

# Regulatory Analysis Form

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INDUSTRIAL REGULATORY  
REVIEW COMMISSION



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**(1) Agency**

Department of State, Bureau of Professional and Occupational Affairs, State Real Estate Commission

**(2) I.D. Number (Governor's Office Use)**

16A-568

IRRC Number:

2084

**(3) Short Title**

Agency

**(4) PA Code Cite**

49 Pa. Code §35.201, 35.281, 35.283-35.284, 35.287-35.288, 35.292, 35.311-35.316, 35.331-35.333 and 35.336-35.337

**(5) Agency Contacts & Telephone Numbers**

Primary Contact: Judith Pachter Schulder, Counsel  
State Real Estate Commission 783-7200  
Secondary Contact: Joyce McKeever, Deputy Chief  
Counsel, Department of State 783-7200

**(6) Type of Rulemaking (check one)**

- Proposed Rulemaking
- Final Order Adopting Regulation
- Policy Statement

**(7) Is a 120-Day Emergency Certification Attached?**

- 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, by delineating duties of licensees generally, the relationships which licensees may have with consumers and mandatory provisions in written agreements and sales contracts.

**(9) State the statutory authority for the regulation and any relevant state or federal court decisions.**

The regulation is authorized under Sections 606-606.6 and 608.1-608.4 of the Real Estate Licensing and Registration Act, 63 P.S. §455.606-606f and 608a-608d.

## Regulatory Analysis Form

**(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.**

Yes. 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 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.

## Regulatory Analysis Form

**(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)**

There are no perceived people or groups of people who will be adversely affected by the proposed regulations.

**(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)**

All licensees of the Commission, except for cemetery companies, cemetery brokers and cemetery salespersons will be required to comply with 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.**

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

(Continued on Page 9)

**(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.**

The only costs associated with this regulation will be in amending written agreements and sales contracts.

**Regulatory Analysis Form**

**(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.**

Not applicable.

**(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.**

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

## Regulatory Analysis Form

**(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.**

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

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

Not applicable.

## Regulatory Analysis Form

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

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

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

There 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.

## Regulatory Analysis Form

**(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.**

Not applicable.

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

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, 35.287-35.288, 35.331-35.333 and 35.336 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.

## Regulatory Analysis Form

**(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.**

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?**

Act 112 of 1998 becomes effective on November 25, 1999. The regulation will be effective upon publication in the Pennsylvania Bulletin as final rulemaking.

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

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



Continued from #16 on Page 3

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

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

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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REGULATORY  
REVIEW COMMISSION

# 2084

DO NOT WRITE IN THIS SPACE

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

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

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

*Cristina S. Caputo*  
BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

State Real Estate Commission  
(AGENCY)

*Margaret E. Dunlop*  
BY: \_\_\_\_\_

JAN 11 2000

DOCUMENT/FISCAL NOTE NO. 16A-568

DATE OF APPROVAL

DATE OF ADOPTION: \_\_\_\_\_

12/22/99  
DATE OF APPROVAL

BY: Rita Halverson  
Rita Halverson

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

TITLE: Chairperson  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[ ] Check if applicable  
Copy not approved.  
Objections attached.

[ ] Check if applicable. No Attorney General approval or objection within 30 day after submission.

PROPOSED RULEMAKING

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

The State Real Estate Commission (Commission) proposes to amend 49 Pa. Code, Chapter 35 by amending Sections 35.201, 35.281, 35.283-35.284, 35.287-35.288, 35.331-35.333 and 35.336, and adding Sections 35.292, 35.311-35.316, and 35.337 as set forth in Annex A.

**A. Effective Date**

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

**B. Statutory Authority**

The amendments are proposed under the authority of Sections 606-606.6 and 608.1-608.4 of the Real Estate Licensing and Registration Act (Act) (63 P.S. §§455.606-455.606f and 455.608a-455.608d).

**C. Background and Purpose**

This proposal implements Act 112 of 1998, which was added to the Act on November 24, 1998. Act 112 codified the duties of licensees generally, expanded the relationships which licensees may have with consumers, and delineated mandatory provisions in written agreements and sales contracts.

