional Appraisal Practice and is being performed for a limited purpose. The Commission has deleted this provision to avoid any possible confusion.

B. Act 47 amendments.

Five months after the regulations were published in proposed form, the RELRA was further amended by Act 47. In final form, the Commission has amended these regulations in accordance with the changes in Act 47. The modifications to the proposed text do not enlarge the original purpose of the regulation. In each instance, the Commission has simply tracked the statutory language.

Section 35.201—Definitions

Section 606.1(b) of the RELRA, 63 P.S. § 455.606a(b), was amended to include non-exclusive buyer agency agreements in the type of agreements that are not required to be in writing. In that IRRRC recommended that the Commission define “open listing agreements,” found in the same section, the Commission has added a parallel definition for “non-exclusive buyer agency agreement.”

Section 35.281—Putting contracts, commitments and agreements in writing

New subsection (b)(1) tracks the language in Section 606.1(b)(2) of the RELRA, 63 P.S. § 455.606a(b)(2), which added nonexclusive agreements for a licensee to act as a buyer/tenant agent to the written agreement exceptions.

New subsection (c) tracks the language in Section 606.1(b)(1) of the RELRA, 63 P.S. § 455.606a(b)(1), regarding the performance of services before an agreement is signed. It permits a licensee to perform real estate services before a written agreement is signed but not collect a fee in the absence of such an agreement.

Section 35.284—Disclosures of business relationships

In proposed form § 35.284 addressed the requirement of providing the Consumer Notice in § 35.336, obtaining a signature on the Acknowledgement and retaining a copy of the Acknowledgement as a record. Act 47 created additional disclosure summaries and different retention requirements depending upon the type of transaction. In final form, this section has been amended to create a separate subsection for each type of disclosure. New subsection (a) addresses the Disclosure Summary requirements where the consumer is seeking to sell or purchase real estate, subsection (b) addresses the Disclosure Summary requirements where the consumer is seeking to lease, and subsection (c) addresses the Disclosure Summary where the consumer is seeking to sell time-shares.

Tracking the language in Section 608(a) of the RELRA, 63 P.S. § 455.608(a), new subsection (a)(1) requires that the Disclosure Summary in § 35.336 be provided to a consumer who is seeking to sell or purchase real estate at the initial interview if the interview occurs in person. If the initial interview does not occur in person, new subsection (a)(2), tracking the language of Section 608(c) of the RELRA, 63 P.S. § 455.608(c), requires that the licensee provide the oral disclosure in § 35.339 (relating to oral disclosure) at the initial interview and the written disclosure in § 35.336 no later than the earlier of the first meeting after the initial interview or at the time the property is first shown to the consumer.

New subsection (b)(1) requires licensees who are working on behalf of the tenant to provide the Disclosure Summary in § 35.336, as required in subsection (a). New subsection (b)(2), tracking the language of Section 608(b) of the RELRA, 63 P.S. §

455.608(b), requires that a licensee provide the Disclosure Summary in § 35.337 to all tenants seeking to lease residential or commercial property where the licensee is working on behalf of the owner.

New subsection (c), tracking the language of Section 608(e) of the RELRA, 63 P.S. § 455.608(e), requires that a licensee provide the Disclosure Summary in § 35.338 to all consumers seeking to sell timeshares.

Proposed subsection (d) was also amended to track the additional requirements in Sections 608(b)(3), 608(d) and 608(e)(3) of the RELRA, 63 P.S. §§ 455.608(b)(3), 455.608(d) and 455.608(e)(3).

Section 35.286—Retention and production of records

This Section was not amended in proposed form but was cross-referenced in proposed § 35.284(b). In that Act 47 subsequently amended the retention requirement mentioned in proposed § 35.284(b), in final form this Section has been amended to track the requirements of Section 608 of the RELRA, 63 P.S. § 455.608. New subsection (a) delineates which records must be retained for 3 years and which records must be retained for 6 months.

New subsection (a)(1) tracks the requirement in existing § 35.336(c) that the Acknowledgement portion of the Disclosure Summary in § 35.336 be retained for 6 months where the consumer and the broker have not entered into a business relationship. New subsection (a)(2) tracks the requirement in Section 608(b) of the RELRA, 63 P.S. § 455.608(b), that the Acknowledgement portion of the Disclosure Summary in § 35.337 be retained for 6 months where the consumer is seeking to lease residential or commercial real estate. New subsection (a)(3) tracks the requirement in Section 608(e) of the RELRA, 63 P.S. § 455.608(e), that the Acknowledgement portion of the Disclosure Summary in § 35.338 be retained for 6 months where the consumer is seeking to sell time-shares. New subsection (a)(4) tracks the requirement in Section 606.1(b)(4) of the RELRA, 63 P.S. § 455.606a(b)(4), that the written disclosure statement establishing a subagent or transaction licensee relationship be retained for 6 months.

New subsection (b) contains the current requirements for the production of documents.

Section 35.336—Disclosure Summary applicable for purchase or sale of residential or commercial real estate or for the lease of residential or commercial real estate where the licensee is working on behalf of the tenant

Current § 35.336 is divided into four parts: the Consumer Notice is in subsection (a), the requirement to provide the Consumer Notice is in subsection (b), the retention requirement is in subsection (c) and the refusal note is in subsection (d). Given that Act 47 created additional Disclosure Summaries, the information in current subsection (b) has been moved to § 35.284(a)(1), the retention requirement in current subsection (c)

has been moved to §§ 35.284(d) and 35.286(a), and the refusal note in current subsection (d) has been moved to § 35.284(d).

In final form, current subsection (a) has been made into a stand-alone provision similar to new §§ 35.337, 35.338, and 35.339. This provision has also been amended to track the language and requirements in Sections 608(b)(1) and 608(d) of the RELRA, 63 P.S. §§ 455.608(b)(1) and 455.608(d).

