

# Regulatory Analysis Form

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INDEPENDENT LEGISLATIVE  
REVIEW COMMISSION

(1) Agency

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

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

16A-561

IRRC Number: 2351

(3) Short Title

Education

(4) PA Code Cite

49 Pa. Code §§35.201, 35.203,  
35.228, 35.229, 35.252, 35.253,  
35.254, 35.271, 35.272, 35.273,  
35.275, 35.341, 35.342, 35.343,  
35.344, 35.351, 35.351a, 35.352,  
35.353, 35.354, 35.355, 35.356,  
35.357, 35.358, 35.359, 35.360,  
35.361, 35.362, 35.363, 35.381,  
35.382, 35.383, 35.384, 35.385,  
35.386, 35.387, 35.388, 35.389,  
35.390, 35.391 and 35.392.

(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 ☒ X

Final Order Adopting Regulation

Final Order, Proposed Rulemaking Omitted

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

No ☐ X

Yes: By the Attorney General

Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The regulation amends and adds provisions concerning the death or injury of a broker/broker of record and consolidates and revises current provisions for pre-licensure and continuing education.

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

The amendments are proposed under the authority of Sections 402, 404 and 404.1 of the Real Estate Licensing and Registration Act, 63 P.S. §§ 455.402, 455.404 and 455.404a.

## 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.

No.

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

The amendments address the following:

- *Formation requirements.* The current regulations permit only the deceased broker's estate to notify the Commission of the broker's death and require that all pending agreements of sale or lease be terminated if not consummated within 90 days from the death. The amendments would permit a designated attorney to notify the Commission of the broker's death. In addition, it would permit *pending* agreements of sale or lease to consummate after the 90-day wrap-up period. The amendments also address the situation where the broker or broker of record needs to be temporarily replaced due to illness or injury.
- *Educational provider requirements.* The current regulations impose onerous and unnecessary facility, administration and paperwork requirements on educational providers. The amendments delete the requirement that providers send in copies of school transcripts, student enrollment agreements and statements of prerequisites for admission (§ 35.341), floor and airspace requirements (§ 35.352), the point system to evaluate instructors (§ 35.353), documentation that instructors must provide the Commission (§ 35.353(c)) and signage requirements (§ 35.354).

(Continued on Page 9)

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

There are no identifiable public health, safety, environmental or general welfare risks associated with nonregulation.

(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 as a whole (including nonresidents who also hold licenses in the Commonwealth), educational providers and applicants for licensure will benefit from the proposed regulations. Currently, there are approximately 49,000 licensees. There are currently 31 approved real estate schools (excluding colleges and universities). In that continuing education providers are not registered, the Commission does not have a quantifiable number of continuing education providers.

### **Regulatory Analysis Form**

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

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

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

All licensees of the Commission will be required to comply with the continuing education provisions. Currently, there are approximately 49,000 licensees of the Commission. Educational providers of pre-licensure and/or continuing education programs will also have to comply with the education provisions. Currently there are 31 approved real estate schools (excluding colleges and universities). The Commission does not have a quantifiable number of continuing education providers.

**(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 individuals and associations to preliminarily review and comment on the Commission's draft regulatory proposal: Laurel D. McAdams; Jim Stoup, Director of Government Affairs,

(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.**

There should be no cost to the regulated community associated with compliance with the regulation. Current education providers and licensees will continue to pay existing fees for approvals. No new groups have been identified to pay fees.

Savings are not specifically quantifiable, but licensees would save costs associated with less burdensome continuing education requirements. Similarly, educational providers will also save due to the less restrictive facility, administration and paperwork requirements.

## 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.

N/A

(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.

Under the proposal, education providers who provide pre-licensure education, except colleges and universities and other exempt entities, will continue to pay the existing fees for approval of providers and instructors. Those who offer continuing education courses and are not colleges and universities will continue to pay the fees for course approval.

Similarly, licensees will continue to pay existing fees for the Commission's review of biennial renewal applications to assure compliance with the continuing education requirements. This proposal merely changes the processing procedures. Instead of reviewing the continuing education information at the time of biennial renewal, continuing education information will be continually forwarded to the Commission for processing. Therefore, no additional costs or savings to state government should be associated with the 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>	\$	\$	\$	\$	\$	\$
Regulated	N/A	N/A	N/A	N/A	N/A	N/A
Local Government						
State Government						
Total Savings						
<b>COSTS:</b>						
Regulated						
Local Government						
State Government						
Total Costs						
<b>REVENUE LOSSES:</b>						
Regulated						
Local Government						
State Government						
Total Revenue Losses						

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

N/A

### Regulatory Analysis Form

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

Program	FY -3	FY -2	FY -1	Current FY
State Real Estate Commission	\$2,155,891.51	\$2,400,136.82	\$1,873,008.90	\$2,223,000.00

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

There should be no adverse effects and costs associated with compliance with the regulation. Current education providers and licensees will continue to pay existing fees for approvals. No new groups have been identified to pay fees.

Both education providers and licensees will be benefited from the streamlined approval processes for both pre-licensure and continuing education.

**(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 policy statements on any of the issues covered by the amendments would not have the force or effect of law.

**(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.

### 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.**

N/A

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

The educational and continuing education requirements are established in the RELRA. Other than New Jersey, each state requires some form of continuing education. 34 states permit distance education and authorize ARELLO review and approval of the delivery system: Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Georgia, Hawaii, Idaho, Iowa, Kentucky, Louisiana, Maine, Mississippi, Nebraska, New Hampshire, New Mexico, New York North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, and Washington.

The proposed regulation will not put Pennsylvania at a competitive disadvantage as it also allows Pennsylvania licensees to obtain their real estate education through distance education.

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**(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.**

The regulation will amend and update existing regulations of the Commission. The regulation should not affect regulations of other state agencies.

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

In light of the extensive public outreach already conducted in promulgating this proposed regulation and the discussions about the proposed regulation at the Commission's regular meetings which are open to the public, the Commission has not scheduled any public meetings or hearings regarding the regulation.

## **Regulatory Analysis Form**

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

Yes. Prior to renewing any real estate license, the Commission confirms that the licensee has completed the required continuing education. Each licensee is required to submit the continuing education certificates along with the renewal application. This regulation will streamline the renewal process and lessen the burden on both licensees and staff because education providers will provide the Commission with a roster of the licensees who completed the courses following each course.

**(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 is aware of no special needs of any subset or group which should be excepted.

**(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?**

The regulation will be effective upon publication as an Order of Final Rulemaking in the Pennsylvania Bulletin. Compliance will be required as of that date.

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

The rules and regulations committee of the Commission continuously reviews its regulations.



(Continued from No. 11)

- *Distance education.* Current regulations only permit licensees to fulfill their pre-licensure and continuing education requirements via traditional classroom methods. The proposed amendments permit licensees to fulfill their requirements by traditional and distance education methods. Under the regulation, the Association of Real Estate License Law Officials would review and approve the delivery system and the Commission would review and approve the course content (§ 35.384).
- *Consolidation.* Current regulations contain provisions for pre-licensure education in Subchapter F and continuing education in Subchapter H. Because many of the provisions are duplicative, the amendments consolidate similar provisions.
- *Continuing education.* Current regulations require licensees to complete both required and elective courses in order to biennially renew their licenses. The amendment would remove the requirement that licensees take required courses unless the Commission advises licensees prior to the beginning of the renewal period that a required course must be taken. In addition, the amendment would permit licensees to complete their continuing education requirement in 3½-hour increments rather than 7-hour increments.

