

From: James Skindzier <jskinzer@pgh.net>
To: Judy Schulder <JSCHULDE@dos.state.pa.us>
Date: Thursday, March 02, 2000 5:35 PM
Subject: comments on PA BULLETIN

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REGULATORY
REVIEW COMMISSION

Dear Judy,

Attached please find my comments and critique of the proposed regulatory language published in the Pennsylvania Bulletin on February 4, 2000. I believe the reference number is 16A-568. The PA Bulletin Doc number is 00-216.

I'm not sure how many responses you have received regarding this issue, but I know that I must register strong opposition to adoption of the rules as proposed. I have grave concerns about the regulatory language proposed as well as the lack of substantive information for licensees regarding issues significant to both them and consumers.

I sincerely hope the Real Estate Commission will consider revisiting the proposed regulations after a review of my comments. If you or any representatives of the Commission would like to discuss this matter in more detail please feel free to contact me. Thank you for the opportunity to provide input.

Sincerely
Jim Skindzier



Original: 2084

Cocodrilli

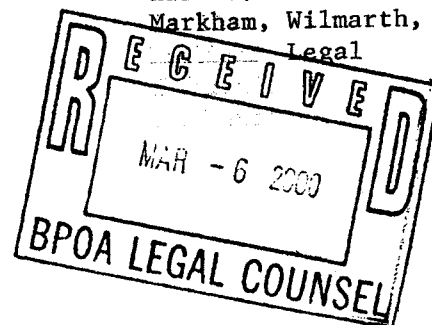
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PA BULLETIN COMMENTS – JIM SKINDZIER (412) 937-1866

The first, and I believe most important point that needs to be addressed is the potential chaos and confusion that will be caused by misuse of the terms “broker” and “broker of record” throughout the proposed regulatory language. With all due respect to the Commission, I believe their understanding of the term broker as indicated on page 642 of the Pennsylvania Bulletin is clearly incorrect and potentially misleading to both consumers and licensees. The term “Broker” does not refer to “...the broker responsible for the real estate transactions and the supervision of the licensees.”

The Real Estate Licensing and Registration Act is actually quite clear regarding proper terminology and definitions and I believe it is beyond the purview of the Commission to attempt to modify statutory definitions or references. Furthermore, current regulatory language also addresses the difference between “Broker” and “Broker of Record”. Neither statutory nor regulatory language concur with the interpretation of the terms suggested by the Commission in the proposed regulatory language.

RELRA Section 201 clearly defines BROKER as “an individual OR ENTITY that for another and for a fee, commission or other valuable consideration does one or more of the following.” Although there is no definition of BROKER OF RECORD in section 201, one can be clearly deduced by reference to section 513. Section 513 (Corporations, partnerships and associations) clearly indicates that the term broker of record is limited in its application to an individual, not the entity licensed as a broker.

Regulatory language in section 35.201 of Chapter 35, Title 49 of the Pennsylvania Code (printing 29 Pa. B. 4414, through August 14, 1999) provides further clarification. The term BROKER is defined in the same terms as RELRA section 201 and makes it abundantly clear that the term BROKER means “an individual OR ENTITY...” The rules also offer a definition of the term BROKER OF RECORD, and the definition makes it clear that the broker of record is “an individual broker.”

In the explanatory comments that accompany the proposed regulatory language (page 642) the statement appears that “the Commission is cognizant that many real estate companies employ many brokers, but only one serves as the broker of record. “I believe that this statement is the cause of much of the problem. A real estate company (corporation, association or partnership) IS the broker. The entity is issued a broker’s license and it is the entity that conducts business with the public. When a consumer enters into a listing contract or buyer agency contract the agreement is between the consumer and the BROKER (the entity-corporation, partnership, or association). It is not between the consumer and the BROKER OF RECORD. RELRA and the rules and regulations provide for the existence of an “ASSOCIATE BROKER”. The term is clearly defined as “an individual broker who is employed by another broker.” Once an individual broker becomes employed by another broker, he or she is no longer considered a broker, but rather an associate broker.

The flaw in the Commission’s position is that the real estate company “employs many brokers.” The facts are:

- A. The real estate company IS THE BROKER
- B. The BROKER, if an entity such as a corporation, partnership or association must identify a properly qualified individual to act as the BROKER OF RECORD.

- C. The BROKER (the entity) may employ other properly qualified individuals (those qualified to be issued a broker's license) who will become ASSOCIATE BROKERS. An associate broker is not "A BROKER" AS DEFINED IN EITHER RELRA OR CURRENT RULES AND REGULATIONS. As such, an associate broker may not hold himself or herself out as a broker. To do so would constitute possible a violation of RELRA sections 604(A) 1, 3, 4, 20 and 21.

