

Regulatory Analysis Form		This space for use by IRRC 2000 JUN 10 PM 2:25 REVIEW COMMISSION IRRC Number: 2421
(1) Agency Department of State, Bureau of Professional and Occupational Affairs, State Real Estate Commission		
(2) I.D. Number (Governor's Office Use) 16A-5610		
(3) Short Title Reciprocity		
(4) PA Code Cite 49 Pa. Code §§35.201, 35.203, 35.321-35.229, 35.241, 35.242, 35.244-35.246, 35.255, 35.271-35.275, 35.305, 35.325 and 35.382-35.384	(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) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation X <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached? <input type="checkbox"/> No X <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. This proposal implements Act 58 of 2003, which authorizes the Commission to issue reciprocal licenses to current licensees of other states whose standards are substantially comparable to those in this Commonwealth and who agree to afford this opportunity to Pennsylvania licensees. In addition, Act 58 authorized the Commission to enter into reciprocal agreements setting forth these terms.		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. The amendments are authorized by Sections 201, 501, 601, 602 and 604 of the Real Estate Licensing and Registration Act (RELRA)(63 P.S. §§455.201, 455.501, 455.601, 455.602 and 455.604).		

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

Yes. Act 58 of 2003, which amended the RELRA on December 30, 2003.

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

The regulation implements the provisions of Act 58 which requires that:

- **Licensees whose principal places of business are in states whose licensure standards are substantially comparable to Pennsylvania standards be granted, where all other requirements are met, "reciprocal licensees."**
- **Reciprocal licensees obtain standard licenses when their principal place of businesses moves to this Commonwealth or when their licenses in their principal places of businesses are no longer current.**
- **Reciprocal licensees maintain current licensure in another state in order to renew.**
- **Reciprocal licensees either maintain an office in this Commonwealth or in the state where the licensee holds the equivalent of a standard license.**
- **Both reciprocal and standard licensees other than brokers be employed and supervised by brokers.**

(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.)

Licensees from other states benefit from this regulation. Rather than having to take the Pennsylvania licensure examination in order to obtain a license and complete Pennsylvania's continuing education in order to maintain a license, out-of-state applicants who are from states who agree to grant licensure to Pennsylvania applicants without restriction or whose licensure standards are substantially comparable to Pennsylvania's, will be able to obtain and maintain a reciprocal license without further requirement. Similarly, Pennsylvania licensees will be able to provide real estate services in those other states without requirement. The Commission cannot quantify the number of out-of-state licensees that will apply for a license nor the number of Pennsylvania licensees who will avail themselves of reciprocal licenses in other states. However, as of January 12, 2005, 34 individuals have applied for a reciprocal license—4 associate brokers, 4 sole proprietors, 3 brokers and 21 salespersons.

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

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

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

Applicants for a reciprocal license are required to comply with the regulation. Rather than having to take the Pennsylvania licensure examination in order to obtain a license and complete Pennsylvania's continuing education in order to maintain a license, out-of-state applicants who are from states who agree to grant licensure to Pennsylvania applicants without restriction or from states whose licensure standards are substantially comparable to Pennsylvania's, will be able to obtain and maintain a reciprocal license without further requirement. The Commission cannot quantify the number of out-of-state licensees will apply for a license.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Notice of proposed rulemaking was published at 34 Pa. B. 4913 (September 4, 2004). Publication was followed by a 30-day public comment period during which the Commission received public comments from the Pennsylvania Association of Realtors. Following the close of the public comment period, the Commission received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment.

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

There should be no additional costs or savings to the regulated community associated with compliance with the regulation. Applicants for licensure will continue to complete applications for licensure and pay existing fees for approvals. No new groups have been identified to pay fees.

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

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.

There are no costs/savings to state government associated with implementation of this regulations as applicants for licensure will continue to pay existing fees for the Commission's review of initial licensure and biennial renewal applications.

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

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

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

N/A

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(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. Applicants for licensure and biennial renewal will continue to pay existing fees for approvals. No new groups have been identified to pay fees.

(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.

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

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 Commission adopted its first reciprocal agreements with Arkansas, Georgia, Oklahoma, Nebraska and West Virginia at the May 25 and 26, 2004 meetings. Colorado, New York and Wyoming were adopted in June, Massachusetts in October and Louisiana in March, 2005. The following terms apply to each of the agreements:

- Each state would recognize the education, experience and examination of the applicant for any of the licensure classes authorized in that state as satisfying the requirements for licensure in that state.
- Applicants would be required to consent to service of process in the state where they would be receiving licensure.
- Applicants would be required to verify that they have received, read and agree to comply with all laws of the state where they would be receiving licensure.
- Applicants for licensure in classifications other than broker or cemetery broker would be required to provide certification from their brokers certifying that the brokers are currently licensed and will actively and personally supervise the applicant while performing real estate services in the state where they would be receiving licensure.
- Each state would not require additional continuing education in order to renew the reciprocal license.
- The applicant's state would furnish a Certificate of Licensure or Record of Good Standing to the state to which the applicant is applying containing the applicant's name, address, licensure classification and history and disciplinary history.

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

The regulation amends and update existing regulations of the Commission. The regulation does 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.

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

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

Yes. Instead of taking the Pennsylvania portion of the licensure examination, reciprocal licensure applicants are only required to submit a certification from the other state which has a reciprocal agreement with the Commission. Similarly, instead of submitting documentation confirming compliance with the continuing education requirement, reciprocal licensure applicants will only be required to submit a certificate of good standing in order to be renewed.

(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)

- Applicants for reciprocal licenses be licensed in a state whose standards are substantially comparable to those in this Commonwealth and who agrees to afford this opportunity to Pennsylvania licensees.
- Applicants for reciprocal licenses verify that:
 - To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either this Commonwealth or another jurisdiction.
 - The applicant has reviewed and is familiar with the act and the regulations and agrees to be bound by the act and regulations.
 - The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any jurisdiction in which the applicant is or has been licensed.
 - The applicant consents to service of process as described in §35.221(3) (related to general requirements).
- The state where the applicant holds the equivalent of a standard license:
 - Confirm that the license is active and in good standing.
 - Describe any past disciplinary action taken by the licensing authority against the applicant.
- The Commission publishes a list of states with which the Commission has signed reciprocal agreements.
- Reciprocal licensees pay the same fees and have the same rights and responsibilities as standard licensees.

(Continued from 25)

- Each state would require an applicant who changes his/her principal place of business to the state wherein he/she holds a reciprocal license to convert the license to a standard license. An applicant may be required to pass the state portion of the licensure examination.
- States have the right to refuse a reciprocal license.

Other states that have expressed an interest in entering into reciprocal agreements include: Alabama, Florida, Idaho, Iowa, Louisiana, Minnesota, Missouri, Oregon and South Dakota. The Commission is also discussing reciprocal agreements with Maine and Ohio, but those agreements would require that additional education/experience/examination requirements be completed before a reciprocal license could be issued. The Commission has not received any response from New Jersey or Maryland. The following states have advised the Commission advising that they cannot enter into reciprocal agreements until their statutes are changed: Arizona, California, Delaware, Kansas, Michigan, Texas and Vermont.

a former client/patient, may be admissible in a disciplinary action brought under §§ 49.22—49.24.

(c) In a disciplinary proceeding brought under §§ 49.22—49.24, the professional counselor shall have the burden of proving that there has been no exploitation of the client/patient in light of all of the relevant factors enumerated under § 49.24(b)(1)—(7).