Section 35.337— Disclosure Summary applicable for the lease of residential or commercial real estate where the licensee is working on behalf of the owner

Sections 35.338- Disclosure Summary applicable for timeshares

Section 35.339— Oral disclosure

New §§ 35.337-35.339 contain the verbatim language of the three additional disclosure summaries added by Act 47 in Sections 608(b), 608(c), and 608(e) of the RELRA, 63 P.S. §§ 455.608(b), 455.608(c) and 455.608(e).

Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Commission reviewed this rulemaking and considered its purpose and likely impact on the public and the regulated population under the directives of Executive Order 1996-1.

Fiscal Impact and Paperwork Requirements

The amendments will have no adverse fiscal impact or paperwork requirements on the Commonwealth, its political subdivisions or the public sector. In that changes to the RELRA require licensees to provide up to three Consumer Notices depending upon the status of property, licensees will be subject to a modest fiscal impact and additional paperwork requirements in producing, distributing and retaining the Notices.

Sunset Date

The Commission continually monitors the effectiveness of its regulations through communication with the regulated population; accordingly, no sunset date has been set.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Commission/Board submitted copies of the notice of proposed rulemaking, published at 30 Pa. B. 641-648, on February 5, 2000, to the IRRC, the SCP/PLC and the HPLC for review and comment.

In compliance with section 5(b.1) of the Regulatory Review Act (71 P.S. § 745.5(b.1)), the Commission also provided IRRC, SCP/PLC, and HPLC with copies of

comments received as well as other documents. In preparing the final-form regulation, the Commission has considered the comments received from IRRC, SCP/PLC, HPLC, and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P.S. § 745.5a(d)), this final-form regulation was (deemed) approved by the HPLC on _____, 2002, and (deemed) approved by SCP/PLC on _____, ____2002. Under section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), IRRC met on _____, 2002, and (deemed) the final-form regulation approved.

Contact Person

Further information may be obtained by contacting Deborah Sopko, Administrative Assistant, State Real Estate Commission, P.O. Box 2649, Harrisburg, PA 17105-2649, www.state.pa.us/bpoa/recomm/mainpage.htm.

Findings

The Commission finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 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 30 Pa.B. 641 on February 5, 2000.

(4) This amendment is necessary and appropriate for administering and enforcing the authorizing acts identified in this Preamble.

Order

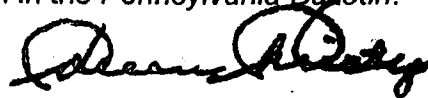
The Commission, acting under its authorizing statutes, orders that:

(a) The regulations of the Commission, 49 Pa. Code Chapter 35, are amended to read as set forth in Annex A.

(b) The Commission shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.



Coleen Christy, Chair
State Real Estate Commission

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:

Agency relationship--A fiduciary relationship between a broker of record or licensee employed by a broker of record and a consumer who becomes a principal.

Broker--An individual or entity that, for another and for a fee, commission or other valuable consideration, does one or more of the following:

- (vi) Undertakes to perform a comparative market analysis.
- (vii) Attempts to perform one of the actions listed in subparagraphs (i)-(vi).

Buyer agent--A licensee who enters into an agency relationship with a buyer/tenant.

COMPARATIVE MARKET ANALYSIS--A WRITTEN ANALYSIS, OPINION OR CONCLUSION BY A CONTRACTED BUYER'S AGENT, TRANSACTIONAL LICENSEE OR AN ACTUAL OR POTENTIAL SELLER'S AGENT RELATING TO THE PROBABLE SALE PRICE OF A SPECIFIED PIECE OF REAL ESTATE IN AN IDENTIFIED REAL ESTATE MARKET AT A SPECIFIED TIME, OFFERED EITHER FOR THE PURPOSE OF DETERMINING THE ASKING/OFFERING PRICE FOR THE PROPERTY BY A SPECIFIC ACTUAL OR POTENTIAL CONSUMER OR FOR THE PURPOSE OF SECURING A LISTING AGREEMENT WITH A SELLER.

Consumer--An individual or entity who is the recipient of any real estate service.

Designated agent--One or more licensees designated by the EMPLOYING broker of record, with the consent of the principal, to act exclusively as the agent or agents for the principal to the exclusion of all other licensees employed by WITHIN the broker'S EMPLOY of record.

Dual agent--A licensee who acts as an agent for the buyer/tenant and seller/landlord in the same transaction.

...

Listing broker--A broker of record who has entered into a written agreement with a seller/landlord to market property as a seller's agent, dual agent or transaction licensee.

OPEN LISTING AGREEMENT--A NON-EXCLUSIVE LISTING AGREEMENT GOVERNED BY A MEMORANDUM OR CONTRACT WHEREIN THE SELLER RETAINS THE RIGHT TO EMPLOY MULTIPLE BROKERS TO SELL OR LEASE A PROPERTY.

NON-EXCLUSIVE BUYER AGENCY AGREEMENT--A NON-EXCLUSIVE AGREEMENT GOVERNED BY A MEMORANDUM OR CONTRACT WHEREIN THE BUYER RETAINS THE RIGHT TO EMPLOY MULTIPLE BROKERS TO PURCHASE OR LEASE A PROPERTY.

...

Principal--A consumer who has entered into an agency relationship with a broker of record or another licensee employed by the broker of record.

...

Salesperson--An individual who is employed by a broker to do one or more of the following:

(viii) Perform a comparative market analysis.

Seller's agent--A licensee who enters into an agency relationship with a seller/landlord.

Subagent--A licensee, not in the employ of the listing broker, who acts or cooperates with the listing broker in selling property as a seller's/landlord's agent AND IS DEEMED TO HAVE AN AGENCY RELATIONSHIP WITH THE SELLER.