To conclude this section of my comments, I would suggest that the proposed regulatory language be brought into conformance with RELRA and current rules and regulations. Whenever "BROKER OF RECORD" is used in the proposed language to refer to the licensed broker authorized by the state to conduct business with the public the term should be changed to "BROKER". Regulatory language should also be developed to clarify the role of "ASSOCIATE BROKERS" and it should be made clear that an associate broker is not a "broker" as defined in the Act or regulatory language.

One other comment regarding section 35.201 is minor but noteworthy. Several years ago the term "limited broker" was eliminated from regulatory language in favor of the term "cemetery broker." The definition of "Broker of Record" in the current printing of Chapter 35, Title 49 dated August 14, 1999 still includes language referring to "limited broker". This should be corrected.

On page 642, the comment regarding proposed regulatory language amending 35.287 states that the amendment conforms the regulation with the definition of broker of record in section 201 of the act. However, there is no definition of broker of record in section 201 of RELRA.

Regarding the actual proposed regulatory language beginning on page 644 of the Pennsylvania Bulletin I would like to offer the following comments.

In defining "Agency Relationship", "Listing Broker", "Principal" and "Salesperson" the term broker of record is incorrectly used. Please refer to the previous comments.

The definition of subagent as written is misleading. A more general definition of the term would be appropriate. See John Reilly's "The Language of Real Estate" or any good legal dictionary for a better definition. The proposed definition assumes that subagency exists only when a cooperating broker is cooperating with a listing broker in selling property. Although, this might be the normal custom or tradition in residential real estate brokerage, it is not an accurate portrayal of what a subagency relationship actually is.

In section 35.281, the proposed language is problematic. As written it addresses "sale or lease contracts.... Between a broker..." "Typically the real estate licensee negotiates sale or lease contracts but is not a party to them. (Unless they are a principal in the transaction). The existing language in 35.281 (a) as currently written is more accurate in addressing the licensee's role when acting in a representative capacity.

If the intent is to incorporate a reference to new section 35.331 (a) that is fine, but make it clear that there is a difference between agreements between brokers and consumers which may obligate consumers to pay fees etc. and agreements between consumers and other consumers which are negotiated or constructed by licensees acting in a representative capacity.

Proposed 35.283(d) refers to a licensee "who is engaged in the business of..." What if the licensee maintains that they are not "engaged in the business of financing the purchase" but they are collecting a fee from a mortgage lender (like

QUICKMORTGAGELOAN.COM) for providing a service to a consumer? How will the Commission determine if a licensee is “engaged in the business of ...” as opposed to providing an ancillary service to their brokerage operation? Finally the word “service” at the end of 35.283(d) should be “services”.

Proposed 35.284 actually should be entitled “Disclosures to Consumers” – since they are to be made to all consumers without regard to whether or not an agreement is entered into. Also, this seems to be the place to develop a clear reference for both the term “initial interview” and “substantive discussion”. Although “initial interview” is not too difficult, “substantive discussion” is. Most of what has been published recently concerning this subject (primarily by PAR) has been unintentionally confusing to licensees. The Commission should write clear regulatory language addressing the issue of information. The language should focus on the difference between general information and specific information relevant to a specific transaction or relationship, as well as classifying information according to three standards – that which is confidential, that which is private in nature, and that which is material.

The licensee population desperately needs the Commission’s help regarding flow of information. Some licensees believe (and have been taught) that all and any information flowing from the consumer to the licensee constitutes “substantive discussion.” All information and discussion is not substantive and licensees need clarification on the parameters within which they must operate. It seems that 35.284 is the place to develop this regulatory language.

Regarding 35.311(c) the terminology “and that other broker” could be rewritten to improve readability. It should state after the language “sale/lease of consumers property” the term “a cooperating broker” and conclude “does not create an agency relationship between the consumer and the cooperating broker.”

Shouldn’t 35.312 refer all the fiduciary duties owed to a principal by an agent rather than simply referring to loyalty and confidentiality? If all the regulatory language is going to do is restate the statutory language, do we really need it? RELRA section 404 states that the Commission “shall have the power to promulgate rules or regulations in order to administer or effectuate the purposes of this Act” I take this to mean that the rules should provide clarification, guidance, interpretation and assistance to licensees who are governed by RELRA. This comment pertains to sections 35.312 thru 35.316..

In 35.313 (c) reference should be made to the fact that the buyer’s agent may be paid by the seller/landlord or by the agent of the seller landlord.

Section 35.314 should fully develop the concepts of “full disclosure” and “informed consent” These are the cornerstones necessary to the practice of legal dual agency representation. Case law has provided clarification of these terms and the understanding should be presented here. 35.314(a) simply references “consent in writing.” This is an unacceptable statement (ask Edina Realty Company attorneys about “consent” as opposed to “fully informed consent”). I would suggest that the proposed regulatory language could put licensees at risk for legal liability in lawsuits alleging that the dual agency was not entered into with fully informed consent after full disclosure.