§ 49.26. Impaired professional program.

When the Board takes disciplinary or corrective action against a professional counselor under section 11(a) of the act (63 P. S. § 1911(a)) for conduct prohibited by §§ 49.22—49.24 (relating to prohibited conduct; former sexual partners as clients/patients; and sexual intimacies with a former client/patient or an immediate family member of a former client/patient), the professional counselor will not be eligible for placement into an impaired professional program in lieu of disciplinary or corrective action.

[Pa.B. Doc. No. 04-1840. Filed for public inspection September 3, 2004, 9:00 a.m.]

STATE REAL ESTATE COMMISSION

[49 PA. CODE CH. 35]

Reciprocal License

The State Real Estate Commission (Commission) proposes to amend Chapter 35 (relating to State Real Estate Commission) to read as set forth in Annex A.

A. Effective Date

This proposed rulemaking will be effective upon publication of the final-form regulations in the *Pennsylvania Bulletin*.

B. Statutory Authority

This rulemaking is proposed under the authority of sections 201, 501, 601, 602 and 604 of the Real Estate Licensing and Registration Act (RELRA) (63 P. S. §§ 455.201, 455.501, 455.601, 455.602 and 455.604).

C. Background and Purpose

This proposal implements the act of December 30, 2003 (P. L. 418, No. 58) (Act 58), which amended the RELRA to provide for requirements for the issuance of a reciprocal license. Act 58 authorizes the Commission to issue and adopt regulations concerning reciprocal licenses to licensees of other states whose standards are substantially comparable to those in this Commonwealth and who agree to afford an opportunity to licensees from this Commonwealth. In addition, Act 58 authorized the Commission to enter into reciprocal agreements.

Act 58 requires that:

- Licensees whose principal place of business is outside of this Commonwealth be classified as "reciprocal licensees" and all other licensees in this Commonwealth be classified as "standard licensees."
- Reciprocal licensees obtain standard licenses when their principal place of business moves to this Commonwealth or when their licenses in their principal places of business are no longer current.

- Reciprocal licensees maintain current licensure in another state to renew.

- Reciprocal licensees either maintain an office in this Commonwealth or in the state where the licensee holds the equivalent of a standard license.

- Both reciprocal and standard licensees other than brokers be employed and supervised by brokers.

- Applicants for reciprocal licenses be licensed in a state that has standards which are substantially comparable to those in this Commonwealth and that agrees to afford this opportunity to licensees of this Commonwealth.

- Applicants for reciprocal licenses verify that:

- (1) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either the Commonwealth or another jurisdiction.

- (2) The applicant has reviewed and is familiar with the RELRA and the regulations and agrees to be bound by the RELRA and regulations.

- (3) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any jurisdiction in which the applicant is or has been licensed.

- (4) The applicant consents to service of process as described in § 35.221(3) (related to general requirements).

- The state where the applicant holds the equivalent of a standard license:

- (1) Certifies that the license is active and in good standing.

- (2) Describes any past disciplinary action taken by the licensing authority against the applicant.

- (3) Lists the applicant's office address and the name of the applicant's employing broker.

- The Commission publish a list of states with which the Commission has signed reciprocal agreements.

- Reciprocal licensees pay the same fees and have the same rights and responsibilities as standard licensees.

D. Description of Proposed Rulemaking

§ 35.201. Definitions.

The Commission is proposing to amend the definitions of "broker," "builder-owner salesperson," "campground membership salesperson," "cemetery broker," "cemetery salesperson," "licensee" and "salesperson" in § 35.201 to include both standard and reciprocal licenses in accordance with section 602(a) of the RELRA.

The Commission is also proposing to add definitions for "branch office," "main office" and "principal place of business." Currently, the Commission registers and inspects main and branch offices. Both are tied to the fixed location of the broker of record or broker who is a sole proprietor. The definition for "main office" addresses the office requirements in §§ 35.241, 35.242 and 35.244—35.246. The definition for "branch office" addresses the licensure, supervision and operation and inspection of branch office requirements in §§ 35.243—35.246.

The definition of "principal place of business" addresses the requirement in section 602(a) of the RELRA that the reciprocal licensee's principal place of business must be outside of this Commonwealth. For licensing purposes, the main office of a reciprocal broker would be that

broker's principal place of business. Each of the reciprocal broker's offices in this Commonwealth would be classified as branch offices.

The Commission also proposes adding a definition for "reciprocal license" in accordance with section 602(a) of the RELRA. Current licensees who also hold the equivalent of standard licenses in other states will have the option to convert their standard licenses to reciprocal licenses or maintain their current standard licenses. If they convert their licenses to reciprocal licenses, they will not have to complete the continuing education requirement in § 35.382 (relating to requirement) but they will not be able to have their principal place of business in this Commonwealth.

§ 35.203. Fees.

Section 602(c)(4) of the RELRA mandates that the licensure fees for reciprocal licenses be the same as those for standard licenses. Accordingly, § 35.203 has been amended to reflect that the fees apply equally to standard and reciprocal licenses.

§ 35.221. General requirements.

Section 604(c) of the RELRA sets out the general requirements for licensure: complete an application, pay the licensure fee, provide details of criminal convictions and consent to service of process. The Commission proposes to amend § 35.321 to clarify that these requirements apply to standard and reciprocal licensure applicants.

§ 35.222. Licensure as a broker.

§ 35.223. Licensure as salesperson.

§ 35.224. Licensure as cemetery broker.

§ 35.225. Licensure as cemetery salesperson.

§ 35.226. Licensure as builder-owner salesperson.

§ 35.227. Licensure as rental listing referral agent.

§ 35.228. Licensure as campground membership salesperson.

§ 35.229. Licensure as time-share salesperson.

Each of the previously mentioned sections currently refers to obtaining a license in this Commonwealth. Act 58 removes the reference to a Pennsylvania license and replaces it with standard and reciprocal license. The Commission is proposing to make that same change to each of these provisions.

For standard license applicants, the Commission is also proposing amending the examination requirement to reflect current practice. Applicants shall pass the entire licensure examination unless the applicant has been actively practicing as a broker in another state within the last 5 years. In that instance, the applicant need only pass the State portion of the examination.

As for a reciprocal license applicants, the Commission is proposing tracking the language of section 602(d) and (e) of the RELRA to indicate that where a broker applicant holds a current license issued by a state that recognizes a Pennsylvania standard license without further requirement, the broker may obtain a reciprocal license without further requirements. However, when the applicant applies from a state which would require a standard license applicant to complete additional education, experience or examination requirements, or both, the applicant shall complete equivalent requirements.

The Commission also proposes adding the requirement for a verified statement enumerated in section 602(c) of

the RELRA for each of the reciprocal classifications. When the applicant will be acting as a salesperson, builder-owner salesperson or associate broker, the Commission proposes adding a sworn statement from the broker attesting to the applicant's good reputation and certifying that the applicant will be actively supervised and trained by the broker, as is required for standard license applicants. When the applicant will be acting as a time-share salesperson or a campground membership salesperson, the Commission proposes adding a sworn statement from the broker certifying that he actively supervised and trained the applicant, as required for standard license applicants.

§ 35.241. General office requirement.

Current § 35.241 contains the requirement that a broker maintain a fixed office in this Commonwealth unless the broker maintains a fixed office in another state. The Commission proposes replacing the word "fixed" with "main" to correspond to the remaining office provisions which refer to "main" offices. Also, the Commission proposes clarifying that the out-of-State main office must be in the state which has a reciprocal agreement with the Commission and where the reciprocal licensee holds the equivalent of a standard license.