In order to provide the most guidance to licensees, the Commission has drafted its preamble in two sections. The first section organizes statutory and corresponding proposed regulatory provisions by subject matter. The second section provides substantive interpretations of various statutory provisions.

**D. Description of Proposed Amendments**

*Organization*

The proposed amendments track statutory language. For ease of reference, the first column contains the statutory citation, the second column contains the proposed regulatory citation, and the third column contains the subject matter.

STATUTE	PROPOSED REGULATION	SUBJECT MATTER
§455.201	§35.201	Definitions
§455.606a(b) §§455.606a(b)(2) -455.606a(b)(4)	§35.281(a) §35.281(b)	Contracts in writing Exceptions
§455.606a(a)(13)	§35.283	Conflicts of interest
§455.606a §§455.606a(h)-606a(i)	§35.292(a) §35.292(b)-(d)	Duties of licensees Exceptions
§455.606 §455.606a(c) §455.606a(d) §455.606a(g)	§35.311(a) §35.311(b) §35.311(c) §35.311(d)	Permitted relationships Delegation Exception Confidentiality
§455.606b §455.606a(e) §455.606a(b)(4) §455.606	§35.312(a) §35.312(b) §§35.312(c)-(d) §35.312(e)	Duties of seller's agents Exception Compensation Status of licensees
§455.606c §455.606a(f) §455.608(7) §455.606	§35.313(a) §35.313(b) §35.313(c) §35.313(d)	Duties of buyer's agents Exception Compensation Status of licensees
§455.606d §455.606d §455.606a(f)	§35.314(a) §35.314(b) §35.314(c)-(d)	Duties of dual agent Exceptions Consent

STATUTE	PROPOSED REGULATION	SUBJECT MATTER
§455.606e(a)(1) §455.606e(a)(2) §455.606 §455.606e(b) §455.606e(a)(3)	§35.315(a) §35.315(c) §35.315(d) §35.315(f) §35.315(g)	Designation Confidentiality Status of licensees Duties of Designated agent Duties of broker
§455.606f	§35.316	Transaction licensees
§455.608a	§35.331	Written agreements
§455.608b	§35.333	Agreements of sales
§455.608c	§35.337	Comparative market analysis

### Substantive Provisions

Current Section 201, relating to definitions, would be amended to include new definitions for agency relationship, buyer agent, consumer, designated agent, dual agent, listing broker of record, principal, seller's agent, subagent, and transaction licensee.

Interspersed throughout the regulations are numerous references to "broker of record." Although the Act refers to "broker", the Commission understands that reference to be to the broker responsible for the real estate transactions and the supervision of the licensees. The Commission is cognizant that many real estate companies employ many brokers, but only one serves as a broker of record. As a result, the regulations distinguish between a broker and a broker of record.

Proposed Section 281(a), relating to putting contracts, commitments and agreements in writing, would contain the general rule that all sale or lease contracts, commitments and agreements wherein the consumer or principal is required to pay a fee be in writing and contain the information contained in Section 331 (relating to written agreements generally.) Proposed subsection (b) delineates the exceptions to the general rule set forth in Section 606.1(b)(2)-606.1(b)(4).

Section 283, relating to conflicts of interest, would be amended by clarifying subsection (d) and adding subsections (e)-(f) in conformity with Section 606.1(a)(13) of the Act. Under this new section, licensees are permitted to provide financial, title transfer, deed or document preparation, insurance, construction, repair and inspection to consumers so long as the consumer is provided with a written disclosure delineating the broker of record's or salesperson's financial interest. The disclosure must be provided at the time the referral is made. Where there is no referral, the disclosure must be made when the broker of record or salesperson learns or should have learned of the conflict.

Section 284, regarding preagreement disclosures to consumers, would be amended to delete current subsections (a) and (b) and replace them with the procedural requirements currently found in Section 336(b)-(d), relating to disclosure summary. These provisions are being moved so that the procedural requirements are placed in Section 284 and the substantive requirements are placed in Section 336. The information required by current subsections (a) and (b) are contained in the substantive provisions in the Consumer Notice in Section 336.