(Continued from No. 16)

Pennsylvania Association of Realtors; Kenneth L. Goldstein; Angelo D. Guerra; Corrine Shearer, Pennsylvania Association of Realtors; Elaine K. Houser, Realtors Educational Institute; Mimmi R. Lambert, Institute of Real Estate Studies; Kenneth Lusht, Penn State University; Robert M. Rowlands; Barbara G. Samet; James Skindzier; Hugo Weber, Jr., Polley Associates; Cemetery Association of Pennsylvania; Howard W. Hanna, Jr., Howard Hanna Company; Richard M. Heller, Esquire, Vice Chair, Real Property Division, Pennsylvania Bar Association; Timothy E. Davis, Esquire; Melisa Flesher, Pennsylvania Association of Realtors; Mary Busey Harris, CAE, Executive Vice President, Pennsylvania Association of Realtors; Allegheny Highland Association; Wallace Czekalski, President, Greater Allegheny-Kiski Area Board; Gregory W. Smathers, President, Allegheny Valley Board; Ruthanne Belus, President, Beaver County Association; Peter French, President, Bradford-Sullivan County Association; Paul D. Allen, President, Bucks County Board; Carol Jean Mitchell, President, Butler County Association; Valerie Hudson, President, Cambria-Somerset Association; Carol L. Meeker, President, Carbon County Association; Ray L. Wolfe, Jr., President, Carlisle Association; Kathleen A. Eskie, President, Central Montgomery County Association; Linda Woodward, President, Central Susquehanna Valley Board; Cynthia Noll, President, Central Westmoreland Board; Robin M. Confer, President, Centre County Association; David C. Ashe, President, Chester County Association; John Brinich, President, Clearfield-Jefferson Association; Robert D. Graham, President, Delaware Valley Realtors Association; Paul W. Barndt, Jr., President, East Montgomery County Association; Ruth Squires, President, Elk-Cameron County Board; Paul Moore, President, Greater Erie Board; Frederick D. Dobek, President, Fayette County Board; Timothy M. Smith, President, Franklin County Association; Larry F. Franklin, Jr., President, Greenville Area Board; Jale O. Dalton, President, Hanover-Adams County Association; Kathryn E. Lucas, President, Greater Harrisburg Association; Anita M. Reber, President, Greater Hazleton Association; Danny P. Guyer, President, Huntingdon County Board; Steven A. White, President,

Indiana County Board; Gregory J. Berta, President, Lancaster County Association; Darryl Audia, President, Lawrence County Board; Robert L. Deck, President, Lebanon County Association; David R. Fretz, President, Lehigh Valley Association; William A. Lake, President, McKean County Association; Nancy Mangilo, President, Greater Meadville Board; Rocco Puntureri, President, Greater Mercer County Board; Claire Shockey, President, Mifflin-Juniata County Board; Dora Mae Barker, President, Mon Yough Association; Mila Lucero, President, Monongahela Valley Board; William H. Lublin, President, Greater Philadelphia Association; Richard L. Tickner, President, North Central Penn Board; Naomi Daly, President, Pike/Wayne Association; Barbara G. Samet, President, Pocono Mountains Association; Bradley K. Bentz, President, Reading-Berks Association; John Petrack, President, Realtors Association of Metropolitan Pittsburgh; Helen M. Miernicki, President, Schuylkill County Board; J. Conrad Bosley, President, Greater Scranton Association; Frank J. Boyle, President, Tri-State Commercial and Industrial Association; Melinda King, President, Warren County Board; Charles W. Dillie, Jr., President, Washington-Greene Association; William Hodrick, President, West Branch Valley Association; Shirley DeMarchis, President, Westmoreland West Association; Robert Kopec, President, Greater Wilkes-Barre Association; Robert E. Aldinger, Jr., President, York County Association; Henry Cruz, The Pennsylvania Federation of Housing Counselors and Agencies; and, Jerilyn D. Coates, CEO, The Real Estate Consumer Council.

In formulating this proposal, the Commission reviewed and considered all comments and suggestions received from these and other interested parties during the regulatory development process. It also held numerous meetings with the Commission's Voluntary Education Advisory Committee to discuss the amendment to the pre-licensure and continuing education regulations.

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)

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#2357

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

BY: Angela M. Elliott  
(DEPUTY ATTORNEY GENERAL)

JUL 30 2003

DATE OF APPROVAL

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

State Real Estate Commission  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-561

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

BY: Helen M. Billak  
Helen M. Billak

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

John V. Turner

7/2/03

DATE OF APPROVAL

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

TITLE: Chair  
(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  
Education

The State Real Estate Commission (Commission) proposes to amend Chapter 35 to read 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 402, 404, 404.1 and 513 of the Real Estate Licensing and Registration Act (RELRA)(63 P.S. §§455.402, 455.404, 455.404a and 455.513).

C. Purpose and Background

As part of its on-going review of its regulations, the Commission amended Sections 35.201-35.327 of its regulations on November 18, 2000 (30 Pa. B. 5954). This proposed rulemaking will amend and update the remaining regulations (§§35.252-35.392), many of which were last amended in 1989 (19 Pa. B. 781) and 1994 (24 Pa. B. 2904).

The Commission proposes to amend and add Sections 35.252-35.254 to address practice when the broker or broker of record dies or is incapacitated for a significant time due to illness or injury. The Commission also proposes to address licensees' and applicants' desire to complete their pre-licensure and continuing education requirements at a date, place and time most convenient to them. Under current regulations, these education requirements may only be satisfied in a traditional classroom setting. Given the importance of the Internet to real estate practice as well as the trend in other real estate licensing jurisdictions to permit distance education, the Commission proposes liberalizing the delivery system for real estate pre-licensure and continuing education courses (§§35.201 and 35.358).

Lastly, the Commission proposes consolidating duplicative pre-licensure and continuing education provisions and revising outdated, burdensome and unnecessary provider requirements (§§ 35.203, 35.228-35.229, 35.271-35.273, 35.275, 35.341-35.363 and 35.381-35.392).

D. Compliance With Executive Order 1996-1, Regulatory Review and Promulgation

In compliance with Executive Order 1996-1, the Commission extended an invitation to real estate boards, associations, educators and licensees to preliminarily review and comment on the Commission's draft regulatory proposal. In formulating this proposal, the Commission reviewed and considered all

comments and suggestions received from these and other interested parties during the regulatory development process. It also held numerous meetings with the Commission's Voluntary Education Advisory Committee to discuss the amendment of the pre-licensure and continuing education regulations.

E. Description of Proposed Amendments:

1. Death or injury of broker/broker of record

Section 35.252 addresses the termination of a sole proprietorship where the broker dies. Subsection (b) contains the rules which must be followed by an appointed broker during the termination period. Paragraph (3) requires that all agreements of sale or lease pending at the time of the sole proprietor's death consummate within the 90-day period. Currently, pending agreements or leases that do not consummate within this timeframe have to be terminated and transferred to another broker resulting in unreasonable delay for the parties in the transaction. In order to eliminate the delay and unnecessary paperwork, the Commission proposes permitting pending agreements of sale or lease to proceed to consummation beyond the 90-day termination period. Because paragraph (1) prohibits the appointed broker from entering into any new agreements, the Commission believes that there will not be any harm, but rather convenience, to the public by extending the termination period.

New §§ 35.253 and 35.254 address the instances where the broker of record of a corporation or partnership dies or is incapacitated due to illness or injury. Both track the requirements of § 35.252(a) and do not require that the business be terminated. Rather, as in the case of a sole proprietorship, the proposed sections would require a partner or corporate officer to notify the Commission of the broker of record's death, illness or injury and appoint another broker of record, in the case of death, or an interim broker, in the case of illness or injury.

2. Pre-Licensure and Continuing Education

Section 402 of the Real Estate Licensing and Registration Act (RELRA) (63 P.S. § 455.402) grants the Commission authority over real estate schools and the courses taught at the schools. In addition, Section 404.1(c) of the RELRA (63 P.S. § 455.404a(c)) grants the Commission authority over the courses, materials, locations and instructors for continuing education.

A. Consolidation

Currently, the regulations relating to real estate education are divided into two separate subchapters: Subchapter F addresses the pre-licensure requirements and Subchapter H addresses the continuing education requirements. Because many of the provisions are either substantially similar or redundant, the

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Commission proposes to consolidate these provisions into one subchapter and replace all references to real estate "schools" with real estate "education providers." The following chart outlines the consolidation.

Current Section	Subject Matter	Consolidated into
§ 35.387	Administration of curriculum	§ 35.358
§ 35.388	Facilities	§ 35.352
§ 35.389	Instructors	§ 35.353
§ 35.390	Advertising, solicitation and promotion	§§ 35.354-35.355
§ 35.391	Course transcripts and certificates of instruction	§ 35.359
§ 35.392	Inspections	§ 35.362

Provisions specifically applicable only to continuing education remain in Subchapter H.

#### B. Simplify/Liberalize processes

As part of this proposal, the Commission also proposes to streamline the approval process for educational providers, permit applicants for licensure and licensees to complete their educational requirements by traditional and distance education learning programs and liberalize the continuing education requirements for all licensees.