...

Transaction licensee--A licensee who, without entering into an agency relationship with the consumer, provides communication or document preparation services or performs other acts listed in the definition of "broker" or "salesperson."

Subchapter E. STANDARDS OF CONDUCT AND PRACTICE GENERAL ETHICAL RESPONSIBILITIES

§35.281. Putting contracts, commitments and agreements in writing.

(a) [A licensee who acts in a representative capacity shall ensure that] All sale or lease contracts, commitments and agreements in connection with a real estate between a broker of record, or a licensee employed by the broker, and a principal or a consumer who is required to pay a fee, commission or other valuable consideration shall [transaction that he has knowledge of, or that he reasonably should] be [expected to have knowledge of, are] in writing and contain the information specified in §35.331 (relating to written agreements generally).

(b) The following are exceptions to subsection (a):

(1) [A licensee who enters into an] Open listing agreements OR NONEXCLUSIVE BUYER AGENCY AGREEMENTS [shall provide] may be oral if the seller/BUYER or landlord/TENANT is provided with a written memorandum stating the terms of the agreement.

(2) Transaction licensees or subagents cooperating with listing brokers are not required to obtain a written agreement from the seller/landlord.

(3) Transaction licensees or subagents who provide services to the buyer/tenant but are paid by the seller/landlord or listing broker shall provide, and have signed, a written disclosure statement describing the nature of the services and the fees to be paid TO BE PERFORMED AND CONTAINING THE INFORMATION REQUIRED BY SECTION 608 OF THE ACT, 63 P.S. §455.608.

(C) A LICENSEE MAY PERFORM SERVICES BEFORE AN AGREEMENT IS SIGNED, BUT THE LICENSEE IS NOT ENTITLED TO RECOVER A FEE, COMMISSION OR OTHER VALUABLE CONSIDERATION IN THE ABSENCE OF A SIGNED AGREEMENT.

§35.283. [Conflict] DISCLOSURE of Interest.

(d) A [broker] licensee who is engaged in the business of financing the purchase of real or personal property, [or of] lending money on the security of real or personal property, or providing PROVIDES FINANCIAL SERVICES, title transfer, deed or document AND preparation, insurance, construction, repair or inspection services, may not require [, as a condition precedent to the activities, the negotiation by the buyer through a particular insurance company of a policy of insurance or the renewal of the insurance covering the property or the person involved, with the exception of a group creditor policy] a consumer to use any such OF THESE serviceS.

(e) In the event that the consumer chooses to use any of the services listed in SUBsection (d), the licensee shall provide the consumer with a written disclosure of any financial interest, including, but not limited to a referral fee or commission, that the licensee has in the service. Such disclosure shall be made at the time the licensee first advises the consumer that an ancillary service is available or when the licensee first learns that the consumer will be using the service.

(f) A licensee has a continuing obligation to disclose to a principal any conflict of interest in a reasonably practicable period of time after the licensee learns or should have learned of the conflict of interest.

§35.284. Preagreement Disclosures to [buyer and seller] consumers. OF BUSINESS RELATIONSHIPS

(A) DISCLOSURE TO CONSUMERS SEEKING TO SELL OR PURCHASE RESIDENTIAL OR COMMERCIAL REAL ESTATE.

(a)1 A licensee shall [disclose the following information to a prospective client-seller at the initial interview before the seller enters in to a listing agreement:

- (1) Whether the broker is the agent of the seller or the agent of the buyer.
- (2) The broker's commission and the duration of the listing period are negotiable.
- (3) The existence of a Real Estate Recovery Fund to reimburse a 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 legal and equitable remedies. Details about the Fund may be obtained by calling the Commission at (717) 783-3658.

(4) The requirement that an agreement of sale executed by the seller shall contain the zoning classification of the property, unless the property (or each parcel thereof, if subdividable) is zoned solely or primarily to permit single-family dwellings] provide the disclosure summary in §335.336 (relating to disclosure summary FOR THE SALE OR PURCHASE OF RESIDENTIAL OR COMMERCIAL REAL ESTATE) to all consumers SEEKING TO PURCHASE OR SELL REAL ESTATE at the initial interview IF THE INTERVIEW OCCURS IN PERSON.

(2) IF THE INITIAL INTERVIEW DOES NOT OCCUR IN PERSON, THE LICENSEE SHALL PROVIDE THE ORAL DISCLOSURE IN §35.339 (RELATING TO THE ORAL DISCLOSURE) AT THE INITIAL INTERVIEW AND THE WRITTEN DISCLOSURE STATEMENT IN §35.336 (RELATING TO DISCLOSURE SUMMARY) NO LATER THAN THE EARLIER OF:

(i) THE FIRST MEETING THAT THE LICENSEE HAS IN PERSON WITH THE CONSUMER AFTER THE INITIAL INTERVIEW; OR

(ii) THE TIME THE LICENSEE OR ANY PERSON WORKING WITH THE LICENSEE FIRST SHOWS A PROPERTY TO THE CONSUMER.

(B) DISCLOSURE TO TENANTS SEEKING TO LEASE RESIDENTIAL OR COMMERCIAL REAL ESTATE.

(1) A LICENSEE WHO IS WORKING ON BEHALF OF THE TENANT SHALL PROVIDE THE DISCLOSURE SUMMARY IN §35.336 AS REQUIRED IN SUBSECTION A.

(2) A LICENSEE WHO IS WORKING ON BEHALF OF THE OWNER SHALL PROVIDE THE DISCLOSURE SUMMARY IN §35.337 (RELATING TO DISCLOSURE SUMMARY FOR THE LEASE OF RESIDENTIAL OR COMMERCIAL PROPERTY) TO TENANTS SEEKING TO LEASE RESIDENTIAL OR COMMERCIAL PROPERTY AT THE INITIAL INTERVIEW.