§ 35.242. Office of a broker or cemetery broker.

§ 35.244. Supervision and operation of office.

§ 35.245. Display of licenses in offices.

§ 35.246. Inspection of office.

Current §§ 35.242, 35.244, 35.245 and 35.246 delineate main and branch office requirements. To clarify that the Commission is only statutorily authorized to impose requirements on offices in this Commonwealth and because the main offices of reciprocal license holders are outside of this Commonwealth, the Commission proposes to amend these sections to specify that the requirements only apply to the main offices of standard license holders and to the branch offices of both standard and reciprocal license holders.

Further, current § 35.244 requires that main and branch offices be under the supervision of a broker or associate broker. Similarly, cemetery main and branch offices must be under the supervision of a cemetery broker or associate broker and rental listing referral offices must be under the direction and supervision of a rental listing referral agent. The Commission proposes amending § 35.244 to clarify that the brokers/associate brokers/cemetery brokers/associate cemetery brokers/rental listing referral agents may hold either a standard or reciprocal license. Additionally, the Commission proposes clarifying that associate brokers, salespersons, cemetery salespersons, campground membership salespersons and time-share salespersons may practice in affiliation with a broker holding either a standard or reciprocal license.

§ 35.255. Reciprocal licenses.

The Commission proposes adding § 35.255 to address renewal, reactivation and conversion requirements for reciprocal licensees. Subsection (a) tracks new section 602(h)(2) of the RELRA which exempts reciprocal licensees from the continuing education requirements in section 404.1 of the RELRA (63 P.S. § 455.404a). To renew reciprocal licensees, in addition to completing the application and paying the renewal fee, shall provide the Commission with a certification from the state where the licensee holds the equivalent of a standard license that the license is current and in good standing.

Subsection (b) tracks new section 602(h)(2) of the RELRA which exempts reciprocal licensees from the reactivation requirements in section 501(b) of the RELRA. Unlike standard licensees, a reciprocal licensee who fails to renew a reciprocal license, even after 5 years, may reactivate the license without being re-examined so long as the licensee holds the equivalent of a current standard license in the state where the licensee has his principal place of business.

Subsection (c) tracks new section 602(g) of the RELRA which requires a reciprocal licensee to obtain a standard license if the reciprocal licensee changes his principal place of business to a location within this Commonwealth. The Commission proposes clarifying that when the reciprocal licensee changes this principal place of business or when the reciprocal licensee fails to hold the equivalent of a current standard in the state where the licensee has his principal place of business, the reciprocal licensee is required to: (1) notify the Commission within 90 days of the change; and (2) pass the State portion of the licensing examination. Once the license has been converted, the standard licensee shall comply with the requirements for a standard license, including completion of the continuing education requirement.

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

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

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

§ 35.274. *Examination for builder-owner salesperson's license.*

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

Similar to the proposed revisions in §§ 35.222—35.229, the Commission proposes to replace the reference to "Pennsylvania" license to "standard" license in conformity with Act 58. Additionally, new provisions, tracking section 602(g) of the RELRA, have been added for each licensure classification clarifying that when the holder of a reciprocal license converts to a standard license, the education, experience and examination requirements do not apply. Rather, the licensee is only required to pass the State portion of the examination. These provisions are consistent with the requirements for standard licensee applicants who hold a current license in another state.

§ 35.305. *Business name on advertisements.*

On November 18, 2000, the Commission amended subsection (b) to permit licensees to advertise a nickname provided the name was registered with the Commission. Despite providing the example of Jack v. John and Margaret v. Peggy, the Commission has received numerous inquiries from licensees questioning whether they could use a nickname for their last name. As such, the Commission proposes amending subsection (b) to clarify that the nickname may only be for the licensee's first name.

§ 35.325. *Escrow account.*

Current subsection (b) authorizes the employing broker or the broker of record to give an employee the written authority to deposit money into an escrow account and a licensed employee the authority to withdraw funds. In an attempt to clarify that the Commission is referring to a sole proprietor when it uses the terms "employing broker," the Commission proposes amending subsection (b) by substituting "sole proprietor" for "employing broker."

§ 35.382. *Requirement.*

§ 35.383. *Waiver of continuing education requirement.*

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

New section 602(h)(2) of the RELRA exempts reciprocal licensees from the continuing education requirements in section 404.1 of the RELRA. Accordingly, the Commission proposes amending §§ 35.382—35.384 by substituting "standard license holders" or "holding a standard license" for "licensees" throughout.

The Commission extended an invitation to the following boards and associations to preliminarily review and comment on the Commission's draft regulatory proposal: Pennsylvania Association of Realtors; Realtors Educational Institute; Institute of Real Estate Studies; Polley Associates; Pennsylvania Cemetery & Funeral Association; Pennsylvania Bar Association; Allegheny Highland Association; Greater Allegheny-Kiski Area Board; Allegheny Valley Board; Beaver County Association; Bradford-Sullivan County Association; Bucks County Board; Butler County Association; Cambria-Somerset Association; Carbon County Association; 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. The Commission considered comments submitted to it in drafting the proposal.

E. *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking should have no fiscal impact on the Commonwealth. Reciprocal licensees are required by Act 58 to pay the same licensure fees as standard license holders. As such, the licensure fees will cover all administrative fees.

Additional paperwork requirements for the Commission would be limited to entering into reciprocal agreements with the other states and annually publishing a list of those states who have entered into agreement and others that require the imposition of additional education, experience and examination requirements. Licensees would have no additional paperwork requirements. The proposed rulemaking should not necessitate any legal, accounting or reporting requirements on the regulated community.

F. *Sunset Date*

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

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2004, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

H. *Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed amendments to Judith Pachter Schulder, Counsel, State Real Estate Commission, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking. Reference No. 16A-5610 (Reciprocal Licenses) when submitting comments.

JOSEPH J. MCGETTIGAN,
Chairperson

Fiscal Note: 16A-5610. 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:

* * * * *

Branch office—Any fixed location in this Commonwealth, other than the main office, maintained by a broker or cemetery broker, devoted to the transaction of real estate business.

Broker—An individual or entity holding either a standard or reciprocal license, unless otherwise specified, that, for another and for a fee, commission or other valuable consideration, does one or more of the following:

* * * * *

Broker of record—The individual broker responsible for the real estate transactions of a partnership, association

or corporation that holds a broker's license[, or the individual broker or limited broker responsible for the real estate transactions of a partnership, association or corporation that holds a limited broker's license].

Builder-owner salesperson—An individual holding either a standard or reciprocal license, unless otherwise specified, who is a full-time employee of a builder-owner of single- and multi-family dwellings located in this Commonwealth and who is authorized, for and on behalf of, the builder-owner, to do one or more of the following:

* * * * *

Campground membership salesperson—An individual holding either a standard or reciprocal license, unless otherwise specified, who, either as an employee or an independent contractor, sells or offers to sell campground memberships[. The individual shall sell campground memberships] under the active supervision of a broker. A licensed broker, salesperson or time-share salesperson does not need to possess a campground membership salesperson's license to sell campground memberships.

* * * * *

Cemetery broker—An individual or entity holding either a standard or reciprocal license, unless otherwise specified, that is engaged as, or carrying on the business or acting in the capacity of, a broker exclusively within the limited field or branch of business that applies to cemetery lots, plots and mausoleum spaces or openings.