##### (i) Real Estate Education providers.

Section 35.341(5) requires providers to post a surety bond for the greater of \$10,000 or the maximum number of students expected to be enrolled at any one day in the first year of operation times the amount of the tuition. The Commission proposes eliminating the per-student calculation and simply requiring providers to post a \$10,000 bond. The Commission believes that this amount sufficiently protects the student's contractual rights.

Paragraphs (6)(i)(D) and (6)(ii)(B) in the same Section require providers to provide the Commission with complete details about any criminal convictions on their applications for approval. Upon being notified of the conviction, the Commission requests certified copies of the conviction documents. To streamline the process, the Commission proposes requiring applicants to provide the conviction documents at the time of the application. Similarly, current paragraphs (6)(vi), (6)(vii), (6)(viii) and (6)(xi) require providers to attach copies of student enrollment agreements, transcripts, a statement of prerequisites and a photograph

or sketch of the sign with their application. Because the inspector reviews this information again during the inspection prior to licensure, the Commission proposes eliminating this duplicative requirement.

Section 35.342 addresses the approval of the director. The regulations are silent, however, on whether a provider may continue operation where the director dies, withdraws or is terminated. In order to provide guidance to providers on this issue, the Commission proposes adding paragraph (d). This provision would permit an interim director, upon notice to the Commission, to operate for up to 90 days following the death, withdrawal, or termination of the director. The interim director would not be permitted to make changes to the curriculum, testing or facilities. After the 90-days, continued operation is contingent upon approval of a director under subsections (a) or (b).

The Commission also proposes technical amendments to §§ 35.344(b)(1) and 35.344(b)(5). Rather than simply using the term "incompetency" to describe when the Commission may withdraw a director's approval, paragraph (1) would delineate that the conduct must demonstrate bad faith, dishonesty, untrustworthiness or incompetency. Similarly, rather than simply using the terms "involving moral turpitude," paragraph (5) would be modified to parallel the language in Section 604(a)(14) of the RELRA (63 P.S. § 455.604(a)(14)) regarding convictions.

Current §§35.351 and 35.351a address the requirements for a director and assistant director. In proposed form, the Commission seeks to clarify the requirements of a director and eliminate the regulation governing assistant directors. The Commission believes that because the RELRA does not contain any provisions delineating the qualifications or responsibilities for assistant directors, no regulation is necessary. In addition, since the director has the ultimate responsibility for the education provider, the director may decide which responsibilities to delegate to the assistant director.

The Commission also proposes to eliminate unnecessary facility requirements in § 35.352. So long as the location or facility is suitable for classroom space and does not share office, instruction or common space with a real estate franchise, network or organization, the Commission believes that it is unnecessary to regulate the amount of floor or air space mentioned in paragraphs (5) and (6). Similarly, the Commission proposes to remove the requirement in subsection (c) that a lease be in effect when the school is in session as this is a private contractual matter between the school and the landlord.

Current § 35.353 assigns a complicated point system in the selection of instructors. The amendment would eliminate the point system and the dual teaching and experience requirement and reduce the number of years of teaching or practical experience needed from 5 to 3. The Commission believes that the current requirement is confusing, onerous and does not guarantee better

instruction. The Commission is satisfied that an instructor who has an undergraduate, graduate or postgraduate degree or 3 years of practical or teaching experience in the subject matter of the course to be taught is sufficiently qualified.

The Commission also seeks to simplify the documentation that an instructor must provide to the Commission. Current § 35.353(c) requires instructors to submit certified documents from educational institutions and real estate organizations attesting to the applicant's acquisition of diplomas, degrees and industry designations and completion of continuing education programs and courses as well as letters from teaching supervisors certifying the applicant's past satisfactory performance as an instructor. Since these documents are viewed during the educational provider's inspection, the Commission would amend this provision to simply require providers to maintain documentation substantiating education or experience rather than submit them to the Commission.

Current §35.354(b) requires the educational provider to post a sign advising students that recruiting for employment opportunities is prohibited. However, the Commission understands that instruction often occurs in multiple locations. Therefore, the Commission proposes eliminating the sign requirement, and instead, requiring that students be provided with written documentation about this prohibition with the other course materials.

Current § 35.357 sets forth a sample student enrollment agreement. In order to avoid private contractual matters between providers and students and because the agreement is exemplary and not mandatory, the Commission would propose deleting the provision.

(ii) Traditional and Distance Education.

In addition to consolidating the pre-licensure and continuing education requirements mentioned above, the Commission proposes increasing the types of programs that licensees and applicants may complete to meet their educational requirements. Currently, applicants and licensees may only complete these requirements via traditional methods--in a live classroom setting. This proposal would permit applicants and licensees to learn via traditional and distance education learning programs.

Distance education is currently accepted in the majority of jurisdictions in the United States and Canada. In 39 of these jurisdictions, 34 within the United States, course content is reviewed and approved by the jurisdiction while the delivery system is reviewed and approved by the Association of Real Estate License Law Officials (ARELLO).

Like traditional learning programs, distance learning programs fall into two categories: instructor-led learning and independent learning. The distinction between the categories depends upon the amount of interactivity between



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instructors, students/learners and content in the learning process. Instructor-led learning provides significant ongoing interactive feedback from the instructor to the participant during the learning process, while independent learning permits the participant to learn a real estate subject with no contact with the instructor.

To account for the various learning methods, the Commission proposes amending § 35.358 (dealing with the administration of curriculum). Subsection (a)(1) would be amended to clarify that instructor-led learning may not exceed 7½ hours of instruction per day. Subsection (a)(2), which permits home study and correspondence courses in Commission-permitted instances, would be deleted since these courses fall within distance learning. Subsections (a)(3) and (a)(6) would be moved to new Subsection (b), which deals exclusively with pre-licensure requirements.

The Commission also proposes adding new Subsection (a)(4). Like the 39 other jurisdictions that permit distance learning, the new provision would require that the course content comply with the requirements of § 35.384 (dealing with qualifying courses) and that the delivery system be approved by ARELLO or another certifying body with similar approval standards approved by the Commission. Although there are currently no other certifying bodies, in drafting this provision, the Commission wants to ensure that if another acceptable certifying body becomes available the regulations would not have to be amended further.

(iii) Continuing education.

Current continuing education requirements are found in Subchapter H. Section 35.383 requires licensees seeking to renew their licenses, with the exception of those listed in § 35.383 (relating to waiver of continuing education requirement), to complete 14 hours of continuing education from an approved sponsor specified in current § 35.385 (relating to continuing education providers). The 14 hours are currently broken down into a 7½-hour mandatory course developed by the Commission and a 7½-hour elective described in § 35.384(b) and (c).

The Commission proposes to shorten the length of the continuing education programs. Under the current regulations, licensees are required to complete their continuing education in 7½-hour increments. In this proposal, the Commission proposes reducing the minimum hours in § 35.384(a) from 7½ to 3½. The Commission believes that the reduced hours will enable licensees to learn more efficiently.

In addition, the Commission proposes to eliminate the mandatory course requirement in § 35.384(b) in all but pre-notified instances, and replace it with all elective courses. Except for instances where the RELRA or the regulations have been substantively modified or where, in the Commission's view, licensees require specific Commission-guidance, the Commission believes that licensees should be

able to take continuing education in subjects that directly benefit their practice or interest.

Under current § 35.385, an applicant for a waiver of the continuing education requirement submits his/her request with the biennial renewal application. In the event that the Commission would deny the request, the applicant must cease practice until the continuing education is completed. The Commission proposes changing the deadline for submission of the waiver request to March 31, rather than at the time of the renewal. By adjusting the submission deadline, the Commission would be able to approve or deny the applications at its April meeting and advise each applicant in time for the applicant to complete the missing hours prior to the May 31 renewal deadline. The Commission believes that this timeframe would be of assistance to applicants because they would be able to obtain the requisite hours without having to cease practice.

The Commission also proposes to expand the list of acceptable topics in § 35.384 to include: real estate investment analysis, management of real estate brokerage operations, property development, real estate securities and syndication, real property exchange, broker courses encompassing supervisory duties and standards of conduct and practice contained in Subchapter E, marketing promotion and advertising of real estate inventory, and use of technology in delivering real estate services. The Commission believes that these courses are valuable given licensees' current practice.