Section 35.315(a) by using the terminology “in the same transaction” seems to limit the practice of designated agency to an in house transaction whereby a seller client and buyer client are both represented by the broker. RELRA section 606.5(a)(1) does not define designated agency in this way. Statutory language seems to imply the designated agency can be selected by a consumer for both in house and cooperating broker transactions.

Sections 35.315 (c) and (G) should be included with material relating to “Offices” in sections 35.241 through 35.246. Why not add 35.247 regarding company and office policies regarding representation, especially when a company practices designated agency.

Under 35.315(F) I assume it was a mere oversight that there is no (3) relating to additional duties of designated agents.

In 35.316 (I), the statement is made about the consumer not providing the licensee with “confidential information”. Who determines what is confidential? My earlier comments regarding section 35.284 apply here. Licensees need clarification as to what information would be considered confidential, and what type of information from a consumer would be neither private or confidential.

Regarding 35.331 the word “may” should be changed to “must” in the opening paragraph. The word “may” indicates a choice as to whether the information is to be included.

Paragraph (2) regarding money to be held by the broker does not fit in this section. It fits better in 35.333 regarding agreements of sale and is covered by language in the section on “Escrow Requirements” in 35.321 –35.328.

Paragraph (3) refers to “the brokers commission”. Not all brokers charge a commission. The appropriate term (which should be used throughout the rules and regulations) is “the brokers compensation...”

Section 35.331(a) also jumps from(3) to (5). I believe it is just an editorial oversight.

Section 35.331(b) refers to information required in subsection(b). Shouldn't this read “...subsection (A)”?

As a final thought on proposed 35.331, it appears that all reference to the Real Estate Recovery Fund is being eliminated. I would suggest that this information is critical and that the consumer should be made aware of the information in any written agreement. I don't believe the fact that it is included in the consumer notice is sufficient. It should be required language in every agency contract (listing contract or buyer representation agreement) as well as every sales agreement or lease in which a licensee is involved.

Regarding 35.332, while I agree that elimination of an archaic sample document is a good move I think it would be wise to include specific language regarding buyer agency contracts (which may be open, exclusive agency or exclusive right to buy contracts.) The language in 35.332 focuses only on listing agreements with sellers and includes both inclusions and exclusions. Nowhere in the regulatory language is there specific guidance regarding inclusions or exclusions when licensees enter into buyer representation agreements. Since buyer agency is the fastest growing facet of the business, this omission appears to be a glaring oversight. Whether by expanding 35.332 and renaming it, or by creating a new subsection, I think regulatory language must be developed to address this issue.

Regarding 35.333, I believe 35.333(b)(6) should be modified to include disclosure not only of the nature and extent of assistance but also clear disclosure of any fees (referral, origination or otherwise) to be received for such assistance.

Regarding current 35.334 I would suggest a review of the sample forms for current information. For example, on the statement of estimated costs to seller the term “Federal Documentary Stamps” still appears.

Wouldn't it make sense to simply entitle section 35.336 "Consumer Notice" rather than "Disclosure Summary," since this is all that is intended to be included in this section?

Regarding proposed 35.337 regarding a Comparative Market Analysis, shouldn't language regarding compensation be included. The most recent Commission newsletter addressed this issue of licensee compensation. It would seem that a section (c) could be developed around language already provided to licensees in the newsletter. I think it would be helpful.

PROPOSED RULEMAKING

641

This notice will be by regular mail to the address indicated by the applicant on the grant application form.

§ 138h.10. Grant agreement.

(a) *General.* After the State Board approves a grant application, and as a precondition to the Department's release of grant funds to a successful applicant, the Department and the applicant shall execute a written grant agreement which describes the terms and conditions subject to which the grant is made. This grant agreement shall contain and conform to the requirements of this chapter and applicable State laws. It shall also contain any special terms and conditions required by the State Board and the Secretary.

(b) *Extension of project completion date.* Although the project completion date set forth in the grant agreement may be extended by mutual written agreement of the Department and the grant recipient, the project completion date will not be extended more than 6 months.

§ 138h.12. Grant cancellation.

(b) *Failure to [establish a] obtain State Board approval of a county program.* If, within 2 calendar years of the date of the first grant agreement to that county, the grant recipient does not have a county program in place, the grant funds provided to the eligible county under this chapter shall be returned to the Department in full as described in § 138h.11(c).

(Pa. B. Doc. No. 00-216. Filed for public inspection February 4, 2000, 9:00 a.m.)