(C) DISCLOSURE TO CONSUMERS SEEKING TO SELL TIME SHARES.

A LICENSEE SHALL PROVIDE THE DISCLOSURE SUMMARY IN §35.338 (RELATING TO DISCLOSURE SUMMARY FOR TIME-SHARE ESTATES) TO CONSUMERS SEEKING TO PURCHASE TIME-SHARE ESTATES AT THE INITIAL INTERVIEW.

([b]D) A licensee shall [disclose the following information to a prospective buyer at the initial interview before the buyer enters into an agreement of sale:

(1) Whether the broker is the agent of the seller or the agent of the buyer.

(2) The existence of a Real Estate Recovery Fund to reimburse a 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 legal and equitable remedies. Details about the Fund may be obtained by calling the Commission at (717) 783-3658] provide a copy of the SIGNED ~~entire~~ disclosure to the consumers REFERENCED IN SUBSECTIONS (A)-(C) and shall retain the signed Acknowledgment PURSUANT TO THE REQUIREMENTS OF ~~for their~~

records for six months, unless the consumer and the broker have entered into a business relationship. In such case the records shall be retained under §35.286 (relating to retention and production of records) (e). If a consumer refuses to sign the Acknowledgment, a licensee shall note the refusal SHALL BE NOTED on the Acknowledgment and retain it as specified in subsection (b).

* * *

§35.286. RETENTION AND PRODUCTION OF RECORDS.

(A) RETENTION--A BROKER OR CEMETERY BROKER SHALL RETAIN COPIES OF RECORDS PERTAINING TO A REAL ESTATE TRANSACTION FOR AT LEAST 3 YEARS FOLLOWING CONSUMMATION OF THE TRANSACTION EXCEPT FOR THE FOLLOWING WHICH SHALL BE RETAINED FOR 6 MONTHS:

(1) THE ACKNOWLEDGEMENT PORTION OF THE CONSUMER NOTICE APPLICABLE TO THE SALE OR PURCHASE OF REAL ESTATE IN §35.336 (RELATING TO DISCLOSURE SUMMARY FOR THE PURCHASE OR SALE OF RESIDENTIAL OR COMMERCIAL REAL ESTATE) WHERE THERE IS NOT A REAL ESTATE TRANSACTION.

(2) THE ACKNOWLEDGEMENT PORTION OF THE CONSUMER NOTICE APPLICABLE TO TIME SHARES IN §35.338 (RELATING TO DISCLOSURE SUMMARY FOR TIME-SHARE ESTATES).

(3) THE ACKNOWLEDGEMENT PORTION OF THE CONSUMER NOTICE APPLICABLE TO LEASES IN §§35.336 (RELATING TO DISCLOSURE SUMMARY FOR THE PURCHASE OR SALE OF RESIDENTIAL OR COMMERCIAL REAL ESTATE OR FOR THE LEASE OF RESIDENTIAL OR COMMERCIAL REAL ESTATE WHERE THE LICENSEE IS WORKING ON BEHALF OF THE TENANT) AND 35.337 (RELATING TO DISCLOSURE SUMMARY FOR THE LEASE OF RESIDENTIAL OR COMMERCIAL REAL ESTATE WHERE THE LICENSEE IS WORKING ON BEHALF OF THE OWNER).

(4) THE WRITTEN DISCLOSURE STATEMENT ESTABLISHING A SUBAGENT OR TRANSACTION LICENSEE RELATIONSHIP REQUIRED BY §35.281(B)(3)(RELATING TO PUTTING CONTRACTS, COMMITMENTS AND AGREEMENTS IN WRITING).

(B) PRODUCTION OF DOCUMENTS

(1) A BROKER OR CEMETERY BROKER SHALL PRODUCE THE RECORDS

REQUIRED IN SUBSECTION (A) FOR EXAMINATION BY THE COMMISSION OR ITS AUTHORIZED REPRESENTATIVES UPON WRITTEN REQUEST OR PURSUANT TO AN OFFICE INSPECTION UNDER §35.246 (RELATING TO INSPECTION OF OFFICE).

(2) A CORPORATION, PARTNERSHIP OR ASSOCIATION THAT HOLDS A BROKER'S OR CEMETERY BROKER'S LICENSE SHALL PRODUCE ITS CORPORATE, PARTNERSHIP OR ASSOCIATION RECORDS FOR EXAMINATION BY THE COMMISSION OR ITS AUTHORIZED REPRESENTATIVES UPON WRITTEN REQUEST OR PURSUANT TO AN OFFICE INSPECTION UNDER §35.246 (RELATING TO INSPECTION OF OFFICE).

§35.287. Supervised property management assistance by salespersons.

A salesperson may assist in the PROPERTY management of real-estate if the salesperson's work is directly supervised and controlled by the employing broker. The salesperson may not independently negotiate the terms of a lease nor execute a lease on behalf of the lessor.

§35.292. Duties of licensees generally.

(a) The following duties are owed to all consumers of real estate services and may not be waived:

- (1) exercise reasonable professional skill and care;
- (2) deal honestly and in good faith;
- (3) present, in a timely manner REASONABLY PRACTICABLE PERIOD OF TIME, all offers, counteroffers, notices, and communications to and from the parties in writing, unless the property is subject to an existing contract and the seller/landlord has agreed in a written waiver;
- (4) comply with the Real Estate SELLER Disclosure Act, 68 P.S. §1021-1036;
- (5) account for escrow and deposits funds as required by §604(a)(5) of the act (63 P.S. §455.604(a)(5)) and §§35.321-35.328 (relating to escrow requirements);
- (6) provide consumers with the disclosure summary in §35.336 (relating to disclosure summary) INFORMATION IN SECTION 608 OF THE ACT (63 P.S. §455.608) at the initial interview;
- (7) disclose, in a timely manner REASONABLY PRACTICABLE PERIOD OF TIME, all conflicts of interest and financial interests as required in §35.283 (relating to conflicts DISCLOSURE of interest);
- (8) advise the consumer to seek expert advice on matters about the transaction that are beyond the licensee's expertise;
- (9) ensure that all services are provided in a reasonable, professional and competent manner;

(10) keep the consumer informed about the transaction and the tasks to be completed;

(11) provide assistance with document preparation; and

(12) advise the consumer about compliance with laws pertaining to real estate transactions without rendering legal advice;

(b) A licensee is not required to conduct an independent inspection of the property.