#### F. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Commission/Board submitted a copy of this proposed regulation on September 3 2003 to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. In addition to submitting the proposed rulemaking, the Commission/Board has provided IRRC and the committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission/Board. A copy of this material is available to the public upon request.

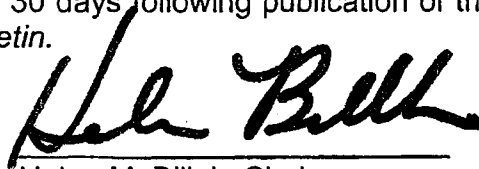
Under section 5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), if IRRC has comments, recommendations or objections regarding any portion of the proposed rulemaking, it will notify the Commission/Board approximately 30 days from the close of the public comment period. The notification will specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of comments, recommendations and objections by the Commission/Board, the General Assembly, and the Governor prior to publication of the regulations.

G. Fiscal Impact and Paperwork Requirements

The proposed amendments should have no fiscal impact on the Commonwealth, its political subdivisions or the public, i.e., the regulated community. The proposed amendments should reduce the legal, accounting, reporting or other paperwork requirements on the regulated community.

H. Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed rulemaking to Judith Pachter Schulder, Counsel, State Real Estate Commission, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

A handwritten signature in black ink, appearing to read "Helen Billak", written over a horizontal line.

Helen M. Billak, Chair

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, shall have the following meanings, unless the context clearly indicates otherwise:

\* \* \*

Distance education—Real estate instruction delivered in an independent or instructor-led format during which the student and the instruction are separated by distance and sometimes time.

\* \* \*

Independent learning—An interactive educational program, including computer-based technology courses, that provides no contact with an instructor.

\* \* \*

Instructor-led learning—An interactive educational program, including a classroom or simulated classroom, that provides significant ongoing contact from the instructor to the participant during the learning process.

\* \* \*

Real estate [school] education provider—[An individual or entity that conducts classes in] Any person or institution who offers real estate [subjects.] education regardless of whether the learning is instructor-led or independent, excluding [The term does not include a] colleges, universit[y]ies or institutes of higher learning accredited by the Middle States Association of Colleges and Secondary Schools or equivalent accreditation.

\* \* \*

### §35.203. Fees.

The following fees are charged by the Commission:

\* \* \*

Approval of real estate [school] education provider.....\$120  
Reinspection of real estate [school] education provider after first failure.....\$65  
Annual renewal of approval of real estate [school] education provider .....\$250 plus  
\$10 for each satellite location, course and instructor

\* \* \*

Change of ownership or directorship of real estate [school] education provider.....\$75  
Change of name of real estate [school] education provider.....\$45  
Change of location of real estate [school] education provider.....\$70  
Addition of satellite location or instructor for real estate [school] education provider..\$20  
Addition of course for real estate [school] education provider.....\$25

\* \* \*

## SUBCHAPTER C. LICENSURE

## LICENSURE REQUIREMENTS

### §35.228. Licensure as campground membership salesperson.

(a) An individual who wants to obtain a Pennsylvania campground membership salesperson's license shall:

\* \* \*

(2) Have successfully completed the one-credit (15 hours), Commission-developed course titled Campground Membership Sales, provided the following conditions are met:

\* \* \*

(ii) The course was taught at an accredited college, university or institute of higher learning in this Commonwealth or a real estate [school] education provider in this Commonwealth approved by the Commission.

\* \* \*

### §35.229. Licensure as time-share salesperson.

(a) An individual who wants to obtain a Pennsylvania time-share salesperson's license shall:

\* \* \*

(2) Have successfully completed the two-credit (30 hours), Commission-developed course titled Time Share Sales, provided the following conditions are met:

\* \* \*

(ii) The course was taught at an accredited college, university or institute of higher learning in this Commonwealth or a real estate [school] education provider in this Commonwealth approved by the Commission.

\* \* \*

## STATUS OF LICENSURE

\* \* \*

### **§35.252. Termination of business of deceased broker with sole proprietorship.**

(a) Within 15 days following the death of a broker with a sole proprietorship, the deceased broker's estate [may] shall notify the Commission that [it] the estate has appointed another licensed broker to supervise the termination of the deceased broker's business [for 90 days following the appointment]. The appointment is subject to verification that the appointed broker has a current license.

(b) The appointed broker shall observe the following rules during the [90-day] termination period:

\* \* \*

(2) Unexpired listing agreements may be promoted unless the seller or lessor elects to cancel the agreement. Unexpired listings will expire automatically [at the conclusion of the] 90[-] days after the broker dies [termination period] and may not be renewed.

(3) Pending agreements of sale or lease may proceed to

consummation.

\* \* \*

**§35.253. Replacement of broker of record due to death.**

Within 15 days following the death of a broker of record, a partner or corporate officer shall file an application with the Commission designating another individual to serve as broker of record.

**§35.254. Substitution of broker or broker of record due to illness or injury.**

If a broker with a sole proprietorship or broker of record is unable to act as a broker/broker of record due to illness or injury, the broker's attorney or another with power of attorney for the broker in a sole proprietorship, a corporate officer or partner shall notify the Commission within 15 days that it has appointed another licensed broker to act as the interim broker/broker of record for the corporation, partnership or sole proprietorship until the broker/broker of record is able to resume his responsibilities.

\* \* \*

**SUBCHAPTER D. LICENSING EXAMINATIONS**

**§35.271. Examination for broker's license.**



\* \* \*

(b) The Commission will apply the following standards in determining whether an examination candidate has met the education requirement of subsection (a)(4):

\* \* \*

(3) To be counted toward the education requirement, a real estate course shall have been offered by :

\* \* \*

(ii) A real estate [school] education provider in this Commonwealth approved by the Commission.

(iii) A real estate [school] education provider outside this Commonwealth that has been approved by the real estate licensing authority of the jurisdiction where the [school] provider is located. The course transcript or certificate of completion shall state that the course is approved by the licensing authority of the jurisdiction where the [school] provider is located.

\* \* \*

(6) Two credits will be allowed for each year of active practice the candidate has had as a licensed broker in another jurisdiction during the 10-year period immediately preceding the submission of the examination application.

**§35.272. Examination for salesperson's license.**

\* \* \*

(b) The Commission will apply the following standards in determining whether an examination candidate has met the education requirement of subsection (a)(2):

\* \* \*

(2) Credits will be allowed for each of the Commission-developed real estate courses—Real Estate Fundamentals and Real Estate Practice—when offered by:

\* \* \*

(ii) A real estate [school] education provider in this Commonwealth approved by the Commission.

(3) Credits will be allowed for acceptable basic real estate courses when offered by:

\* \* \*

(ii) A real estate [school] education provider outside this Commonwealth that has been approved by the real estate licensing authority of the jurisdiction where the [school] provider is located.

**§35.273. Examination for cemetery broker's license.**

\* \* \*

(b) The Commission will apply the following standards in determining whether an examination candidate has met the education requirement of subsection (a)(3):

\* \* \*

\* \* \*

(2) Credits will be allowed for each of the Commission-developed real estate courses—Real Estate Fundamentals and Real Estate Practice—when offered by:

\* \* \*

(ii) A real estate [school] education provider approved by the Commission in this Commonwealth.

(3) Credits will be allowed for cemetery courses when offered by:

\* \* \*

(ii) A real estate [school] education provider in this Commonwealth approved by the Commission.

(4) Credits will be allowed for acceptable basic real estate courses when offered by:

\* \* \*

(ii) A real estate [school] education provider outside this Commonwealth that has been approved by the real estate licensing authority of the jurisdiction where the [school] provider is located.

\* \* \*

**§35.275. Examination for rental listing referral agent's license.**

\* \* \*

(b) The Commission will apply the following standards in determining whether an examination candidate has met the education requirement of subsection (a)(2):

\* \* \*

(2) Credits will be allowed for each of the Commission-developed real estate courses—Real Estate Fundamentals and Real Estate Practice—when offered by:

\* \* \*

(ii) A real estate [school] education provider in this Commonwealth approved by the Commission.

(3) Credits will be allowed for acceptable basic real estate courses when offered by:

\* \* \*

(ii) A real estate [school] education provider outside this Commonwealth that has been approved by the real estate licensing authority of the jurisdiction where the [school] provider is located.