Section 287, relating to supervised property management assistance by salespersons, would be amended to delete current subsection (a), dealing with appraisals. This amendment would conform the regulation with the definitions of salesperson and broker of record in Section 201 of the Act, in that appraisals, other than a comparative market analysis described in 608.3 of the Act, have been removed from a real estate licensee's scope of practice.

New Section 292(a), relating to duties of licensees generally, would delineate the twelve duties owed to all consumers of real estate services. New subsections (b)-(d) identify the three areas where licensees are not required to act pursuant to Sections 606.1(h) and 606.1(i) of the Act.

New Sections 311(a) would delineate the business relationships created by Section 606 of the Act. Subsection (b) would clarify that an agency relationship cannot be extended or delegated without the consent of the principal. Subsection (c) would clarify that an agency relationship is not created where another broker of record is compensated for assisting in the marketing and sale/lease of the property. New subsection (d) would contain the general rule that licensees may not knowingly reveal confidential information and the five exceptions to this rule.

New Section 312 would relate to seller's agency. New subsections (a)-(d) would track statutory language regarding additional duties and compensation. New subsection (e) stems from the requirement in Section 606 of the Act that employees of the broker of

record bear the same relationship with the consumer as the broker of record unless the licensee has been named as a designated agent.

Similar to new Section 312, new Section 313 would address buyer agency. The additional duties delineated in Section 606.3 are set forth in subsection (a). New subsections (b)-(c) track the statutory requirement regarding showing competing properties and compensation. Like Section 312(e), new subsection (d) stems from the requirement that employees of the broker of record bear the same relationship with the consumer as the broker of record unless designation has taken place.

Proposed Section 314 would address dual agency and tracks the responsibilities mandated by Section 606.4 of the Act.

New Section 315 would govern designated agency. In designated agency a broker of record, with the consent of the principal, may designate one or more licensees to act exclusively as the agent for the seller/lessor and others to act exclusively on behalf of the buyer/lessee. Licensees who are not designated by the broker of record would have no agency relationship with either party in the transaction.

In situations where designated licensees in the same company represent both parties to the transaction designated agents would be subject to the duties imposed on all licensees generally, as well as the additional duties enumerated in new subsection (f). In this situation, the broker of record would assume the status of a dual agent and would be subject to the duties of licensees generally, the duties of dual agents and the additional duties specified in new subsection (g).

The Commission believes that it would be in the best interest of both the licensee and the consumer or principal, if designation were to take place at the time the principal enters into a written agreement. Nonetheless, the Commission acknowledges that there may be circumstances (i.e., death, vacation, change of employment) where up-front designation may be impossible. In such instances, not only would the broker of record be required to use reasonable care to ensure that confidential information is not disclosed, but new subsection (b) would require the broker of record to obtain the principal's written consent for the newly designated licensee as well as the principal's agreement to renunciate any previous agency relationship.

The Commission also believes that in order to ensure that confidential information would not be revealed, broker of records who permit designated agency in their offices, must develop clear company policy addressing such issues.

New Section 316 tracks the language of Section 606.6 of the Act. Unlike buyer's agency, seller's agency and dual agency, the relationships between transaction licensees and consumers is not an agency relationship. Transaction licensees do not act as an agent or advocate for the consumer. As such, transaction licensees do not owe consumers the general duty of confidentiality. Transaction licensees would only owe a limited duty of confidentiality for the information specified in subsection (b).

Section 331(a), relating to written agreements generally, would be amended to track the mandatory provisions listed in Section 608.1. New subsection (b) would clarify that the Consumer Notice may be incorporated by reference in the written agreement. The Commission believes that since some of the required information will be explained to consumers in detail at the initial interview, repetition would not be necessary.

Section 332(d), relating to exclusive listing agreements, would be deleted. The Commission agrees with the pre-drafting suggestion of the Pennsylvania Association of Realtors that since the Commission's regulations do not provide sample agreements for all real estate transactions, this sample is unnecessary.

Section 333, relating to agreements of sales, would be amended to track provisions of Section 608.2 and clarify the applicability of this provision to sales of cemetery lots, mausoleums or cremation spaces or openings.