STATE REAL ESTATE COMMISSION

[49 PA. CODE CH. 35]

Agency

The State Real Estate Commission (Commission) proposes to amend Chapter 35 by amending §§ 35.201, 35.281, 35.283, 35.284, 35.287, 35.331—35.333 and 35.336, and adding §§ 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 regulations 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 the act of November 24, 1998 (P.L. 908, No. 112) (Act 112). 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.

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(D) § 455.608(7)	§ 35.313(a) § 35.313(b) § 35.313(c)	Duties of buyer's agents Exception Compensation Status of licensees

PROPOSED RULEMAKING

Statute	Proposed Regulation	Subject Matter
§ 455.606d § 455.606d § 455.606a(f)	§ 35.314(a) § 35.314(b) § 35.314(c)—(d)	Duties of dual agent Exceptions Consent
§ 455.606e(a)(1) § 455.606e(a)(2) § 455.606 § 455.606c(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 § 35.201 (relating to definitions), would be amended to include new definitions for "agency relationship," "buyer agent," "consumer," "designated agent," "dual agent," "listing broker," "principal," "seller's agent," "sub-agent" 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 § 35.281(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 § 35.331 (relating to written agreements generally.) Proposed subsection (b) delineates the exceptions to the general rule set forth in sections 606.1(b)(2)—606.1(b)(4) of the act.

Section 35.283 (relating to conflicts of interest) would be amended by clarifying subsection (d) and adding subsections (e) and (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. When 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 35.284 (relating to preagreement disclosures to consumers), would be amended to delete current subsections (a) and (b) and replace them with the procedural requirements currently found in § 35.336(b)—(d) (relating to disclosure summary). These provisions are being moved so that the procedural requirements are placed in § 35.284 and the substantive requirements are placed in § 35.336. The information required by current subsections (a) and (b) are contained in the substantive provisions in the Consumer Notice in § 35.336.

Section 35.287 (relating to supervised property manage-

deletes 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 section 608.3 of the act, have been removed from a real estate licensee's scope of practice.

New § 35.292(a) (relating to duties of licensees generally), would delineate the 12 duties owed to all consumers of real estate services. New subsections (b)—(d) identify the three areas where licensees are not required to act under section 606.1(h) and (i) of the act.

New § 35.311(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 § 35.312 (relating to seller's agency) and 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 employes 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 § 35.312 is new § 35.313 (relating to buyer's agency). The additional duties delineated in section 606.3 are set forth in subsection (a). New subsections (b) and (c) of the act track the statutory requirement regarding showing competing properties and compensation. Like § 35.312(e), new subsection (d) stems from the requirement that employes of the broker of record bear the same relationship with the consumer as the broker of record unless designation has taken place.

Proposed § 35.314 would address dual agency and tracks the responsibilities mandated by section 606.4 of the act.

New § 35.315 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

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PROPOSED RULEMAKING

643

who are not designated by the broker of record would have no agency relationship with either party in the transaction.

When 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 (that is, death, vacation, change of employment) when up-front designation may be impossible. In these 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 a previous agency relationship.

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

New § 35.316 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 agents or advocates 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 35.331(a) (relating to written agreements generally), would be amended to track the mandatory provisions listed in section 608.1 of the act. 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 35.332(d) (relating to exclusive listing agreements), would be deleted. The Commission agrees with the predrafting 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 35.333 (relating to agreements of sales), would be amended to track provisions of section 608.2 of the act and clarify the applicability of this provision to sales of cemetery lots, mausoleums or cremation spaces or openings.

Section 35.336(b) and (c) (relating to the disclosure summary), would be deleted as similar provisions are contained in § 35.284.

E. Compliance with Executive Order 1996-1

In compliance with Executive Order 1996-1, the Com-

mission 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 and 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 rulemaking 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 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

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 20, 2000, the Commission submitted a copy of this proposal 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 proposal, the Commission has provided IRRC and the Committee with a copy of a detailed regulatory analysis form

PROPOSED RULEMAKING

tive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRRC has objections to any portion of the proposal, it will notify the agency within 10 days after the expiration of the Committees' review period. The 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 regulations, 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.

RITA HALVERSON, Chairperson

Fiscal Note: 16A-568. No fiscal impact; (8) recommends adoption.

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:

(iii) Manages ~~real estate~~ real estate.

(vi) Undertakes to perform a comparative market analysis.

(vii) Attempts to perform one of the actions listed in subparagraphs (i)—~~(v)~~(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. *this is incorrect should say "licensed broker"*

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. *incorrect reference*

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 ~~property~~ 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. *could go the other way*

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) ~~When a licensee acts in a representative capacity in connection with a real estate transaction, the licensee shall document that.~~ All sale or lease contracts, commitments and agreements ~~regarding the transaction that the licensee is engaged in, or that he or she is acting in~~ 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 be ~~documented in writing and contain the information specified in § 35.331 (relating to written agreements generally).~~ in writing and contain the information specified in § 35.331 (relating to written agreements generally).