\* \* \*

**Subchapter F. REAL ESTATE [SCHOOL] EDUCATION PROVIDERS**  
**APPROVAL OF [SCHOOLS AND SCHOOL DIRECTORS] EDUCATION PROVIDERS**

**§35.341. Approval of real estate [school] education provider.**

A real estate [school] education provider shall obtain the Commission's approval before commencing operations in this Commonwealth. To obtain approval from the

Commission, the [school] provider shall:

(1) Be owned by persons who [are 21 years of age or older and] possess [a] good moral character, or, if the owner is a corporation, have officers and directors who meet th[e]is[e] requirement[s].

\* \* \*

(3) Have a director of [school] operations who meets the requirements of §35.342 (relating to approval of [school] director).

(4) Designate a person or entity [located in this Commonwealth] to serve as custodian of [school] records if the [school] provider were to terminate operations.

(5) Post a surety bond of \$10,000 to the Commonwealth for the protection of the contractual rights of the [school]provider's students[, the amount of which shall be the greater of \$10,000 or the maximum number of students expected to be enrolled at any one day in the first year of operation times the amount of the tuition].

(6) Submit a completed [school] provider approval application to the Commission with:

(i) A completed [school] provider owner application with:

(A) A resume of the applicant's experience in owning, administrating or teaching in, a college[,]or university or as a real estate [school] education provider.

\* \* \*

(C) [A notarized pro forma profit and loss statement and balance sheet.

(D) Complete details] Certified copies of court documents related to a conviction of, or plea of guilty or nolo contendere to, a felony or misdemeanor and the sentence imposed.

\* \* \*

(ii) A completed [school] provider director application with:

\* \* \*

(B) [Complete details] Certified copies of court documents related to conviction of, or plea of guilty or nolo contendere to, a felony or misdemeanor and the sentence imposed.

(iii) A fictitious name registration, if the [school] provider has a fictitious name.

(iv) A certificate of incorporation, if the [school] provider is a corporation.

\* \* \*

(vi) [A copy of the student enrollment agreement.

(vii) A copy of the school transcript.

(viii) A statement of the prerequisites for admission.

ix] A statement of policy regarding refund of tuition and other fees.

[x] (vii) The approval fee prescribed in §35.203 (relating to

fees).

[(xi) For the main school location and each proposed satellite location, a sketch or photograph of the school sign.]

**§35.342. Approval of [school] educational director.**

(a) A real estate [school] education provider shall obtain the Commission's approval of its director before commencing operations in this Commonwealth. The applicant for director shall have a combination of experience in teaching, supervision and educational administration [to be able] which, in the opinion of the Commission, will enable the applicant to competently administer a real estate education program in areas that include, but are not limited to, the following: evaluation of instructor performance; evaluation of curriculum and specific course content; analysis of course examinations; and management of [school] records and [school] facilities.

\* \* \*

(c) An approved [school] education provider shall obtain the Commission's approval before changing directors. The prospective director shall submit to the Commission the information required by §35.341(6)(ii) (relating to approval of real estate [school] education provider).

(d) In the event that the director dies, withdraws or is terminated, an approved education provider shall not lose its approved status, nor shall it be required to terminate operations within the Commonwealth provided that:

(1) The provider shall submit the name of an interim director to the

Commission within 15 days of the death, withdrawal, or termination of the director.

(2) The interim director is authorized to operate for up to 90 days following the death, withdrawal, or termination of the director. Thereafter, continued operation is contingent upon approval of a director under subsections (a) or (b).

(3) No changes may be made to the curriculum, testing or facilities until the new director is approved by the Commission.

**§35.343. Renewal of [school] education provider approval.**

An approved real estate [school] education provider shall renew its approval annually. To obtain renewal of approval, an [school] education provider shall submit a completed renewal of approval application to the Commission with:

(1) A notarized certification of compliance with this chapter signed by the [school] director.

(2) A copy of the \$10,000 surety bond showing coverage for the upcoming renewal period [, the amount of which shall be the greater of \$10,000 or the maximum number of students enrolled at any one day during the previous year times the amount of the tuition].

\*\*\*

**§35.344. Withdrawal of [school] education provider or director approval.**

(a) The Commission may, following notice and hearing under 2 Pa.C.S. §§501-



508 (relating to practice and procedure of Commonwealth agencies), withdraw the approval of a real estate [school] education provider that it finds guilty of:

\* \* \*

(2) Failing to maintain compliance with §35.341 (relating to approval of real estate [school] education provider).

(3) Violating a requirement of §§35.351-35.363 (relating to administration of [schools] education providers).

(b) The Commission may, following notice and hearing under 2 Pa. C.S. §§501-508, withdraw the approval of a [school] director that it finds guilty of:

(1) Any conduct in connection with the administration of an education provider which demonstrates bad faith, dishonesty, untrustworthiness or [l]incompetency.

(2) Failing to maintain compliance with §35.341 (relating to approval of real estate [school] education provider).

\* \* \*

(4) Having been convicted of, or having pled guilty or nolo contendere to a felony.

(5) Having been convicted of, or having pled guilty or nolo contendere to [or] a misdemeanor [involving moral turpitude] related to the practice of real estate, forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar offense.

## ADMINISTRATION OF [SCHOOLS] EDUCATION PROVIDERS

### **§35.351. Duty of [school] director.**

The director [of] for a real estate [school] education provider is responsible for [the] day-to-day administration [of the school], including evaluation of instructor performance, evaluation of curriculum and specific course content, analysis of course examinations, management of records and facilities and otherwise assuring [the school's] compliance with §§ 35.352-35.363.

### **§35.351a. [Assistant school director] Reserved.**

[(a) A school may, upon notification to the Commission, appoint an approved instructor under § 35.353 (relating to selection of instructors) to serve as assistant school director.

(b) An assistant school director may not become a school director without the Commission's approval under §35.342 (relating to approval of school director).]

### **§35.352. Location and facilities.**

(a) A real estate [school] education provider shall have a main location [within this Commonwealth] that contains its administrati[on]ve offices, its records, and a telephone with a listed number for the [school]provider's exclusive use. [Classes may be taught at the main location or at satellite locations.]

(b) The [main] location [and each satellite location] where classes are taught  
shall:

(1) Be [designed primarily for classroom purposes or, in the case of a meeting hall, convention hall or motel/hotel facility, be] suitable for classroom space.

(2) Not share office space, [classroom] instruction space or a common [entrance] space with a real estate franchise, network or organization. This paragraph does not apply to a real estate trade association.

(3) Be in conformance with applicable building, fire safety and sanitary requirements imposed by State, county and municipal governments.

[(4) Have adequate illumination on horizontal work surfaces in each classroom.

(5) Have 15 square feet of floor space per student in each classroom.

(6) Have 150 cubic feet of airspace per student in each classroom.

(c) If the school rents facilities for its main or satellite location, the lease agreement shall be in effect for the period when the school is in session at that location.]

### **§35.353. Selection of instructors.**

(a) Qualified instructors.

[(1)] A real estate [school] education provider shall employ instructors

who are qualified to teach the [curriculum] courses for which the instructors have been hired. The [school] provider may consider an individual qualified to teach a course if the individual satisfies one of the following criteria:

[(i) Has accumulated a minimum of 75 total points under the points system in subsection (b), with a minimum of 30 education points (including points in both formal and continuing education), three industry experience points and 20 teaching experience points.

(ii) Has accumulated a minimum of 53 total points under the points system in subsection (b), with a minimum of 30 education points (including points in both formal and continuing education) and three industry experience points.]

[(iii)]1) Possesses an undergraduate, graduate or postgraduate degree [and has 2 years of practical experience] in the subject matter of the course to be taught. [The experience requirement does not apply when the individual holds a teaching certificate in the subject matter of the course to be taught.]

[(iv)]2) Has [5]3 years of [full-time] practical or teaching experience in a profession, trade or occupation directly related to the subject matter of the course to be taught.

[(2) If the school determines that an individual is qualified as an instructor under paragraph (1)(ii), the school shall require the individual to acquire at least 20 teaching experience points within 3 years after commencing

employment as an instructor for the school.

(b) Point system. A school shall award points for education, industry experience and teaching experience as follows:

(1) Education. Education requirements are as follows:

(i) Formal education.

(A) High school or general equivalency diploma - five points.

(B) Degrees - only one degree may be considered for points:

(I) Associate's degree, or its equivalent, in any area - five points.

(II) Bachelor's or master's degree in any area - 10 points.

(III) Bachelor's or master's degree in real estate - 15 points.