* * * * *

Cemetery salesperson—An individual holding either a standard or reciprocal license, unless otherwise specified, employed by a broker or cemetery broker exclusively to perform the duties of a cemetery broker.

* * * * *

Licensee—An individual or entity [licensed] holding either a standard or reciprocal license, unless otherwise specified, under the act. For purposes of the consumer notice in § 35.336(a) (relating to disclosure summary for the purchase or sale of residential or commercial real estate or for the lease of residential or commercial real estate when the licensee is working on behalf of the tenant), the term means a broker or salesperson.

* * * * *

Main office—The fixed location of the broker or cemetery broker in this Commonwealth or another state devoted to the transaction of real estate business.

* * * * *

Principal place of business—The fixed location of the broker or cemetery broker in the state where the licensee holds the equivalent of a standard license.

* * * * *

Reciprocal license—A license issued to an individual or entity whose principal place of business for the provision of real estate services is outside of this Commonwealth and who holds a current license to provide real estate services from a state that has executed a reciprocal agreement with the Commission.

* * * * *

Salesperson—An individual holding either a standard or reciprocal license, unless otherwise specified, who is employed by a broker to do one or more of the following:

* * * * *

Standard license—A license issued to an individual or entity who has fulfilled the education/experience and examination requirements of the act.

* * * * *

§ 35.203. Fees.

The following fees are charged by the Commission:

* * * * *

Application for standard or reciprocal licensure of:

* * * * *

Initial standard or reciprocal licensure for broker, cemetery broker, branch office, rental listing referral agent, or broker of record, partner or officer for a partnership, association or corporation:

* * * * *

Initial standard or reciprocal registration of cemetery company or initial standard or reciprocal licensure for associate broker, salesperson, cemetery associate broker, builder-owner salesperson, time-share salesperson or campground membership salesperson:

* * * * *

Biennial renewal of standard or reciprocal license of broker, cemetery broker, branch office, rental listing referral agent, or broker of record, partner or officer for a partnership, association or corporation \$84

Biennial renewal of cemetery company registration or standard or reciprocal license of associate broker, salesperson, cemetery associate broker, cemetery salesperson or campground membership salesperson \$64

* * * * *

Certification of current status of standard or reciprocal licensure, registration or approval \$15

Certification of history of standard or reciprocal licensure, registration or approval \$40

Duplicate standard or reciprocal license \$5

Late renewal of standard or reciprocal license In addition to the prescribed renewal fee, \$5 for each month or part of the month beyond the renewal date

* * * * *

Subchapter C. LICENSURE
LICENSURE REQUIREMENTS

§ 35.221. General requirements.

In addition to meeting the other requirements of this subchapter pertaining to the specific license sought, an applicant for a [Pennsylvania] standard or reciprocal real estate license shall submit the following to the Commission with the license application:

* * * * *

§ 35.222. Licensure as a broker.

(a) [Except as provided in subsection (b), an] An individual who wants to obtain a [Pennsylvania] standard broker's license shall comply with § 35.221 (relating to general requirements) and:

(1) Have scored a passing grade on each part of the broker's licensing examination within 3 years prior to submission of a properly completed license application except that an applicant who has been actively licensed as a broker by another state within the last 5 years shall take and pass only the Pennsylvania portion of the examination. See § 35.271 (relating to examination for broker's license).

(2) Comply with §§ 35.241 and 35.242 (relating to general office requirement; and office of broker or [limited] cemetery broker).

(3) Submit a completed [license] application to the Commission with recommendations attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence from:

(i) One real estate broker [licensed] holding either a current standard or reciprocal license issued by the Commission.

* * * * *

(b) An individual [holding a broker's license issued by another jurisdiction] who wants to obtain a [Pennsylvania] reciprocal broker's license [either] shall comply with [subsection (a) or shall] § 35.221 and:

(1) Possess a current broker's license issued by another [jurisdiction that has been active within 5 years prior to the submission of a properly completed license application] state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. When an applicant applies from a state which would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.

(2) [Have scored a passing grade on the Pennsylvania portion of the broker's examination within 3 years prior to the submission of a properly completed license application. See § 35.271.

(3)] Comply with §§ 35.241 and 35.242.

[(4)](3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either the Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(4) If the applicant will be acting as an associate broker, submit a sworn statement from the broker with whom the applicant desires to be affiliated:

(i) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.

(ii) Certifying that the applicant will be actively supervised and trained by the broker.

(5) Submit a certification from the real estate licensing authority of the other [jurisdiction containing the following information] state:

(i) [The applicant's license number, the date of issuance of the license and confirmation that the applicant obtained initial licensure by written examination.

(ii) Whether the [Confirming that the applicant's license [has been] is active [within the last 5 years] and in good standing.

[(iii) A description of] (ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

[(iv) The] (iii) Listing the applicant's office address and the name of the applicant's [employer] employing broker.

(c) A partnership, association or corporation that wants to obtain a [Pennsylvania] standard or reciprocal broker's license shall:

(1) Ensure that each member of the partnership or association, or each officer of the corporation, who intends to engage in the real estate business [is licensed] holds either a current standard or reciprocal license issued by the Commission as a salesperson or broker.

* * * * *

§ 35.223. Licensure as salesperson.

(a) [Except as provided in subsection (b), an] An individual who wants to obtain a [Pennsylvania] standard salesperson's license shall comply with § 35.221 (relating to general requirements) and:

(1) Have scored a passing grade on each part of the salesperson's licensing examination within 3 years prior to the submission of a properly completed license application except that an applicant who has been actively licensed as a broker or a salesperson by another state within the last 5 years shall take and pass only the Pennsylvania portion of the examination. See § 35.272 (relating to examination for salesperson's license).

* * * * *

(b) An individual [holding a broker's or salesperson's license issued by another jurisdiction] who wants to obtain a [Pennsylvania] reciprocal salesperson's license [shall comply with subsection (a) or] shall comply with § 35.221 and:

(1) Possess a current broker's or salesperson's license issued by another [jurisdiction that has been active within 5 years prior to the submission of a properly completed license application] state that agrees to issue a license to a standard Pennsylvania licensee

without further requirement. When an applicant applies from a state which would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.

(2) [Have scored a passing grade on the Pennsylvania portion of the salesperson's examination within 3 years prior to the submission of a properly completed license application. See § 35.272.] Submit a completed license application to the Commission with a verified statement that:

(1) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either this Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(3) Submit [a completed license application to the Commission with] a certification from the real estate licensing authority of the other [jurisdiction containing the following information] state:

(i) [The applicant's license number, the date of issuance of the license and confirmation that the applicant obtained initial licensure by written examination.

(ii) An indication of whether [Confirming that the applicant's license [has been] is active [within the last 5 years] and in good standing.

[(iii) A description of] (ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

[(iv) The] (iii) Listing the applicant's office address and the name of the applicant's [employer] employing broker.

(4) Submit a sworn statement from a standard or reciprocal broker with whom the applicant will be affiliated:

(i) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.

(ii) Certifying that the applicant will be actively supervised and trained by the broker.

§ 35.224. Licensure as cemetery broker.

(a) An individual who wants to obtain a [Pennsylvania] standard cemetery broker's license shall comply with § 35.221 (relating to general requirements) and:

(1) Have scored a passing grade on each part of the salesperson's licensing examination within 3 years prior to the submission of a properly completed license application except that an applicant who has been actively licensed as a cemetery broker by another state

within the last 5 years shall take and pass only the Pennsylvania portion of the examination. See § 35.273 (relating to examination for cemetery broker's license).