(c) A licensee is not required to independently verify the accuracy or completeness of any representation made by the consumer to a transaction which the licensee reasonably believes to be accurate and reliable.

(d) A licensee is not liable for the acts of a consumer unless the consumer is acting at the express direction of the licensee or as a result of a representation by a licensee reasonably relied on by the consumer.

PERMITTED RELATIONSHIPS

§35.311. Generally.

(a) A licensee and a consumer may enter into the relationship specified in sections 606.2 (relating to duties of seller's agent), 606.3 (relating to duties of buyer's broker), 606.4 (relating to duties of dual agent), and 606.6 (relating to duties of transaction licensee), 63 P. S. §§455.606.2-455.606.4 and 455.606.6.

(b) A broker may not extend or delegate the broker's agency relationship without the written consent of the principal.

(c) Compensation paid by a broker of record to another broker of record who assists in the marketing and sale/lease of a consumer's property does not create an agency relationship between the consumer and that other broker of record.

(d) A licensee in an agency relationship may not knowingly, during or following THE TERMINATION OF AN AGENCY RELATIONSHIP, reveal or use confidential information of the principal, except when:

(1) the principal consented to the disclosure;

(2) the information is disclosed to another licensee or third party acting solely on behalf of the principal;

(3) the information is required to be disclosed under subpoena or court order;

- (4) the disclosure is necessary to prevent the principal from committing a crime;
or
(5) the information is used by the licensee to defend in a legal proceeding against an accusation of wrongdoing.

§35.312. DUTIES OF Seller's agent.

(a) In addition to the duties required in §35.292 (relating to duties of licensees generally), a seller's agent owes the additional duties of:

- (1) loyalty to the seller/landlord by acting in the seller's/landlord's best interest.
- (2) confidentiality, except that a licensee has a duty to reveal known material defects about the property.
- (3) making a continuous and good faith effort to find a buyer/tenant for the property except where the property is subject to an existing agreement of sale/lease.
- (4) disclosure to other parties in the transaction that the licensee has been engaged as a seller's agent.

(b) A licensee does not breach a duty to a seller/landlord by showing alternative properties to a prospective buyer/tenant or listing competing properties.

(c) A seller's agent may compensate other brokers of record as subagents if the seller/landlord agrees in writing. Subagents have the same duties and obligations to the seller/landlord as the seller's agent.

(d) A seller's agent may also compensate a buyer's agent and a transaction licensee who do not have the same duties and obligations to the seller/landlord as the seller's agent.

(e) Upon entering into a written agreement with the seller/landlord, each licensee employed by the broker of record WILL ACT AS becomes a seller's agent unless a licensee has been named, or is thereafter named, a designated agent pursuant §35.315 (relating to designated agency).

§35.313. DUTIES OF Buyer's AgencyT.

(a) In addition to the duties required in §35.292 (relating to duties of licensees generally), a buyer's agent owes the additional duties of:

- (1) Loyalty to the buyer/tenant by acting in the buyer's/tenant's best interest.
- (2) Confidentiality.
- (3) Making a continuous and good faith effort to find a property for the

buyer/tenant except where the buyer/TENANT is subject to an existing contract for sale/lease.

(4) Disclosure to other parties in the transaction that the licensee has been engaged as a buyer's agent.

(b) A licensee does not breach a duty to a buyer/tenant by showing a property the buyer/tenant is interested in to other buyer/tenants.

(c) A buyer's agent represents the interests of the buyer/tenant even if paid by the seller/landlord.

(d) Upon the entering into a written agreement with the buyer/tenant, each licensee employed by the broker of record WILL ACT AS becomes a buyer's agent unless a licensee has been named, or is thereafter named, a designated agent pursuant to §35.315 (relating to designated agency).

§35.314. DUTIES OF Dual AgencyT.

(a) A licensee may act as a dual agent if both parties consent in writing.

(b) In addition to the duties required in §35.292 (relating to duties of licensees generally), a dual agent owes the additional duties of:

(1) Taking no action that is adverse or detrimental to either party's interest in the transaction.

(2) Unless otherwise agreed IN WRITING, making a continuous and good faith effort to find a buyer/tenant for the property and a property for the buyer/tenant EXCEPT WHERE THE BUYER/TENANT OR SELLER/LANDLORD IS SUBJECT TO AN EXISTING CONTRACT.

(3) Confidentiality, except that a licensee is required to disclose known material defects about the property.

(c) A dual agent does not breach a duty to the seller/landlord by showing properties not owned by the seller/landlord to a prospective buyer/tenant or listing competing properties for sale/lease.

(d) A dual agent does not breach a duty to a buyer/tenant by showing a property the buyer/tenant is interested in to other prospective buyer/tenants.

§35.315. DUTIES OF Designated AgencyT.

(a) A broker, with the written consent of the principal, may designate one or more licensees to act exclusively as the agent of the seller/landlord, and designate one or more licensees to act exclusively as the agent of the buyer/tenant in the same transaction.