(IV) Doctorate degree in any area - 15 points.

(ii) Industry designations. Ten points for each industry-awarded designation earned in the area of study to be taught, up to a maximum of 30 points.

(iii) Continuing education programs. One point for each Continuing Education Unit/Program (CEUP) in the area of study to be taught. For purposes of this clause, a CEUP is defined as 10 hours of classroom participation as a student.

(2) Industry experience. One point for each year of industry-related experience in the area of study to be taught, up to a maximum of 15 years.

(3) Teaching experience. One point for each Continuing Teaching Unit (CTU) earned in the area of study to be taught. For purposes of this paragraph, a CTU is defined as 10 hours of classroom participation as an instructor in an industry-related curriculum.]

[(c)b] Proof of qualifications. An [school] education provider shall [require an instructor applicant to prove qualifications by the submission of:] maintain documentation substantiating the instructor's education and experience.

[(1) Certified documents from educational institutions and real estate organizations attesting to the applicant's acquisition of diplomas, degrees and industry designations and completion of continuing education programs and courses.

(2) Letters from teaching supervisors certifying the applicant's past satisfactory performance as an instructor.]

**§35.354. Prohibited forms of advertising and solicitation.**

(a) A real estate [school] education provider may not:

(1) Hold itself out under a name other than the name approved for it by the Commission under §35.341 (relating to approval of real estate [school] education provider).

(2) Hold itself out as being recommended or endorsed by the Commission, the Department of Education or other agency of the

Commonwealth, except that the [school] education provider may advertise that it has been approved by the Commission to provide instruction in real estate courses and that credits earned in certain named courses will be accepted by the Commission toward fulfillment of the professional education prerequisite for taking the Pennsylvania real estate licensing examinations.

(3) Hold itself out to be an educational institution that conforms to the standards and requirements prescribed for colleges and universities by the Department of Education, unless the [school] education provider meets those standards and requirements.

\* \* \*

(9) Permit an instructor or guest lecturer while on [school] the provider's premises to wear any identification relating to the name of the real estate licensee or a real estate organization, franchise or network.

\* \* \*

(b) A [school] real estate education provider may not allow its main or satellite locations to be used by others for the solicitation or recruitment of students for employment or affiliation with a real estate licensee or a real estate organization, franchise or network. [The following sign] Students shall be informed of this prohibition through a written statement which shall [be conspicuously displayed or in each classroom whenever a class is in session] contain the following:

**§35.355. Prospectus materials.**

(a) A real estate [school] education provider shall provide copies of catalogs, bulletins, pamphlets and other prospectus materials to the Commission upon request. Prospectus materials shall state the following in clear and unambiguous terms:

\* \* \*

**§35.356. Tuition and other fees.**

A real estate [school] education provider shall charge tuition that bears a reasonable relationship to the quality and quantity of instructional services rendered. If additional fees are charged for books, supplies and other materials needed for coursework, the [school] provider shall itemize the fees and the books, supplies and materials, upon payment therefor, shall become the property of the student.

**§35.357. [Student enrollment agreements] Reserved.**

[(a) A real estate school shall require each of its students to enter into a student enrollment agreement that has been approved by the Commission. The agreement shall itemize the tuition and other fees and the services and materials to be received from them. The agreement also shall state the school's policy regarding the refund of tuition and fees if the student were to withdraw or be dismissed or if the school were to terminate operations before the end of the academic year. The agreement also shall contain the Bureau's toll-free telephone number, 1(800) 822-2113, that the student may call to obtain information about filing a complaint against the school.



(b) The following real estate school enrollment agreement is exemplary of the requirements of subsection (a):

REAL ESTATE SCHOOL] EDUCATION PROVIDER STUDENT  
ENROLLMENT AGREEMENT

In consideration of (Name of School) (hereinafter the "School") accepting me as a student and giving me the instruction specified in its (Name of Course) (Fall or Spring Session) (Day or Evening Class) (Year) according to the curriculum of the School, I, (Name of Student) (hereinafter the "Student"), agree to pay the School tuition in the amount of \$\_\_\_\_, \$\_\_\_\_ of which shall be paid at the signing and execution of this agreement and the balance paid in (Weekly or Monthly) installments of \$\_\_\_\_\_.

The School and the Student agree that the portion of the tuition paid at the time of the signing and execution of this agreement is nonrefundable.

The Student agrees to acquire all books, tools and supplies required for the course, according to the current catalog, for which a fee of \$\_\_\_\_\_ shall be paid at the signing and execution of this agreement.

The Student agrees to abide by the rules and regulations of the School as may be established from time to time in connection with the course.

The School shall have the right to cancel this agreement at any time if the student shall (i) violate a rule or regulation established by the School in connection with course; (ii) fail to advance satisfactorily in the course; or (iii) refuse to take the instruction offered. In the event of cancellation, the School shall refund the unearned

portion of the tuition paid, in accordance with the refund schedule in the current catalog.

The School shall have the right to substitute any study or laboratory work in connection with the course when changing conditions in the field of study require such substitution in the School's judgment.

The School shall not be bound by any agreement or representation other than those specified in this contract and the current catalog.

IN WITNESS WHEREOF, I (We) have hereunto set my (our) hand(s) and seal(s)  
this (Date) day of (Month)(Year)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Name of Student)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Parents or Guardian, if  
Student is a minor)

The (Name of School) herewith agrees to enroll (Name of Student) for the (Name of Course) (Fall or Spring Session) (Day or Evening Class) (Year).

\_\_\_\_\_  
(School Director)]

**§35.358. Administration of curriculum.**

(a) All real estate [school] education providers shall observe the following standards in the administration of [its] pre-licensure and continuing education curriculum:

(1) Instructor-led learning [No day of the academic year] may not exceed 7½ clock hours of instruction per day. For purposes of this section, a clock hour is defined as a 60-minute period comprising 50 minutes of [inspection] instruction and a 10-minute break. A student may not be required to attend class for more than 90 consecutive minutes without a break.

(2) [A correspondence or home study course may be offered to students whom the Commission certifies as being unable to attend classes.

(3) A course shall be assigned one credit for 15 clock hours, two credits for 30 clock hours, three credits for 45 clock hours or, if the course is a combination of Real Estate Fundamentals and Real Estate Practice, four credits for 60 clock hours.

(4)] The substantive content of the course, as evidenced by the course outline, text and other instructional materials, shall adequately reflect the stated purpose of the course, as evidenced by the course title and course description. [If the course purports to offer i] Instruction in a Commission [-developed] required course [, the course outline] shall [be substantially the same as] conform to the content or outline developed by the Commission for the course.

[(5) If copyrighted test materials are to be used in a course that purports to

be a review for a Pennsylvania real estate licensing examination, the school shall obtain permission to use the materials from the Commission and the testing service that administers the examination.

(6) A course shall be graded by written examination, except when a student's handicap or disability would make grading by written examination impractical. [In the case of a home study course, at least 50% of the student's grade shall be determined by the proctored written examination.]

[(7)3] Unless [enrolled in] the course is taught via [a correspondence or home study] distance education [course], a student shall be physically present during at least 80% of the classroom instruction for a pre-licensure course[,] and during at least 90% of the classroom instruction for a continuing education course, in order to receive [a passing grade] credit. [A sign-in/sign-out attendance roster shall be maintained for each class session.] The provider shall be responsible for verifying student attendance.

[(8) Each class shall be taught via live presentation by the instructor. An instructor's live presentation may be augmented by the use of an audiotape, videotape or other audio/visual aid.]

(4) Courses delivered by distance education, in addition to meeting the content requirements in §35.384(relating to qualifying courses), shall be approved by the Association of Real Estate License Law Officials or another certifying body with similar approval standards approved by the Commission.

(b) In addition to the requirements in subsection (a), an education provider shall observe the following standards in the administration of its pre-licensure curriculum:

(1) A pre-licensure course shall be assigned one credit for every 15 clock hours of instruction.

(2) A pre-licensure course shall be graded by written examination, except when a student's handicap or disability would make grading by written examination impractical.

**§35.359. Course Transcripts.**

(a) Pre-licensure. Within 30 days after a course has been taught, a real estate [school] education provider shall provide each student in the course with an official course transcript that contains the information in §35.360(a)(5) (relating to records) and is signed by the [school] director.