(b) ~~When a licensee enters into an agreement,~~ The following are exceptions to subsection (a):

(1) Open listing ~~agreements shall provide~~ agreements may be oral if the seller or landlord is provided with a written

PROPOSED RULEMAKING

(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.

§ 35.283. Conflict of interest.

(d) A licensee who is engaged in the business of financing the purchase of real or personal property, 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 a consumer to use any of these service.

(e) If the consumer chooses to use any of the services in subsection (d), the licensee shall provide the consumer with a written disclosure of any financial interest, including a referral fee or commission, that the licensee has in the service. The 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 provide the following information to a prospective client, seller, at the initial interview before the seller enters into a listing agreement:

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

(2) The licensee's commission and the duration of the listing period are negotiable.

(3) The licensee is a Real Estate Broker, and is not a salesperson. The licensee is not a salesperson and is not a salesperson. The licensee is not a salesperson and is not a salesperson. Details should be provided to the consumer by calling the Commission at (412) 400-8850.

(4) The requirement that any agreement or disclosure be in writing shall not apply to the listing contract of the property unless the property is a residential property. The requirement shall not apply to a listing contract for a residential property.

provide the disclosure summary in § 33.338 (relating to disclosure summary) to all consumers at the initial interview.

(b) A licensee shall provide the following information to a prospective buyer at the initial interview before the buyer enters into a purchase agreement:

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

(2) The licensee is a Real Estate Broker, and is not a salesperson. The licensee is not a salesperson and is not a salesperson. Details should be provided to the consumer by calling the Commission at (412) 400-8850.

(3) Provide a copy of the entire disclosure to the consumer and shall retain the signed acknowledgment for his records for 6 months, unless the consumer and the broker have entered into a business relationship. In this 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 (b).

§ 35.287. Supervised property management assistance by salespersons.

(a) A salesperson may assist in the preparation of an agreement by the employing broker, and execute a lease on behalf of the employing broker.

(1) Directly supervise and control the salesperson's work, assuming total responsibility for the contract, the appraisal, the purchase and value conclusion. The salesperson may not execute an independent determination of value.

(2) Personally make a physical inspection of the interior condition of the subject property.

(3) Sign the appraisal, contract and agreement and has the salesperson sign a statement of compliance.

(4) 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).

PROPOSED RULEMAKING

(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 § 35.338 (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.

(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

(Editor's Note: The text in §§ 35.311—35.318 is proposed to be added. It is being printed in regular print to enhance readability.)

§ 35.311. Generally.

(a) A licensee and a consumer may enter into the relationship specified in sections 606.2—606.4 and 606.6 of the act (63 P.S. §§ 455.606b—455.606d and 455.606f).

(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 one or more of the following apply:

- (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.

(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 when 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 under § 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 when 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 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 under § 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 party would

OR THE AGENT OF THE SELLER/LANDLORD

This duty may be modified by agreement

PROPOSED RULEMAKING

poorly written

647

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

(2) Making a continuous and good faith effort to find a buyer/tenant for the property and a property for the buyer/tenant, unless otherwise agreed.

(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.

This limits designated agency in nature

(b) Designation should take place at the time that the parties enter into a written agreement. Licensees may be designated after the initial designation or after a written agreement has been entered into, if the broker of record:

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

(2) Obtains, when 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. *poorly written*

(d) The licensees employed by the broker of record who are not designated may not have an 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 or affiliated licensees, or both, who are employed by the broker of record as the designated agents of the consumer.

(f) Each licensee employed by the same broker of record 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 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 when 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 a 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) Confirmation 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 and § 36.314 (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 shall advise the consumer that the licensee:

(1) Is not acting as an agent or advocate for the consumer and should not be provided with confidential information.

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

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

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

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

REAL ESTATE DOCUMENTS

§ 35.331. ~~(Contract)~~ Written agreements generally.

(a) A ~~(written)~~ written agreement [~~(contract)~~] 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, may ~~(contract)~~ contain the following information, printed conspicuously:

(2) ~~(Details about the Fund may be obtained by calling the Commission at (412) 786-6666)~~

(3) ~~(*)~~ 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 ~~(duration)~~ broker 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.

(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.

3??

PROPOSED RULEMAKING

(7) In an agreement between a broker of record and a seller/landlord, the broker 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 § 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 § 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 sale.

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

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

(d) [redacted] 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.

[redacted] The Disclosure Summary shall be entitled "Consumer Notices" and shall be in the following format available from the Commission office upon request by phone, fax or internet.