* * * * *

(3) Submit a completed [license] application to the Commission with recommendations attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence from:

(i) One real estate broker [licensed] holding either a current standard or reciprocal license issued by the Commission.

* * * * *

(b) An individual who wants to obtain a reciprocal cemetery broker's license shall comply with § 35.221 and:

(1) Possess a current cemetery broker's license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. When an applicant applies from a state that would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.

(2) Comply with §§ 35.241 and 35.242.

(3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either this Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(4) If the applicant will be acting as an associate cemetery broker, submit a sworn statement from the broker with whom the applicant will be affiliated:

(i) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.

(ii) Certifying that the applicant will be actively supervised and trained by the broker.

(5) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the applicant's license is active and in good standing.

(ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

(iii) Listing the applicant's office address and the name of the applicant's employing broker.

(c) A partnership, association or corporation that wants to obtain a [Pennsylvania] standard cemetery broker's license shall:

(1) Ensure that each member of the partnership, association [,] or each officer of the corporation, who intends to engage in the real estate business [is licensed by the Commission] possesses a standard license as a broker or cemetery broker issued by the Commission.

* * * * *

(d) A partnership, association or corporation that wants to obtain a reciprocal cemetery broker's license shall:

(1) Ensure that each member of the partnership, association or each officer of the corporation, who intends to engage in the real estate business possesses a standard or reciprocal license as a broker or cemetery broker issued by the Commission.

(2) Designate a broker or cemetery broker holding a standard or reciprocal license to serve as broker of record.

(3) Comply with §§ 35.241 and 35.242.

(4) Submit a complete license application to the Commission.

§ 35.225. Licensure as cemetery salesperson.

(a) An individual who wants to obtain a [Pennsylvania] standard cemetery salesperson's license shall comply with § 35.221 (relating to general requirements) and:

* * * * *

(b) An individual who wants to obtain a reciprocal cemetery salesperson's license shall comply with § 35.221 and:

(1) Possess a current cemetery salesperson's license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. When an applicant applies from a state that would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.

(2) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the applicant's license is active and in good standing.

(ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

(iii) Listing the applicant's office address and the name of the applicant's employing broker.

(3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either this Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(4) Submit a sworn statement from the broker with whom the applicant will be affiliated:

(i) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.

(ii) Certifying that the applicant will be actively supervised and trained by the broker.

§ 35.226. Licensure as builder-owner salesperson.

(a) An individual who wants to obtain a [Pennsylvania] standard builder-owner salesperson's license shall comply with § 35.221 (relating to general requirements) and:

(1) Have scored a passing grade on each part of the salesperson's licensing examination within 3 years prior to the submission of a properly completed license application except that an applicant who has been actively licensed as a broker, salesperson or builder-owner salesperson by another state within the last 5 years shall take and pass only the Pennsylvania portion of the examination. See § 35.274 (relating to examination for builder-owner salesperson's license).

* * * * *

(b) An individual who wants to obtain a reciprocal license as a builder-owner salesperson shall comply with § 35.221 and:

(1) Possess a current builder-owner salesperson license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. When an applicant applies from a state that would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.

(2) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the applicant's license is active and in good standing.

(ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

(iii) Listing the applicant's office address and the name of the applicant's employing broker.

(3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either the Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(4) Submit a sworn statement from the builder-owner with whom the applicant will be affiliated:

(i) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.

(ii) Certifying that the applicant is a builder-owner of single or multifamily dwellings and employs the applicant.

§ 35.227. Licensure as rental listing referral agent.

(a) An individual who wants to obtain a [Pennsylvania] standard rental listing referral agent's license shall comply with § 35.221 (relating to general requirements) and:

(1) Have scored a passing grade on each part of the salesperson's examination within 3 years prior to the submission of a properly completed license application except that an applicant who has been actively licensed as a broker, salesperson or rental listing referral agent by another state within the last 5 years shall take and pass only the Pennsylvania portion of the examination. See § 35.275 (relating to examination for rental listing referral agent's license).

* * * * *

(b) An individual who wants to obtain a reciprocal rental listing referral agent's license shall comply with § 35.221 and:

(1) Possess a current rental listing referral agent's license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. When an applicant applies from a state that would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.

(2) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the license is active and in good standing.

(ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

(iii) Listing the applicant's office address and the name of the applicant's employing broker.

(3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either the Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(4) Comply with § 35.241 (relating to general office requirement).

(c) A partnership, association or corporation that wants to obtain a [Pennsylvania] standard or reciprocal rental listing referral agent's license shall:

(1) Designate an individual who is licensed by the Commission as either a current standard or reciprocal as a rental listing referral agent issued by the Commission to serve as manager of record.

* * * * *

§ 35.228. Licensure as campground membership salesperson.

(a) An individual who wants to obtain a [Pennsylvania] standard campground membership salesperson's license shall comply with § 35.221 (relating to general requirements) and:

* * * * *

(b) An individual who [sells campground memberships without a license may be subject to disciplinary action by the Commission for unlicensed practice as a campground membership salesperson under section 301 of the act (63 P. S. § 455.301).] wants to obtain a reciprocal campground membership salesperson's license shall comply with § 35.221 and:

(1) Possess a current campground membership salesperson's license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. When an applicant applies from a state that would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.

(2) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the applicant's license is active and in good standing.

(ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

(iii) Listing the applicant's office address and the name of the applicant's employing broker.

(3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either the Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(4) Submit a sworn statement from the broker from whom the applicant received his onsite training certifying that the broker actively trained and supervised the applicant and providing other information regarding the onsite training the Commission may require.

§ 35.229. Licensure as time-share salesperson.

(a) An individual who wants to obtain a [Pennsylvania] standard time-share salesperson's license shall comply with § 35.221 (relating to general requirements) and:

* * * * *

(b) An individual who [sells time shares without a license may be subject to disciplinary action by the Commission for unlicensed practice as a time-share salesperson under section 301 of the act (63 P. S. § 455.301).] wants to obtain a reciprocal time-share salesperson's license shall comply with § 35.221 and:

(1) Possess a current time-share salesperson's license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. When an applicant applies from a state that would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.

(2) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the applicant's license is active and in good standing.

(ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

(iii) Listing the applicant's office address and the name of the applicant's employing broker.

(3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either this Commonwealth or another state.

(ii) The applicant has reviewed and is familiar with the act and the regulations and agrees to be bound by the act and regulations.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(4) Submit a sworn statement from the broker from whom the applicant received his onsite training certifying that he actively trained and supervised the applicant and providing other information regarding the onsite training the Commission may require.

OFFICES

§ 35.241. General office requirement.

(a) A broker, cemetery broker, or rental listing referral agent shall maintain a [fixed] main office in this Commonwealth unless he maintains a [fixed] main office in another [jurisdiction] state where he [is licensed] holds the equivalent of a standard license.

* * * * *

§ 35.242. Office of broker or cemetery broker.

(a) The office of a broker or cemetery broker in this Commonwealth shall be devoted to the transaction of real estate business and be arranged to permit business to be conducted in privacy.

(b) If the office of a broker or cemetery broker in this Commonwealth is located in a private residence, the entrance to the office shall be separate from the entrance to the residence.

(c) The business name of the broker or cemetery broker, as designated on the license, shall be displayed prominently and in permanent fashion outside the office in this Commonwealth.