(b) Continuing education. Effective with the renewal period commencing June 1, 2004, within 30 days after a continuing education course has ended, the continuing education provider shall provide the Commission with a roster in a format approved by the Commission, listing each licensee who satisfactorily completed/taught the course. Continuing education providers shall be required to issue course transcripts/certificates of instruction to students only upon request.

**§35.360. Records.**

(a) A real estate [school] education provider shall maintain complete and

accurate records in the following areas:

(1) *Financial*. The [school] provider's assets and liabilities and the sources and amounts of its income.

(2) *Physical plant*. For the main location and for each satellite location, the following:

(i) [A detailed floor plan depicting offices, classrooms, restrooms, entrances, halls, doors and windows, including the size and seating capacity of each classroom.

(ii) A certificate of occupancy issued by the Department of Labor and Industry under the act of April 27, 1927 (P.L. 465, No. 299), known as the Fire and Panic Act (35 P.S. §§1221-1235) or, if the location is in Philadelphia, Pittsburgh or Scranton, proof that the building being used by the school has been approved for fire safety by that city's Bureau of Fire Inspections] Copies of documentation showing compliance with applicable building, fire safety and sanitary requirements imposed by state, county and/or municipal governments.

(ii[i]) A copy of the lease or rental agreement, if the [school] provider does not own the building being used.

(3) *Personnel*. The [point] qualifications of each instructor and the documentary evidence of those qualifications. See §35.353 (relating to selection of instructors).

(4) *Curriculum.* For each course the [school] provider has offered, the following:

...

(5) *Scholastic.* An academic transcript for each student [that includes the following information for each course taken by the student] which shall contain:

(i) The [school] provider's name and Commission approval number.

...

[(v) The semester in which the course was taught.]

(v[i]) The date that the student completed the course.

(v[i]i) The number of hours of the course.

[(viii) The number of sessions that the student was present and the number that he was absent, except for a home study course.]

(vii[x]) The student's final grade in the course, if an examination is required for the course.

[(x)viii] The date that the transcript was issued.

(ix[i]) The course instructor.

[(xii) The fact that the course will be accepted by the Commission towards fulfillment of the pre-licensure or continuing education requirement for either the real estate broker's examination or real estate salesperson's examination, as the case may be.]

(6) *Attendance.* [A daily attendance record for each student.]

(b) An [school] education provider shall store its records at its main location.

Upon termination of operations, a [school] provider shall transfer its records to the designated custodian of records. The [school] provider shall notify the Commission whenever it changes the custodian of records.

(c) An [school] education provider shall produce its records for examination by the Commission or its representatives upon written request or pursuant to an inspection under §35.362 relating to inspection of [schools] education providers).

(d) An[school] education provider shall make copies of a student's scholastic and attendance records available to the student upon request.

(e) An [school] education provider shall retain attendance and scholastic records as follows:

(1) [pertaining to c] Continuing education records shall be maintained  
for 4 years.

(2) [and a] All other [attendance and scholastic] records shall be retained  
for 10 years.

#### **§35.361. Display of documents and approved name.**

(a) A real estate [school] education provider's certificate of approval shall be displayed prominently at the [school] provider's main location. A copy of the certificate shall be displayed prominently at each satellite location.

(b) An [school] education provider's approved name shall be displayed prominently [outside] at each [school] location where courses are taught.



(c) The [school] education provider's letter of approval shall be displayed prominently at the [school] provider's main location. A copy of the letter shall be displayed prominently at each satellite location.

(d) [An alphabetical list of all courses currently offered by the school, together with their instructors, shall be displayed prominently at each school location.

(e)] An alphabetical list of the [school] education provider's satellite locations shall be displayed prominently at the [school] provider's main location.

**§35.362. Inspections [of school].**

(a) *Routine Inspections.* No more than 4 times a year while classes are in session, the Commission or those authorized representatives may conduct a routine inspection of the main location or satellite location of a real estate [school] education provider for the purpose of determining whether the [school] provider is in compliance with §§35.351-35.363 (relating to administration of [schools] education providers).

(b) *Special inspections.* In addition to the routine inspections authorized by subsection (a), the Commission or its authorized representatives may conduct a special inspection of an [school] education provider's main location or satellite location:

(1) Upon a complaint or reasonable belief that the [school] provider is not in compliance with §§35.351-35.363.

(2) As a follow-up to a previous inspection that revealed the [school's] provider's noncompliance with §§35.351-35.363.

(c) *Scope of inspection.* Prior to the start of a routine or special inspection, the Commission or its authorized representatives will advise the [school owner] education provider, [school] director or other person in charge at the time of the inspection that the inspection is being made under this section and is limited in scope by this section.

(d) During the course of a routine or special inspection or investigation, the Commission or its authorized representatives will be permitted to:

- (1) Examine [school] provider records.
- (2) Inspect all areas of the [school] provider's premises.
- (3) Monitor the performance of instructors in classrooms.
- (4) Interview the [school owner] provider, [school] director and other administrative personnel, instructors and students.

### **§35.363. Termination of operations.**

A real estate [school] education provider that desires to terminate operations shall submit to the Commission, within 60 days of the planned termination, a termination plan that includes the following:

- (1) The date of termination.
- (2) The date that [school] provider records will be transferred to the designated records custodian.

\* \* \*

## **SUBCHAPTER H. CONTINUING EDUCATION**

**§35.381. [Purposes and goals] Reserved.**

[The purposes and goals of continuing education are to provide an education program through which a licensee may obtain the knowledge and skills to:

(1) Maintain and Increase competency to engage in licensed real estate activities.

(2) Keep a licensee abreast of changes in laws, regulations, practices and procedures that affect the real estate business.

(3) Better ensure that the public is protected from incompetent practice by licensees.]

**§35.382. Requirement.**

(a) Condition precedent to renewal of current license. [Beginning with the 1994-1996 biennial license period and continuing with each biennial license period thereafter, a] A broker or salesperson who desires to renew a current license shall, as a condition precedent to renewal, complete 14 hours of Commission-approved continuing education during the preceding license period. The continuing education shall be completed by the May 31 renewal deadline.

(b) Condition precedent to reactivation and renewal of noncurrent license. [Effective March 1, 1994, a] A broker or salesperson who desires to reactivate and renew a noncurrent license shall, as a condition precedent to reactivation and renewal, complete 14 hours of Commission-approved continuing education during the 2-year

period preceding the date of submission of the reactivation application. A broker or salesperson may not use the same continuing education coursework to satisfy the requirements of this subsection and subsection (a).

(c) Exception. The continuing education requirement does not apply to cemetery brokers, cemetery salespersons, builder-owner salespersons, timeshare salespersons, campground membership salespersons and rental listing referral agents.

(d) Documentation. A licensee shall provide the Commission with information necessary to establish the licensee's compliance with this subchapter.

#### **§35.383. Waiver of continuing education requirement.**

(a) The Commission may waive all or part of the continuing education requirement of §35.382 (relating to requirement) upon proof that the licensee seeking the waiver is unable to fulfill the requirement because of illness, emergency or hardship. [Sections (b) - (d)] The following are examples of situations in which hardship waivers will be granted [. Hardship waivers will be granted in other situations for good cause shown.];

((b)1) A licensee who seeks to renew a current license that was initially issued within 6 months of the biennial license period for which renewal is sought will be deemed eligible, on the basis of hardship, for a full waiver of the continuing education requirement.

((c)2) A licensee who seeks to renew a current license that was reactivated from noncurrent status within 6 months of the biennial license period

for which renewal is sought will be deemed eligible, on the basis of hardship, for a full waiver of the continuing education requirement.

[(d)3) A licensee who is a qualified continuing education instructor will be deemed eligible [, on the basis of hardship,] for the waiver of 1 hour of continuing education for each hour of actual classroom instruction in an approved continuing education topic [that the instructor is qualified to teach]. Duplicate hours of instruction in the same topic during the same biennial license period will not be considered for waiver purposes.

(b) Requests to waive the continuing education requirement shall be filed with the Commission on or before March 31 of the renewal year unless the applicant proves to the satisfaction of the Commission that it was impracticable to do so.

\* \* \*

**§35.384. Qualifying courses[ ; required and elective topics].**

(a) [Qualifying courses.] Except as provided in subsection (b), [A] a licensee [may] shall [satisfy the continuing education requirement by doing one of the following:] complet[ing]e 14 hours of continuing education in acceptable topics in a minimum of 3½-hour increments.