(b) Designation should MAY take place at the ANY time that the parties enter into a written agreement, however, licensees may be designated. IF DESIGNATION TAKES PLACE after the initial designation or after a written agreement has been entered into, provided the broker SHALL:

(1) Obtains the principal's consent, in writing, to the newly designated licensee.

(2) Obtains, where applicable, the principal's agreement to renunciate RENOUNCE any previous agency relationship with the other licensees employed by the broker to the exclusion of other designated agents.

(c) Regardless of when the designation takes place, the broker and the designated agent(S) shall use reasonable care to ensure that confidential information is not disclosed or used.

(d) All licensees employed by the broker who are not designated have no agency relationship with either party in the transaction.

(e) The broker may, provided there is a written company policy, authorize licensees employed by the broker to execute listing and agency contracts indicating themselves and/or affiliated licensees who are employed by the broker as the designated agent(s) of the consumer.

(f)E) Each licensee employed by the same broker who is a designated agent in the same transaction, oweS the following additional duties, in addition to those required in §35.292 (relating to duties of licensees generally):

(1) Loyalty to the principal with whom the designated agent is acting by acting WORKING in that principal's best interest.

(2) MakingE a continuous and good faith effort to find a buyer/tenant for a principal who is a seller/landlord or to find a property for a principal who is the buyer/tenant except where the seller/landlord is subject to an existing contract for sale or lease or the buyer/tenant is subject to an existing contract to purchase or lease.

(j)3) Disclosure to THE principal prior to writing or presenting an offer to purchase that the other party to the transaction is represented by a designated agent also employed

by the broker.

(f) Confirm that the broker is a dual agent in the transaction.

(g) In the transaction specified in subsection (f), the employing broker, as a dual agent, has the additional duties, in addition to those specified in §35.292 (relating to duties of licensees generally) and §35.314 (relating to dual agents), of:

(1) Taking reasonable care to protect any confidential information THAT HAS BEEN disclosed to the designated licensees.

(2) Taking responsibility to direct and supervise the business activities of the designated licensees while taking no action that is adverse or detrimental to either party's interest in the transaction.

§35.316. DUTIES OF Transaction Licensee.

In addition to the duties required in §35.292 (relating to duties of licensees generally), a transaction licensee must advise the consumer that the licensee:

(a) is not acting as an agent or advocate for the consumer and should not be provided with confidential information, and

(b) owes the additional duty of limited confidentiality in that the following information may not be disclosed:

(1) the seller/landlord will accept a price less than the asking/listing price.

(2) the buyer/tenant will pay a price greater than the price submitted in a written offer.

(3) the seller/landlord or buyer/tenant will agree to financing terms other than those offered.

REAL ESTATE DOCUMENTS

§35.331. [Listing] Written agreements generally.

(a) A [listing] written agreement [, of whatever type,] ~~other than a sales agreement or contract,~~ between a BROKER licensee and a principal, or between a BROKER licensee and a consumer whereby the consumer is or may be committed to pay a fee, commission or other valuable consideration ~~may~~ SHALL [state that] contain the following information

printed conspicuously:

(1) NOTIFICATION THAT a Real Estate Recovery Fund exists to reimburse a person who has obtained a final civil judgment against a Commonwealth 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 legal and equitable remedies.

[(2)] Details about the Fund may be obtained by calling the Commission at (717) 783-3658.

[(3)] NOTIFICATION THAT payments of money received by the broker on account of a sale--regardless of the form of payment and the person designated as payee (if payment is made by an instrument)--shall be held by the broker in an escrow account pending consummation of the sale or a prior termination thereof.

[(4)] NOTIFICATION THAT the broker['s]of record's commission and the duration of the [listing period] agreement have been determined as a result of negotiations between the broker, or a licensee employed by the broker, and the seller/landlord or buyer/tenant.

(4) A DESCRIPTION OF THE SERVICES TO BE PROVIDED AND THE FEES TO BE CHARGED.

(5) NOTIFICATION ABOUT the possibility that the broker or any licensee employed by the broker may provide services to more than one party in a single transaction, and an explanation of the duties owed to the other party and the fees which the broker may receive for those services.

(6) A description of the licensee's conflicts of interest and a method whereby the licensee will disclose future conflicts NOTIFICATION OF THE LICENSEE'S CONTINUING DUTY TO DISCLOSE IN A REASONABLY PRACTICABLE PERIOD OF TIME ANY CONFLICT OF INTEREST.

(7) In an agreement between a broker and a seller/landlord, a description of the broker's of record's policies STATEMENT regarding cooperation with subagents and buyers agents, a disclosure that a buyer agent, even if compensated by the LISTING broker or seller/landlord will represent the interests of the buyer/tenant and a disclosure of any potential for the broker to act as a dual agent.

(8) In an agreement between a broker and a buyer/tenant, an explanation that the broker may be compensated based upon a percentage of the purchase price, the broker's policies regarding cooperation with listing brokers willing to pay buyer's brokers, a

disclosure that the broker, even if compensated by the listing broker or seller/landlord will represent the interests of the buyer/tenant and a disclosure of any potential for the broker to act as a dual agent.

(b) To the extent that any of the information required in subsection (bA) is set forth in the disclosure summaries in §§35.336-35.338 (relating to disclosure summaryIES), those provisions need not be repeated, but may be incorporated by reference.

§35.332. Exclusive listing agreements.

* * *

(b) An exclusive listing agreement shall contain, in addition to the requirements in §335.331 (relating to written agreements generally):

* * *

(2) The commission, fees or other compensation expected on the sale or lease price.