(d) A branch office operated by a broker or cemetery broker in this Commonwealth shall be in compliance with this section.

§ 35.244. Supervision and operation of office.

(a) The main or branch office in this Commonwealth of a broker shall be under the direction and supervision of a broker or associate broker holding either a standard or reciprocal license.

(b) The main or branch office in this Commonwealth of a cemetery broker shall be under the direction and supervision of a broker, cemetery broker, associate broker or associate cemetery broker holding either a standard or reciprocal license.

(c) An associate broker, salesperson, cemetery salesperson, campground membership salesperson or time-share salesperson shall practice in affiliation with a broker holding either a reciprocal or standard license issued by the Commission.

(d) A branch office in this Commonwealth may not be operated in a manner that permits, or is intended to permit, an [employe] employee to carry on the business of the office for the [employe's] employee's sole benefit.

[(d)] (e) The office in this Commonwealth of a rental listing referral agent shall be under the direction and supervision of a rental listing referral agent holding either a standard or reciprocal license issued by the Commission. A rental listing referral agent may not supervise more than one office.

§ 35.245. Display of licenses in office.

(a) The current license of a broker, cemetery broker or rental listing referral agent holding a standard license and those licensees employed by that broker, cemetery broker or rental listing referral agent shall be displayed in a conspicuous place at the main office.

(b) The current license of [an associate broker, salesperson, associate cemetery broker or cemetery salesperson] a broker, cemetery broker or rental listing referral agent holding a reciprocal license and those licensees employed by that broker, cemetery broker or rental listing referral agent shall be displayed in a conspicuous place at the branch office out of which the [licensee] broker, cemetery broker or rental listing referral agent works.

* * * * *

(d) A broker or cemetery broker holding a standard license shall maintain at the main office a list of licensed [employes] employees and the branch office out of which each licensed [employe] employee works.

(e) A broker or cemetery holding a reciprocal license shall maintain at the branch office a list of employees licensed in this Commonwealth and the branch office out of which each licensed employee works.

§ 35.246. Inspection of office.

(a) *Routine inspections.* No more than four times a year during regular business hours, the Commission or its authorized representatives may conduct a routine inspection of the main office of a broker, cemetery broker or rental listing referral agent holding a standard license or a branch office of a broker, cemetery broker or rental listing referral agent holding either a standard or reciprocal license for the purpose of determining whether the office is being operated in compliance with the act and this chapter.

(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 a main office of a standard license holder or a branch office of a standard or reciprocal license holder:

* * * * *

STATUS OF LICENSURE

§ 35.255. Reciprocal licenses.

(a) *Renewal.* In addition to completing the application and paying the fee, the licensee shall provide the Commission with a certification that the license is current and in good standing from the state where the licensee has his principal place of business.

(b) *Reactivation.* A licensee who fails to renew a reciprocal license may reactivate the license without being reexamined provided that he holds the equivalent of a current standard license in the state where the licensee has his principal place of business.

(c) *Conversion to standard license.* A reciprocal licensee who designates his principal place of business as in this Commonwealth or who fails to maintain a current standard license in the state of his principal place of business shall notify the Commission within 90 days of the change. To continue to practice in this Commonwealth at the end of the renewal period, the reciprocal licensee shall obtain a standard license in accordance with the applicable requirements of this chapter. Thereafter, the standard licensee shall comply with the requirements for a standard license, including completion of the continuing education requirement.

Subchapter D. LICENSING EXAMINATIONS

§ 35.271. Examination for broker's license.

(a) An individual who wants to take the broker's examination for a [Pennsylvania] standard broker's license shall:

* * * * *

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

* * * * *

(2) [Except as provided in paragraph (6), 2] Two of the required 16 credits shall be in a Commission-developed or approved real estate office management course and 2 of the required 16 credits shall be in a Commission-developed or approved law course. At least 6 of the remaining 12 credits shall be in 3 or more of the

Commission-developed courses listed in this paragraph. The remaining 6 credits shall be in real estate courses but not necessarily those listed in this paragraph. A candidate may not apply credits used to qualify for the salesperson's examination toward fulfillment of the broker education requirement.

* * * * *

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

(c) A reciprocal licensee who is converting that license to a standard broker's license is exempt from subsection (a) and is only required to pass the state portion of the examination.

§ 35.272. Examination for salesperson's license.

(a) An individual who wants to take the salesperson's examination for the purpose of obtaining a [Pennsylvania] standard salesperson's license shall:

* * * * *

(c) A licensee who is converting that license to a standard salesperson's license is exempt from the requirements in subsections (a) and (b) and is only required to pass the state portion of the examination.

§ 35.273. Examination for cemetery broker's license.

(a) An individual who wants to take the salesperson's examination for the purpose of obtaining a [Pennsylvania] standard cemetery broker's license shall:

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

* * * * *

(5) Courses shall have been completed within 10 years prior to the date of successful completion of the licensing examination except for applicants who are converting a reciprocal license to a standard license or hold a current license in another state.

(c) A reciprocal licensee who is converting that license to a standard cemetery broker's license is exempt from subsection (a) and is only required to pass the State portion of the examination.

§ 35.274. Examination for builder-owner salesperson's license.

(a) An individual who wants to take the salesperson's examination for the purpose of obtaining a [Pennsylvania] standard builder-owner salesperson's license shall:

* * * * *

(b) A reciprocal licensee who is converting that license to a standard builder-owner salesperson's license is only required to pass the State portion of the examination.

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

(a) An individual who wants to take the salesperson's examination for the purpose of obtaining a [Pennsylvania] standard rental listing referral agent's license shall:

* * * * *

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

* * * * *

(4) Courses shall have been completed within 10 years prior to the date of successful completion of the licensing examination except for applicants who are converting a reciprocal license to a standard license or hold a current license in another state.

(c) A reciprocal licensee who is converting that license to a standard rental listing referral agent's license is exempt from the requirements in subsections (a) and (b) and is only required to pass the state portion of the examination.

Subchapter E. STANDARDS OF CONDUCT AND PRACTICE

ADVERTISING AND SOLICITATION

§ 35.305. Business name on advertisements.

* * * * *

(b) [Individual brokers of record, associate brokers, salespersons, cemetery associate brokers, cemetery salespersons and rental listing referral agents] Licensees who wish to use and advertise [nicknames (for example, Jack v. John or Margaret v. Peggy)] a nickname for their first names shall include the [names] nickname on their licensure applications or biennial renewal applications.

* * * * *

ESCROW REQUIREMENTS

§ 35.325. Escrow account.

* * * * *

(b) [The employing] A broker who is a sole proprietor or broker of record [of a partnership, association or corporation] may give an [employe] employee written authority to deposit money into an escrow account and may give a licensed [employe] employee written authority to withdraw funds from the escrow account for payments that are properly chargeable to the account.

* * * * *

Subchapter H. CONTINUING EDUCATION

§ 35.382. Requirement.

(a) Condition precedent to renewal of current standard license. [Beginning with the 1994-1996 biennial license period and continuing with each biennial license period thereafter, a] A broker or salesperson holding a standard license 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.

(b) Condition precedent to reactivation and renewal of noncurrent standard license. [Effective March 1, 1994, a] A broker or salesperson holding a standard license 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 holding a standard license 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 reciprocal license holders or cemetery brokers, cemetery salespersons, builder-owner salespersons, timeshare salespersons, campground membership salespersons and rental listing referral agents who hold standard licenses.