[redacted] Licensees shall provide the disclosure summary to all consumers at their initial interview.

[redacted] Licensees shall provide a copy of the disclosure summary to the consumer and obtain the signed acknowledgment for their records and a copy of the disclosure summary and the broker's investment in a business relationship with the consumer shall be maintained in the broker's records.

[redacted] Licensees shall provide a copy of the disclosure summary to the consumer and obtain the signed acknowledgment for their records and a copy of the disclosure summary shall be maintained in the broker's records.

§ 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 (63 P.S. §§ 457.1—457.19) 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.

(P.A.B. Doc. No. 00-216. Filed for public inspection February 4, 2000, 9:00 a.m.)

March 2000

Real Estate Outlook

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 REVIEW COMMISSION

EXISTING HOME SALES

Original: 2084
 Coccodrilli

TOTAL SALES: SINGLE-FAMILY, APARTMENT CONDOS AND CO-OPS

es: Harris
 de Bien
 Markham
 Wilmarth
 Sandusky
 Wyattte

(Units in Thousands)

	1997	1998	1999	1998	1999			
				IV	I	II	III	IV
	(Seasonally Adjusted Annual Rate)							
United States	4,915	5,589	*5,919	5,783	5,889	6,028	*5,961	*5,674
Northeast	665	737	*740	727	778	780	*683	*656
Midwest	1,077	1,223	1,247	1,260	1,243	1,275	1,259	1,203
South	1,945	2,253	*2,460	2,373	2,455	2,502	*2,492	2,357
West	1,228	1,376	1,471	1,422	1,412	1,471	1,528	1,459
Alabama	78.0	84.0	87.0	91.7	88.6	89.6	87.5	81.8
Alaska	13.5	17.1	16.0	22.3	15.6	14.9	18.4	14.3
Arizona	133.1	155.1	170.0	166.0	165.3	174.4	169.5	169.5
Arkansas	46.3	54.9	63.5	61.8	64.2	65.6	60.7	63.9
California	596.2	665.4	708.7	682.8	672.9	707.5	747.1	697.6
Colorado	117.2	130.6	136.2	131.0	137.9	137.2	137.2	132.5
Connecticut	43.8	49.9	51.0	49.3	51.4	54.5	49.3	49.3
Delaware	8.6	8.6	N/A	8.0	8.4	8.6	N/A	N/A
District of Columbia	8.7	13.0	13.8	13.8	15.3	12.9	13.5	14.0
Florida	408.4	454.4	509.8	488.9	494.7	511.9	523.4	506.2
Georgia	111.8	128.1	149.2	134.4	139.7	129.2	173.1	149.4
Hawaii	11.5	14.7	17.8	16.3	16.5	18.7	17.5	18.3
Idaho	28.0	29.7	28.6	27.8	29.6	28.7	29.4	27.1
Illinois	200.1	235.3	243.9	243.9	240.7	245.6	250.5	237.4
Indiana	112.7	125.9	132.0	127.2	125.5	133.9	138.1	128.0
Iowa	48.0	56.5	57.8	58.6	56.4	61.3	57.3	55.9
Kansas	57.0	66.8	67.9	70.3	67.8	69.5	66.5	67.8
Kentucky	64.3	71.8	77.8	75.2	96.4	78.0	74.3	66.0
Louisiana	82.4	91.7	88.8	102.0	88.1	89.8	90.3	86.5
Maine	28.9	32.9	N/A	32.8	40.2	33.8	N/A	N/A
Maryland	73.3	92.4	103.1	100.0	101.6	103.1	107.0	100.0
Massachusetts	90.6	100.0	97.7	97.5	106.2	98.8	91.4	97.5
Michigan	143.6	161.9	160.4	161.5	152.9	164.4	167.2	151.5
Minnesota	93.9	108.5	106.5	107.9	118.5	107.2	105.2	99.9
Mississippi	43.5	48.2	51.1	50.2	50.8	52.0	51.1	50.8
Missouri	107.0	116.0	122.9	121.6	123.1	126.9	120.1	120.9
Montana	16.8	18.3	19.1	19.6	19.2	18.4	18.6	20.4
Nebraska	27.5	33.3	34.3	36.5	36.0	36.5	32.7	32.4
Nevada	31.4	38.4	47.3	41.6	45.8	45.8	49.1	48.6
New Hampshire	35.8	40.5	N/A	38.8	42.0	46.4	N/A	34.6
New Jersey	115.7	129.9	141.9	134.3	148.7	151.8	143.0	125.1
New Mexico	24.9	27.1	29.8	27.2	31.8	31.5	28.1	28.5
New York	161.0	183.1	179.5	175.8	180.2	178.8	187.5	170.0
North Carolina	183.8	211.6	228.6	222.1	231.4	242.6	226.7	211.8
North Dakota	9.4	11.4	10.3	11.1	9.7	10.9	10.4	9.7
Ohio	176.2	191.4	194.9	203.1	196.9	198.5	190.6	193.8
Oklahoma	84.0	95.5	100.1	95.2	98.1	104.7	99.9	97.0
Oregon	60.8	63.1	62.4	63.8	63.3	66.4	62.3	57.7
Pennsylvania	167.6	175.4	177.9	172.8	183.1	186.1	183.1	159.5
Rhode Island	15.8	19.0	20.7	19.6	21.3	21.1	21.0	19.5
South Carolina	84.6	98.7	104.3	103.8	104.8	101.4	110.1	99.9
South Dakota	13.5	14.3	15.4	15.0	15.8	15.5	15.9	14.3
Tennessee	121.8	136.2	149.0	145.8	143.0	152.8	150.0	148.6
Texas	424.0	512.1	551.9	511.4	559.7	579.6	542.6	522.7
Utah	42.7	44.9	46.5	46.4	44.8	46.1	47.7	46.9
Vermont	6.4	6.8	N/A	6.5	5.0	8.2	7.2	N/A
Virginia	103.6	133.4	146.9	139.1	145.1	151.2	153.2	135.1
Washington	140.5	159.2	175.7	164.8	157.6	167.4	189.7	185.2
West Virginia	27.2	29.3	26.7	29.9	25.0	29.1	28.7	22.8
Wisconsin	87.5	101.1	100.8	103.7	99.9	104.9	104.3	91.0
Wyoming	11.3	12.0	13.1	12.7	12.0	14.1	13.4	12.5