Section 336(b) and (c) relating to the Disclosure Summary, would be deleted as similar provisions are contained in Section 284.

#### E. Compliance with Executive Order 1996-1

In compliance with Executive Order 1996-1, the Commission extended an invitation to the following boards, associations and interested licensees and educators to preliminarily review and comment on the Commission's draft regulatory proposal: Pennsylvania Association of Realtors; Realtors Educational Institute; Institute of Real Estate Studies; Polley Associates; Pennsylvania Cemetery & Funeral Association; Pennsylvania Bar Association; Allegheny Highland Association; Greater Allegheny-Kiski Area Board; Allegheny Valley Board; Beaver County Association; Bradford-Sullivan County Association; Bucks County Board; Butler County Association; Cambria-Somerset Association; Carbon County Association; Carlisle Association; Central Montgomery County Association; Central Susquehanna Valley Board; Central Westmoreland Board; Centre County Association; Chester County Association; Clearfield-Jefferson Association; Delaware Valley Realtors Association; East Montgomery County Association; Elk-Cameron County Board; Greater Erie Board; Fayette County Board; Franklin County Association;



Greenville Area Board; Hanover-Adams County Association; Greater Harrisburg Association; Greater Hazleton Association; Huntingdon County Board; Indiana County Board; Lancaster County Association; Lawrence County Board; Lebanon County Association; Lehigh Valley Association; McKean County Association; Greater Meadville Board; Greater Mercer County Board; Mifflin-Juniata County Board; Mon Yough Association; Monongahela Valley Board; Greater Philadelphia Association; North Central Penn Board; Pike/Wayne Association; Pocono Mountains Association; Reading-Berks Association; Realtors Association of Metropolitan Pittsburgh; Schuylkill County Board; Greater Scranton Association; Tri-State Commercial and Industrial Association; Warren County Board; Washington-Greene Association; West Branch Valley Association; Westmoreland West Association; Greater Wilkes-Barre Association; York County Association; The Pennsylvania Federation of Housing Counselors and Agencies; and The Real Estate Consumer Council.

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

F. Fiscal Impact and Paperwork Requirements

The proposed amendments should have no fiscal impact or additional paperwork requirement on the Commonwealth. This regulation would have a fiscal impact and additional paperwork requirement on the regulated community in that licensees would incur the cost of amending written agreements and sales contracts.

The proposed amendments should not necessitate any legal, accounting, or reporting requirements on the regulated community.

G. Sunset Date

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

H. Regulatory Review

Pursuant to Section 5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19), as amended, 71 P.S. §745.5(a), the agency submitted a copy of this proposed regulation on January 20, 2000 to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. In addition

to submitting the regulation, the agency has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

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

I. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Judith Pachter Schulder, Counsel, State Real Estate Commission, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking. Please reference No. 16A-568 (Agency), when submitting comments.

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS  
PART I. DEPARTMENT OF STATE  
SUBPART A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
CHAPTER 35. STATE REAL ESTATE COMMISSION

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 licensees 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:

- ...  
(iii) Manages [or appraises] real estate.  
...  
(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.

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

...  
Designated agent--One or more licensees designated by the 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 the broker 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.

...  
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 of record to do one or more of the following:

- ...  
(vii) Assist a broker in managing [or appraising] property.  
(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.

...  
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 in connection with a real estate transaction shall ensure that] All sale or lease contracts, commitments and agreements between a broker of record, or a licensee employed by the broker of record, and a principal or a consumer who is required to pay a fee, commission or other valuable consideration shall [regarding the 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 section 35.331 (relating to written agreements generally).

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

(i) [A licensee who enters into an oral] Open listing agreements [shall provide] may be oral if the seller or landlord is provided with a written memorandum

stating the terms of the agreement.

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

(iii) 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.

\* \* \*

**§35.283. Conflict 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 title transfer, deed or document 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 service.

(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.**

(a) 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 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 section 33.336 (relating to disclosure summary) to all consumers at the initial interview.