§ 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] standard license holder seeking the waiver is unable to fulfill the requirement because of illness, emergency or hardship. Subsections (b)—(d) are examples of situations in which hardship waivers will be granted. Hardship waivers will be granted in other situations for good cause shown.

(b) A [licensee] standard license holder 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) A [licensee] standard license holder 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) A [licensee] standard license holder 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.

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

(a) [Qualifying courses.] A [licensee may] standard license holder shall satisfy the continuing education requirement by doing one of the following:

* * * * *

(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] standard license holders, require up to 3 hours in a topic that addresses a critical issue of current relevance to licensees.

(c) [Elective topics.] * * *

* * * * *

[Pa.B. Doc. No. 04-1841. Filed for public inspection September 3, 2004, 9:00 a.m.]

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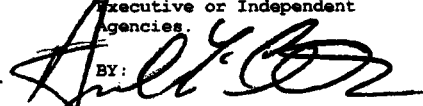
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State Real Estate Commission
(AGENCY)

BY: 
ANDREW C. CLARK

DOCUMENT/FISCAL NOTE NO. 16A-5610

DATE OF APPROVAL

DATE OF ADOPTION: _____

5.31.05
DATE OF APPROVAL

BY: 
Joseph J. McEttigan

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

TITLE: Chairman
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

The State Real Estate Commission (Commission) hereby amends Chapter 35 to read as set forth in Annex A. These amendments address reciprocal licenses.

Statutory Authority

The amendments are authorized under sections 201, 501, 601, 602 and 604 of the Real Estate Licensing and Registration Act (RELRA)(63 P.S. §§455.201, 455.501, 455.601, 455.602 and 455.604).

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

Notice of the proposed rulemaking was published at 34 Pa. B. 4913 (September 4, 2004). Publication was followed by a 30-day public comment period during which the Commission received comments from the Pennsylvania Association of Realtors (PAR). Following the close of the public comment period, the Commission received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment.

The following is a section-by-section description of the comments and the Commission's response.

§ 35.201. Definitions.

Broker, builder-owner salesperson, campground membership salesperson, cemetery broker, cemetery salesperson, licensee, and salesperson

The definitions of "broker," "builder-owner salesperson," "campground membership salesperson," "cemetery broker," "cemetery salesperson," "licensee," and "salesperson" each contain the phrase "unless otherwise specified." The HPLC recommended that the Commission delete this phrase in each of the definitions. The Commission found this suggestion reasonable and has amended each definition accordingly.

Broker of record

In the definition of "broker of record," the Commission deleted language regarding a limited broker's license. The HPLC asked for an explanation why the Commission deleted this language. In that limited broker's licenses were removed from the RELRA on June 29, 1990, the Commission has removed the reference from the regulations.

Main office

The HPLC recommended that the Commission add the phrase "other than a branch office" to the definition of "main office." The HPLC also suggested that "main office" and "branch office" be further amended to differentiate between the two types of

offices. The Commission found these suggestions reasonable and has amended both definitions.

PAR commented that the definitions for "main office" and "branch office" should be removed because they are unnecessary. PAR recommended replacing the terms with "fixed office." However, various provisions of the regulations specifically apply to main offices; other provisions apply to branch offices. As such, the Commission was unable to use one definition to refer to both offices.

Principal place of business

PAR recommended that the definition of "principal place of business" be amended to be "the principal office address at which a licensee offers real estate services." However, in order to qualify for a reciprocal license under section 602(a) of the RELRA, among other requirements, the licensee's principal place of business must not be in this Commonwealth. When the principal place of business moves to this Commonwealth, under section 602(g) of the RELRA, the licensee must convert the reciprocal license to a standard license. Because PAR's recommended definition does not incorporate this distinction, the Commission was unable to implement the suggestion.

Similarly, the Commission believes that it would be impracticable to determine "principal place of business" based on sales volume as PAR suggested. Because real estate offices' sales volume fluctuates monthly or annually, or both, a reciprocal broker with an office in this Commonwealth that has an unusually high volume of sales at one time would be required to convert the reciprocal license to a standard license negating the intent of the RELRA. The Commission believes that a better construction would be to tie the "principal place of business" to the state where the licensee holds a standard license.

Notwithstanding the Commission's decision not to amend the definition, the Commission agrees with PAR that for reciprocal licensees, their "main office" and the "principal place of business" are the same out-of-state address. Any offices of reciprocal licensees opened within this Commonwealth are characterized as "branch offices."

Reciprocal license

In proposed form, the definition of "reciprocal license" referred only to those licensees from other states that have executed reciprocal agreements with the Commission. The HPLC, IRRC and PAR commented that section 602(e) permits licensees from states that have not executed reciprocal agreements with the Commission to also obtain a reciprocal license. The Commission agreed with the commentators and has amended the definition accordingly.

Standard licensee

The HPLC commented that the definition of "standard licensee" could be interpreted as applying to both standard and reciprocal licensees. The HPLC and IRRC recommended that the definition of "standard licensee" be amended to clarify that it applies only to nonreciprocal license holders. In order to obtain a standard license under

the definition, the licensee must fulfill the education/experience *and* examination requirements of the RELRA. The examination requirement in the RELRA involves passing both the national and *Pennsylvania* portion of the license examination. While reciprocal licensees are required to pass an examination in the state that issued their licenses, those applicants have not have passed the Pennsylvania portion of the examination and therefore would not automatically qualify for a standard license as the HPLC suggests. Nonetheless, owing to the HPLC and IRRC's concern, in final-form rulemaking, the Commission amended this definition to specifically exclude reciprocal licensees.

PAR and IRRC questioned whether the Commission intended to limit the issuance of standard licenses to only applicants who reside in the Commonwealth. The Commission does not. Residency is not a requirement for any license. As such, two classes of out of state applicants qualify for standard licenses (assuming that the education/experience and examination requirements have been met): (1) current out of state licensees from states that have not either executed reciprocal agreements with the Commission or whose licensure requirements are not substantially comparable with those of this Commonwealth and (2) out of state applicants who desire a standard license.

§ 35.222. Licensure as a broker.

§ 35.223. Licensure as salesperson.

§ 35.224. Licensure as cemetery broker.

§ 35.225. Licensure as cemetery salesperson.

§ 35.226. Licensure as builder-owner salesperson.

§ 35.227. Licensure as rental listing referral agent.

§ 35.228. Licensure as campground membership salesperson.

§ 35.229. Licensure as time-share salesperson.

Proposed §§ 35.222(b)(1), 35.225(b)(1), 35.226(b)(1), 35.227(b)(1), 35.228(b)(1), 35.229(b)(1) delineate the requirements for reciprocal licenses for each licensure class under the RELRA. Where another state agreed to issue a license to a standard Pennsylvania licensee without further requirement, the applicant needed only possess a current broker's license issued by that state. Where an applicant applied from a state which would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant for a Pennsylvania license would be required to complete equivalent requirements. The HPLC made two comments: a reciprocal license can be issued to an applicant from a state that has not executed a reciprocal agreement with this Commonwealth and the section is internally inconsistent.

Regarding the first comment, the Commission agrees with the HPLC and PAR that section 602(e) of the RELRA permits licensees from states that have not executed reciprocal agreements with the Commission to also obtain a reciprocal license. As such, the Commission has made the same amendment to §§ 35.222(b)(1), 35.223(b)(1), 35.224(b)(1), 35.225(b)(1), 35.226(b)(1), 35.227(b)(1), 35.228(b)(1) and 35.229(b)(1), that it did to the definition of "reciprocal license" in § 35.201 (relating to definitions).