* * *

~~(D) THE FOLLOWING EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT IS EXEMPLARY OF THE REQUIREMENTS OF THIS SECTION:~~

~~EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT~~

~~_____ (HEREINAFTER THE "SELLER") HEREBY GRANTS _____ (HEREINAFTER THE "AGENT") THE EXCLUSIVE RIGHT TO SELL PROPERTY LOCATED AT _____ FOR THE SALE PRICE OF \$ _____.~~

~~THE SELLER AND THE AGENT AGREE THAT THIS AGREEMENT SHALL BE IN FORCE FOR _____ MONTHS FROM THE DATE OF THIS AGREEMENT AND SHALL THEN TERMINATE UNLESS EXTENDED IN WRITING BY THE SELLER AND THE AGENT. IF THE PROPERTY IS SOLD OR EXCHANGED DURING THE TERM OF THIS AGREEMENT BY THE AGENT, OR BY THE SELLER, OR BY ANY OTHER PERSON, THE SELLER AGREES TO PAY THE AGENT A COMMISSION OF _____ OF THE GROSS SALE PRICE.~~

~~THE SELLER REPRESENTS THAT HE HAS THE LEGAL RIGHT TO SELL THE PROPERTY AND HAS RECEIVED AN EXACT COPY OF THIS AGREEMENT.~~

~~THE SELLER UNDERSTANDS THAT ALL PAYMENTS RECEIVED BY THE AGENT ON ACCOUNT OF A SALES AGREEMENT ENTERED INTO BETWEEN THE SELLER AND A BUYER SHALL BE HELD IN ESCROW BY THE AGENT PENDING CONSUMMATION OF THE SALE, OR A PRIOR TERMINATION THEREOF, IN ACCORDANCE WITH THE REAL ESTATE LICENSING AND REGISTRATION ACT AND REGULATIONS PROMULGATED THEREUNDER.~~

~~IN WITNESS WHEREOF, THE SELLER HAS HEREUNTO SET HIS HAND AND SEAL~~

THIS _____ DAY OF _____ 19____.

ACCEPTED:

AGENT _____

(SEAL) _____

SELLER _____

ADDRESS _____

(SEAL) _____

SELLER _____

§35.333. Agreements of Sales

(a) An agreement of sale, other than for a cemetery lot, mausoleum or cremation space or opening, shall contain, conspicuously:

(7) A statement [as to whether] identifying the capacity in which the broker, or a licensee employed by the broker is [the agent of the seller or the agent of the buyer] involved in the transaction and whether services have been provided to another party in the transaction.

(d) [The requirements in subsection (a)(1)-(5) and (9) are applicable to] An agreement of sale for a cemetery lot or plot or a mausoleum space or opening shall contain the requirements in subsection (a)(1)-(5) and (9).

§35.336. Disclosure Summary FOR THE PURCHASE OR SALE OF RESIDENTIAL OR COMMERCIAL REAL ESTATE OR FOR THE LEASE OF RESIDENTIAL OR COMERICAL REAL ESTATE WHERE THE LICENSEE IS WORKING ON BEHALF OF THE TENANT.

[(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**

PENNSYLVANIA LAW REQUIRES REAL ESTATE BROKERS AND SALESPERSONS (LICENSEES) TO ADVISE CONSUMERS WHO ARE SEEKING TO SELL OR PURCHASE RESIDENTIAL OR COMMERCIAL REAL ESTATE OR TENANTS WHO ARE SEEKING TO LEASE RESIDENTIAL OR COMMERCIAL REAL ESTATE WHERE THE LICENSEE IS WORKING ON BEHALF OF THE TENANT OF THE BUSINESS RELATIONSHIPS 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 UNLESS AN ORAL DISCLOSURE HAS BEEN PREVIOUSLY PROVIDED. IF THE ORAL DISCLOSURE WAS PROVIDED, THIS NOTICE MUST BE PROVIDED AT THE FIRST MEETING OR THE FIRST TIME A PROPERTY IS SHOWN TO THE CONSUMER BY THE BROKER OR SALESPERSON.

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.

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, REASONABLY PRACTICABLE PERIOD OF TIME, ALL OFFERS, COUNTEROFFERS, NOTICES, AND COMMUNICATIONS TO AND FROM THE PARTIES IN WRITING. 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 ALL CONFLICTS OF INTEREST IN A TIMELY MANNER REASONABLY PRACTICABLE PERIOD OF TIME.
- 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, 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 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, 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. DUAL AGENTS OWE THE ADDITIONAL DUTIES OF:

- TAKING NO ACTION THAT IS ADVERSE OR DETRIMENTAL TO EITHER PARTY'S INTEREST IN THE TRANSACTION.
- UNLESS OTHERWISE AGREED TO IN WRITING, 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 REPRESENT YOU. OTHER LICENSEES IN THE COMPANY MAY REPRESENT ANOTHER PARTY AND SHALL NOT BE PROVIDED WITH ANY CONFIDENTIAL INFORMATION. THE DESIGNATED AGENT(S) SHALL HAVE THE DUTIES 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 LICENSEE.
- 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 EMPLOYING 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 SHALL 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 EMPLOYMENT, LISTING AGREEMENT OR CONTRACT.
- THE FEES OR COMMISSIONS.
- THE SCOPE OF THE ACTIVITIES OR PRACTICES.
- THE BROKER'S COOPERATION WITH OTHER BROKERS, INCLUDING THE SHARING OF FEES.

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.

THE 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.

ACKNOWLEDGMENT

I ACKNOWLEDGE THAT I HAVE RECEIVED THIS DISCLOSURE.

DATE:

PRINT (CONSUMER)

PRINT (CONSUMER)

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 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).

(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).]

§35.337. DISCLOSURE SUMMARY FOR THE LEASE OF RESIDENTIAL OR COMMERCIAL REAL ESTATE WHERE THE LICENSEE IS WORKING ON BEHALF OF THE OWNER.