[(1)Completing a 14-hour continuing education course comprising 5-to-8 hours in required topics and 6-to-9 hours in elective topics

(2) Completing a 5-to-8 hour continuing education course in required topics and one of the following courses:

- (i) A 6-to-9 hour continuing education course in elective topics
- (ii) A course approved by the Commission for broker licensure if 6-to-9 hours are in elective topics.]

(b) [Required topics. A minimum of 5 and a maximum of 8 hours shall be in required topics. A minimum of 2 hours shall be in the act and this chapter and a minimum of 3 hours shall be in fair housing laws and practices.] The Commission may, for a given biennial license period and with adequate notice to licensees, require [up to 3 hours] that all or part of the 14 hours be completed in [a] required topics [that address a critical issue of current relevance to licensees].

(c) [*Elective topics.* The balance of the 14 hours shall be in elective topics that have significant intellectual and practical content to increase the competency of licensees. A minimum of 2 hours shall be in each elective topic. The elective topics may address either real estate specialties or matters of general interest to licensees.

(1)] Acceptable [elective] topics include:

[(I] 1) Real estate ethics.

[(ii] 2) [New] Laws affecting real estate.

[(iii] 3) Real estate financing and mathematics.

[(iv] 4) Real estate valuation and evaluation.

[(v] 5) Property management.

[(vi] 6) Land use and zoning.

[(vii] 7) Income taxation as applied to real property.

[(viii] 8) Ad valorem tax assessment and special assessments.

(~~[ix]~~ 9) Consumer protection and disclosures.  
(~~[x]~~ 10) Agency relationships.  
(~~[xi]~~ 11) Landlord-tenant laws.  
(~~[xii]~~ 12) Environmental issues in real estate.  
(~~[xiii]~~ 13) Anti-trust issues in real estate.  
(~~[xiv]~~ 14) Current litigation related to real estate.  
(~~[xv]~~ 15) Legal instruments related to real estate transactions.  
(~~[xvi]~~ 16) Legalities of real estate advertising.  
(~~[xvii]~~ 17) Developments in building construction techniques, materials and mechanical systems.

(18) Real estate investment analysis.

(19) Management of real estate brokerage operations.

(20) Property development.

(21) Real Estate securities and syndication.

(22) Real property exchange.

(23) Broker courses encompassing supervisory duties and standards of conduct and practice contained in Subchapter E.

(24) Marketing promotion and advertising of real estate inventory.

(25) Use of technology in delivering real estate services.

(~~[2]~~d) Unacceptable elective topics include: (~~[i]~~ M) mechanical office and business skills; for example, typing, speed writing, preparation of advertising copy,

development of sales promotional devices, word processing, calculator and computer operation and [(ii) O] office management and related internal operations procedures that do not have a bearing on the public interest [(iii) Real estate mathematics].

**§35.385. [Approved c] Continuing education providers.**

The following providers [are approved to] may offer instruction for continuing education:

...

(2) A real estate [school] education provider in this Commonwealth approved by the Commission.

(3) A real estate [school] education provider outside this Commonwealth that has been approved by the real estate licensing authority of the jurisdiction where the [school] provider is located.

[(4) A real estate industry organization outside this Commonwealth, if approved by the Commission has given its prior approval to the industry organization's continuing education curriculum].

**§35.386. [Course content outlines and course titles] Reserved.**

[(a) Course outlines. The Commission will develop content outlines for the required continuing education topics and make them available to continuing education providers within a reasonable time prior to the biennial license period during which the required topics are taught. Each continuing education provider is responsible for



developing content outlines for the elective continuing education topics.

(b) Course titles. The Commission will specify the titles for continuing education courses authorized under §35.384(a)(1) and (2)(i)(relating to qualifying courses; required and elective topics).]

**§ 35.387. [Administration of curriculum] Reserved.**

[A continuing education provider, shall comply with the requirements of §35.358 (relating to administration of curriculum) except for paragraphs (3), (5) and (6).]

**§ 35.388. [Facilities] Reserved.**

[A continuing education course shall be taught at a facility that conforms to §35.352(b)(relating to location and facilities).]

**§ 35.389. [Instructors] Reserved.**

[A continuing education course shall be taught by an instructor who meets the requirements of § 35.353 (relating to selection of instructors).]

**§ 35.390. [Advertising, solicitation and promotion] Reserved.**

[A continuing education provider shall comply with the requirements in §§35.354 and 35.355 (relating to prohibited forms of advertising and solicitation; and prospectus materials).]

**§ 35.391. [Course transcripts and certificates of instruction] Reserved.**

[(a) Within 30 days after a continuing education course has ended, the continuing education provider shall issue a course transcript to each licensee who satisfactorily completed the course and a certificate of instruction to the course instructor if the instructor is also a licensee. The course transcript and certificate of instruction shall contain, to the extent applicable, the information in §35.360(a)(5)(relating to records), as well as the licensee's license numbers.

(b) A continuing education provider shall retain attendance rosters, course transcripts and certificates of instruction for 4 years and shall issue a duplicate transcript or certificate to the licensee or the Commission upon request.

(c) A licensee shall provide the Commission with information necessary to establish the licensee's compliance with this subchapter.]

**§35.392. [Investigations and inspections] Reserved.**

[(a) *Investigations.* Continuing education providers and licensees shall cooperate with investigations conducted by the Commission or its authorized representatives to ensure compliance with this subchapter.

(b) *Routine and special inspections.* No more than 4 times a year while classes are in session, the Commission or its authorized representatives may conduct a routine inspection of the facilities of a continuing education provider for the purpose of determining whether the provider or a licensee is in compliance with this subchapter. In

addition to the routine inspections, the Commission or its authorized representatives may conduct a special inspection of the facilities of a provider upon a complaint or reasonable belief that the provider is not in compliance with this chapter or as a follow-up to a previous inspection that revealed the provider's noncompliance with this subchapter.

(c) *Scope of inspection.* Prior to the start of a routine or special inspection, the Commission or its authorized representatives will advise the person in charge at the time of the inspection that the inspection is being made under this section and is limited in scope by this section. During the course of a routine or special inspection, the Commission or its authorized representatives will be permitted to:

- (1) Examine continuing education records.
- (2) Inspect all areas of the facility where continuing education courses are taught.
- (3) Monitor the performance of continuing education instructors in classrooms.
- (4) Interview the director of the continuing education program, the instructors and the students.

(d) *Combined inspections.* The Commission or its authorized representatives may combine an inspection under this section with an inspection under § 35.362 (relating to inspection of school).]

\* \* \*



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
**STATE REAL ESTATE COMMISSION**  
Post Office Box 2649  
Harrisburg, Pennsylvania 17105-2649  
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September 3, 2003

The Honorable John R. McGinley, Jr., Chairman  
INDEPENDENT REGULATORY REVIEW COMMISSION  
14<sup>th</sup> Floor, Harristown 2, 333 Market Street  
Harrisburg, Pennsylvania 17101

Re: Proposed Regulation  
State Real Estate Commission  
16A-561: Education

Dear Chairman McGinley:

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

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

Sincerely,

  
Helen M. Billak, Chairperson  
State Real Estate Commission

JPS:apm  
Enclosure

c: Andrew Sislo, Chief Counsel  
Department of State  
Scott J. Messing, Deputy Commissioner  
Bureau of Professional and Occupational Affairs  
Joyce McKeever, Deputy Chief Counsel  
Department of State  
Cynthia Montgomery, Regulatory Counsel  
Department of State  
Herbert Abramson, Senior Counsel in Charge  
Department of State  
Judith Pachter Schulder, Counsel  
State Real Estate Commission  
State Real Estate Commission

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-561  
SUBJECT: State Real Estate Commission - Education  
AGENCY: DEPARTMENT OF STATE

**TYPE OF REGULATION**

☒ Proposed Regulation

☐ Final Regulation

☐ Final Regulation with Notice of Proposed Rulemaking Omitted

☐ 120-day Emergency Certification of the Attorney General

☐ 120-day Emergency Certification of the Governor

☐ Delivery of Tolled Regulation

a. ☐ With Revisions

b. ☐

☐ Without Revisions

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REVIEW COMMISSION

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
9/3/03	<i>Sandra J. Harper</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
9/3/03	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
9/3/03	<i>Elena Pagan</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
9/3/03	<i>Mary Garas</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

August 6, 2003