* Final numbers subject to revision due to incomplete state data.
 N/A Not Available p Preliminary r Revised



Pennsylvania Association of REALTORS®

The Voice for Real Estate® in Pennsylvania

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DERENDA UPDEGRAVE
DIRECTOR, GOVERNMENT AFFAIRS

e-mail: derenda@epk.net
beeper: 886-3361

To:

Chris Marlcum

From:

Message:

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Date:

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REGULATORY
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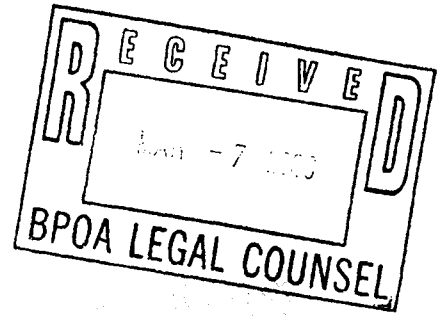
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Fax rec'd 3/6/00



Via Fax and U.S. Mail

March 6, 2000

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

RE: Regulation 16A-568 (Agency)

Dear Ms. Schulder:

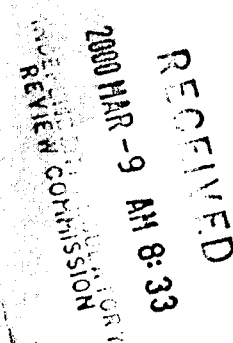
On behalf of the 26,000 members of the Pennsylvania Association of REALTORS® (PAR), we thank you for providing the opportunity to comment on proposed regulations implementing Act 112 of 1998 published in the February 5, 2000 issue of *The Pennsylvania Bulletin*. PAR trusts the Commission will find our comments constructive.

Act 112 of 1998 was signed into law on November 25, 1998, not November 24, 1998.

Proposed Section 35.283(d) the word "service" at the end of the paragraph should read "services."

Proposed Section 35.283(e) requires the licensee to provide written disclosure of financial interest when the licensee advises the consumer that an ancillary service is available from the licensee or broker. These ancillary services include deed preparation, which would require the disclosure of this financial interest. Licensees who continue to draft deeds for their sellers will have to provide this disclosure. Nothing in Act 112 specifically states that this form is to be used when a licensee provides services for deed preparation. PAR does not believe Act 112 requires disclosure when the broker is drafting the deed, although the proposed regulations require such disclosure. PAR believes this disclosure is an unnecessary layer of documentation not required by law.

Proposed Section 35.284 provides that licensees give pre-agreement disclosures to all consumers at the initial interview. Licensees need clarification as to what is meant by "all consumers." Commercial practitioners have questioned who may sign the Consumer



Notice in cases where the commercial licensee is working with a representative of the company seeking to purchase or sell. When the licensee deals with another representative of the same company via telephone, must that licensee provide an additional Consumer Notice? Additionally, when a licensee provides one spouse with a Consumer Notice, does that satisfy the licensee's obligation to both consumers? Another question raised by licensees is as follows: The property is listed through a designated seller's agent. Must each designated buyer's agent, from the same office, who takes a buyer to the property and meets the seller, give the seller the "Consumer Notice?" In the absence of any clear instruction in the proposed regulations, these issues will be resolved on a case by case basis by hearing examiners.