THE DISCLOSURE SUMMARY FOR THE LEASE OF RESIDENTIAL OR COMMERCIAL PROPERTY SHALL BE IN THE FOLLOWING FORMAT:

CONSUMER NOTICE
THIS IS NOT A CONTRACT

(LICENSEE) _____ HEREBY STATES THAT WITH
RESPECT TO THIS PROPERTY, (DESCRIBE PROPERTY) I AM ACTING IN THE
FOLLOWING CAPACITY: (CHECK ONE)

- (i) OWNER/LANDLORD OF THE PROPERTY;
- (ii) A DIRECT EMPLOYEE OF THE OWNER/LANDLORD; OR
- (iii) AN AGENT OF THE OWNER/LANDLORD PURSUANT TO A PROPERTY
MANAGEMENT OR EXCLUSIVE LEASING AGREEMENT.

I ACKNOWLEDGE THAT I HAVE RECEIVED THIS NOTICE:

DATE:

PRINT (CONSUMER)

PRINT (CONSUMER)

SIGNED (CONSUMER)

SIGNED (CONSUMER)

ADDRESS (OPTIONAL):

ADDRESS (OPTIONAL):

PHONE NUMBER (OPTIONAL):

PHONE NUMBER (OPTIONAL):

I CERTIFY THAT I HAVE PROVIDED THIS NOTICE:

(LICENSEE)

(DATE)

§35.338. DISCLOSURE SUMMARY FOR TIME-SHARE ESTATES.

THE DISCLOSURE SUMMARY FOR TIME-SHARE ESTATES SHALL BE IN THE FOLLOWING FORMAT:

CONSUMER NOTICE
THIS IS NOT A CONTRACT

(LICENSEE) _____ HEREBY STATES THAT WITH RESPECT TO THIS PROPERTY, (DESCRIBE PROPERTY) I AM ACTING IN THE FOLLOWING CAPACITY: (CHECK ONE)

- (I) OWNER OF THE PROPERTY;
- (II) A DIRECT EMPLOYEE OF THE OWNER; OR
- (III) AN AGENT OF THE OWNER PURSUANT TO A PROPERTY MANAGEMENT OR EXCLUSIVE LEASING OR SELLING AGREEMENT.

I ACKNOWLEDGE THAT I HAVE RECEIVED THIS NOTICE:

(CONSUMER)

(DATE)

I CERTIFY THAT I HAVE PROVIDED THIS NOTICE:

(LICENSEE)

(DATE)

§35.339. ORAL DISCLOSURE.

THE DISCLOSURE SHALL BE READ VERBATIM:

"THE REAL ESTATE LAW REQUIRES THAT I PROVIDE YOU WITH A WRITTEN CONSUMER NOTICE THAT DESCRIBES THE VARIOUS BUSINESS RELATIONSHIP CHOICES THAT YOU MAY HAVE WITH A REAL ESTATE LICENSEE. SINCE WE ARE DISCUSSING REAL ESTATE WITHOUT YOU HAVING THE BENEFIT OF THE CONSUMER NOTICE, I HAVE THE DUTY TO ADVISE YOU THAT ANY INFORMATION YOU GIVE ME AT THIS TIME IS NOT CONSIDERED TO BE CONFIDENTIAL, AND ANY INFORMATION YOU GIVE ME WILL NOT BE CONSIDERED CONFIDENTIAL UNLESS AND UNTIL YOU AND I ENTER INTO A BUSINESS RELATIONSHIP. AT OUR FIRST MEETING I WILL PROVIDE YOU WITH A WRITTEN CONSUMER NOTICE WHICH EXPLAINS THOSE BUSINESS RELATIONSHIPS AND MY CORRESPONDING DUTIES TO YOU."

§35.340. Comparative market analysis.

[(a)] A comparative market analysis shall contain the following statement printed conspicuously and without change on the first page:

This analysis has not been performed in accordance with the Uniform Standards of Professional Appraisal Practice which requires valuers to act as unbiased, disinterested third parties with impartiality, objectivity and independence and without accommodation of personal interest. It is not to be construed as an appraisal and may not be used as such for any purpose.

(b) A licensee who is also licensed as an appraiser under the Real Estate Appraisers Certification Act and who prepares a comparative market analysis that satisfies the Uniform Standards of Professional Appraisal Practice is not required to place the disclosure on the analysis.



Commonwealth of Pennsylvania
Department of State
Bureau of Professional and Occupational Affairs
STATE REAL ESTATE COMMISSION
Post Office Box 2649
Harrisburg, PA 17105-2649
Telephone: 717-783-3658
Fax: 717-787-0250
www.dos.state.pa.us

January 22, 2002

The Honorable John R. McGinley, Chairman
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

RE: Final Regulation
State Real Estate Commission
Agency: 16A-568

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Real Estate Commission pertaining to agency. It implements the amendments made to the Real Estate Licensing and Registration Act under Acts 112 of 1998 and 47 of 2000.

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

Sincerely,

A handwritten signature in black ink, appearing to read "George E. Meagher, III".

George E. Meagher, III, Chairman
State Real Estate Commission

GEM:JPS:apm
Enclosures

c: **John T. Henderson, Jr., Chief Counsel**
Department of State
Albert H. Masland, Commissioner
Bureau of Professional and Occupational Affairs
Joyce McKeever, Deputy Chief Counsel
Department of State
Philip Zarone, Regulatory Counsel
Gerald S. Smith, 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**

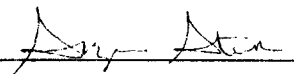

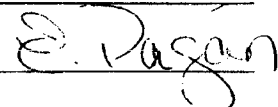
I.D. NUMBER: 16A-568
SUBJECT: State Real Estate Commission - Agency
AGENCY: DEPARTMENT OF STATE

TYPE OF REGULATION

- 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

RECEIVED
JAN 22 2002

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
1-22-02		HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
JAN 22 2002		SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
1/22/02		INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

January 3, 2002