(b) 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 entire disclosure to the consumer and shall retain the signed Acknowledgment for their records for six months, unless the consumer and the broker have entered into a business relationship. In such case the records shall be retained under §35.286 (relating to retention and production of records).

(c) If a consumer refuses to sign the acknowledgment, a licensee shall note the refusal on the acknowledgment and retain it as specified in subsection (c).]

**§35.287. Supervised [appraisal and] property management assistance by salespersons.**

[(a) A salesperson may assist in the preparation of an appraisal by the employing broker or an associate broker, if the employing broker or associate broker:

(1) Directly supervises and controls the salesperson's work, assuming total responsibility for the contents of the appraisal documents and value conclusions. The salesperson may not arrive at an independent determination of value.

(2) Personally makes a physical inspection of the interior and exterior of the subject property.

(3) Signs the appraisal document as "appraiser" and has the salesperson sign as "assistant to appraiser."

(b)] A salesperson may assist in the 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 landlord.

**§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, 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 Disclosure Act, 68 P.S. §1021-1036;
- (5) account for escrow and deposits funds as required by section 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) at the initial interview;
- (7) disclose, in a timely manner, all conflicts of interest and financial interests as required in §35.283 (relating to conflicts 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 of record may not extend or delegate the broker of record'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, 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. 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 records 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 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. Buyer's Agency.**

(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 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 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. Dual Agency.**

(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, making a continuous and good faith effort to find a buyer/tenant for the property and a property for the buyer/tenant.

(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. Designated Agency.**

(a) A broker of record, 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 take place at the time that the parties enter into a written agreement, however, licensees may be designated after the initial designation or after a written agreement has been entered into, provided the broker of record:

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

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

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

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

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

(f) Each licensee employed by the same broker of record who is a designated agent in the same transaction, owe 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 in that principal's best interest.

(2) making 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.

(4) disclosure to 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.

(5) Confirm that the broker of record is a dual agent in the transaction.

(g) In the transaction specified in subsection (f), the employing broker of record, 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 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. 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 licensee and a principal, or between a licensee and a consumer whereby the consumer is or may be committed to pay a fee, commission or other valuable consideration shall [state that] contain the following information printed conspicuously:

(1) 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)2] Payments of money received by the broker of record 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 of record in an escrow account pending consummation of the sale or a prior termination thereof.

[(4)3] 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 of record, or a licensee employed by the broker of record, and the seller/landlord or buyer/tenant.

(4) A description of the services to be provided and the fees to be charged.

(5) The possibility that the broker of record or any licensee employed by the broker of record 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 of record 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.

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

(8) In an agreement between a broker of record and a buyer/tenant, an explanation that the broker of record may be compensated based upon

a percentage of the purchase price, the broker of record'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 of record to act as a dual agent.

(b) To the extent that any of the information required in subsection (b) is set forth in the disclosure summary in Section 35.336 (relating to Disclosure Summary), 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 Section 33.331 (relating to written agreements generally):

\*\*\*

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

\*\*\*

**§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 of record, or a licensee employed by the broker of record 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.**

[(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.

[(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. 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

(717) 783-3658

116 PINE STREET  
P. O. BOX 2649  
HARRISBURG, PA  
17105-2649

January 20, 2000

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

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

Dear Chairman McGinley:

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

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 cursive script that reads "Joseph Tarantino, Jr.".

Joseph Tarantino, Jr., Chairperson  
State Real Estate Commission

JT:JPS:apm  
Enclosures



c: Steven V. Turner, Chief Counsel  
Department of State  
Dorothy Childress, Commissioner  
Bureau of Professional and Occupational Affairs  
Joyce McKeever, Deputy Chief Counsel  
Department of State  
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**

**RECEIVED**

2000 JAN 20 PM 12:41

INDEPENDENT REGULATORY  
REVIEW COMMISSION

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

**TYPE OF REGULATION**

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a. With Revisions
  - b. Without Revisions

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
1/20/00	<i>Angela A...</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
	<i>Tammy Weaver 1/20/00</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
1/20/00	<i>St. Helens</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
	<i>...</i>	LEGISLATIVE REFERENCE BUREAU

January 18, 2000