Proposed Section 35.287(b) address salespersons assisting in the management of real estate. To better reflect realities of real estate office practices we recommend striking "employing" and after "broker" add "controlled by the broker or associate broker charged with the responsibility of directing and supervising the office." The rationale is to have the regulation be consistent with Section 601(b) of the Act where it requires each office to be under supervision of broker or associate broker. The "office manager" would clearly be the appropriate person to supervise as required by Section 601(b). The "employing broker" may be far removed and may not have the ability to supervise.

Proposed Sections 35.312(e) and 35.313(d) implement the requirement that all of the licensees take on the same relationship to the consumer as the broker, except when designated. These subsections provide that the licensees take the same relationship as the broker upon the broker entering into an agency relationship. Yet later in these subsections, there is an exception when "thereafter" (after the broker has entered into an agency relationship) an agent is specifically designated to represent the client. PAR proposes the following language to clarify the intent of Act 112:

"If the broker has entered into an agency agreement with seller/landlord, each licensee employed by the broker of record will act in the capacity of the seller's agent unless a licensee has been named, or is thereafter named, as a designated agent under 35.315 (relating to designated agency)."

Proposed Section 35.312(e) should be clarified to indicate the licensee's designation is that of a seller agent.

Proposed Section 35.313(d) should be clarified to indicate that the licensee's designation is that of a buyer agent.

Proposed Section 35.315(b)(2) the word "renunciate" should be "renounce."

Proposed Section 35.315(d) provides that non-designated licensees may not have an agency relationship with either party. Situations do exist where a non-designated agent should be permitted to represent the seller. For example, a buyer comes to an open house hosted by a non-designated licensee (that licensee is hosting the open house but is not acting as an agent for the seller and is there to provide information), views the home and

makes an offer. The hosting agent could be a buyer's agent or transaction licensee, but should the buyer not accept these relationships, in what capacity does the agent hosting the open house work with the buyer? Since the licensee is not designated, according to 35.315(d), he/she could not work on behalf of the seller. This prohibition does not make sense considering that the agent hosting the open house has the ability to act as a designated buyer's agent and therefore work "against" the seller, but could not work "for" the seller. Keep in mind that designation was designed to limit the occurrence of dual agency. In the example we have noted, the buyer is unrepresented and there is no dual agency nor danger in allowing the selling agent to serve as a seller's agent, even though he/she has not been designated. This is particularly so if the seller has given permission as is covered in PAR's Listing Agreement:

"If property is introduced to the buyer by a licensee in the company who is not representing the buyer, than that licensee is authorized to work on behalf of seller."

PAR believes that if the consumer grants permission, then the relationship is one that is appropriate and should be permitted. There is nothing in the Act that would prohibit the non-designated agent from working on behalf of a party if that party gives permission.

Proposed Section 35.331(a)(5) deals with agency agreements and fee agreements that are signed early in the relationship. This section requires the licensee to indicate whether the broker may provide services to the other party to the transaction and "the fee to be charged" to the other party. The other party is probably unknown at this point and the fee to be charged, if any, is not known. That is why Act 608(4) only requires the broker to indicate "whether a broker may accept a fee for those services" from the other party. We believe this regulation should follow Section 608(4) of the Act.

Proposed Section 35.331(a)(6) requires the licensee to provide, in an agency agreement, a description of the licensee's conflicts of interest and "a method" whereby the licensee will disclose further conflicts. PAR is unsure of the meaning of this phrase and calls the Commissions attention to Section 608.1(7) of Act 112 that provides:

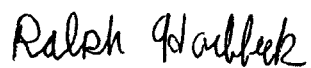
"A statement regarding any possible conflicts of interests and informing the consumer of the licensee's continuing duty to timely disclose any conflicts of interest."

PAR is unsure of the meaning of this phrase and calls the Commission's attention to Section 608.1(7) of Act 112 that requires licensees to include in the agency/fee agreement the following:

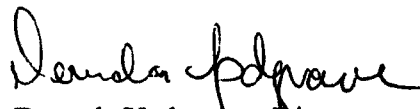
"A statement regarding any possible conflicts of interest and informing the consumer of the licensee's continuing duty to timely disclose any conflicts of interest."

PAR trusts you have found these suggestions helpful. Please contact us if you have any questions or concerns about these comments.

Sincerely,



Ralph Horlbeck, Chair
License Law Subcommittee



Derenda Updegrave, Director
Department of Government Affairs

Cc: Commissioner John McGinley, IRRC