Regarding the second comment, in addition to authorizing the Commission to issue reciprocal licenses to applicants from states that have either executed reciprocal agreements or have comparable requirements, section 602(e) of the RELRA also authorizes the Commission to issue reciprocal licenses to applicants from states whose requirements are not comparable. In the latter instance, the reciprocal applicants are required to complete whatever equivalent requirements would be imposed on Pennsylvania applicants. For example, if Pennsylvania applicants would be required to take an additional state-specific ethics course in the other state in order to obtain a license, the reciprocal applicant would be required to take an Pennsylvania-specific ethics course in order to obtain a license in this Commonwealth. Owing to the HPLC's concern that this interpretation was not clearly reflected in proposed rulemaking, the Commission has also amended the second clause in §§ 35.222(b)(1), 35.223(b)(1), 35.224(b)(1), 35.225(b)(1), 35.226(b)(1), 35.227(b)(1), 35.228(b)(1) and 35.229(b)(1) accordingly.

Proposed §§ 35.222(b)(3)(iv), 35.223(b)(2)(iv), 35.224(b)(3)(iv), 35.225(b)(3)(iv), 35.226(b)(3)(iv), 35.227(b)(3)(iv), 35.228(b)(3)(iv) and 35.229(b)(3)(iv), specifically required applicants to comply with the out-of-state service provisions in § 35.221(3) (relating to general requirements). PAR recommended that these provisions be deleted because the introduction to subsection (b) includes the requirement that applicants comply with § 35.221. The Commission found this recommendation reasonable and has removed these provisions in final form.

The HPLC also questioned why the Commission does not require reciprocal applicants to provide their license number and date of issuance of that license on their reciprocal application. Because the reciprocal state is required to provide a certification to the Commission including this information, the Commission believed that requiring it also from the licensee would be unnecessary.

§ 35.229. Licensure as time-share salesperson.

PAR recommended that the pronoun in subsection (b)(4) be removed and replaced with gender-neutral language to parallel § 35.228(b)(4) (relating to licensure as campground membership salesperson). The Commission has made this change in final form.

§ 35.241. General office requirements.

Section 35.241 contains the general office requirements. PAR recommended that the Commission delete all of its revisions. As was explained above, "fixed office" does not accurately reflect the distinction between main and branch offices. In addition, the current regulation refers to "jurisdiction" instead of state. An earlier version of the amendments to the RELRA referenced "jurisdiction," however, the final version removed all references to "jurisdiction" and replaced them with references to "state." Accordingly, in final form, the Commission has not amended this provision further.

§ 35.244. Supervision and operation of offices.

Section 35.244 permits either a standard or reciprocal broker to supervise a real estate office and real estate licensees in this Commonwealth. The HPLC questioned why the Commission would permit a reciprocal licensee to supervise a Pennsylvania office. Section 602(h) of the RELRA specifically confers the same standards and responsibilities on reciprocal licensees as standard licensees (with the exception of their being able to be a member of the Commission, their completing the Pennsylvania continuing education requirement and their passing the Pennsylvania examination). Given that the standards and responsibilities are the same, the Commission believes that there is no statutory basis for preventing reciprocal brokers from supervising real estate offices in this Commonwealth. In fact, before obtaining a reciprocal license, the applicant must verify that the applicant has reviewed, is familiar with, and agrees to be bound by the requirements in the RELRA and this chapter. Additionally, permitting reciprocal brokers to supervise their associate brokers and salespersons who have obtained reciprocal licenses in this Commonwealth provides a continuity in supervision.

§ 35.245. Display of licenses in offices.

Proposed § 35.245 required the broker to conspicuously display the licenses of all standard license holders in the broker's employ in the broker's main office, all reciprocal license holders in the broker's employ in the broker's branch office and a list of the all licensees working out of a particular office at each office. PAR commented that this provision would be confusing to implement. Upon further reflection, the Commission agrees with PAR and has adopted, in final form, a simpler rule applicable to all licensees: Effective with the next renewal period, all real estate licenses must be maintained in the broker's main office and each branch office must maintain a list of employees working out of that office. Because the broker has supervisory responsibility, the Commission continues to believe that original licenses should be maintained at the broker/cemetery broker's main office. However, the Commission does not believe that it is necessary for the licenses to be conspicuously displayed. At the time this provision was adopted consumers and investigators did not have immediate access to the licensure status of a licensee. Today, however, the Bureau of Professional and Occupational Affairs' on line record system allows consumers and investigators immediate access eliminating the need for conspicuous display. Accordingly, in final form, the Commission has amended § 35.245 to require brokers and cemetery brokers to maintain all original licenses in their main office and a list of licensees in the branch office where the licensees work.

IRRC also recommended that the term "broker" be added after "cemetery." Finding this recommendation reasonable, the Commission has made this amendment.

§ 35.246. Inspection of office.

In proposed form the Commission attempted through the inspection rules to further clarify that a standard licensee would have a main and branch office in the

Commonwealth while a reciprocal licensee would only have a branch office in the Commonwealth. PAR recommended that this language be removed because it is unnecessary. Owing to PAR's concern, the Commission deleted the new language and has returned to the original version.

§ 35.255. Reciprocal licenses.

Proposed § 35.255(c) required reciprocal licensees to advise the Commission within 90 days of changing their principal places of business from another state to this Commonwealth, thereby requiring them to convert their reciprocal license to a standard license by the end of the renewal period. IRRC requested that the Commission justify the 90-day period. The HPLC recommended that the Commission reduce the notification period from 90 days to 30 days. The Commission found the HPLC's recommendation acceptable and has reduced the notification period to 30 days.

The HPLC and IRRC also recommended that an office inspection occur whenever a reciprocal licensee converts that license to a standard license. Prior to any real estate office being opened in the Commonwealth, an office must be inspected and found in compliance with the regulations. If the reciprocal licensee already had a real estate office in the Commonwealth, an office inspection would have already been conducted. In that the professional standards and responsibilities of standard and reciprocal license holders are the same, the Commission does not believe that there would be any reason to reinspect the real estate office without further evidence that another inspection was necessary. Where the licensee seeking to convert a reciprocal license would also be opening a real estate office in the Commonwealth, an office inspection would be performed prior to that office being opened.

PAR also suggested a technical amendment to subsection (a) which would clarify that the renewal would be for a reciprocal license. Finding this suggestion reasonable, the Commission has amended this subsection accordingly.

§ 35.271. Examination for broker's license.

The HPLC recommended two changes to § 35.271(b): the addition of a closing bracket to current subsection (b) and renumbering of the paragraphs in the subsection. The Commission found both recommendations reasonable and has made the changes.

The HPLC also asked the Commission to provide an explanation of the method it uses to count experience in subsection (b)(6). The Commission responds as follows. In order to qualify to take the broker's examination, an applicant must acquire 200 points. Points are acquired based on the services provided. In the commercial/industrial area, an applicant would receive 5 points for each sale, 5 points for an exclusive listing which sold, 5 points for each lease and 1 point for an unsold exclusive listing. In the residential area, an applicant would receive 5 points for each sale, 5 points for an exclusive listing which sold, 1 point for each lease and 1 point for an unsold exclusive listing. For each month of full-time employment in property management assistance, an applicant is

granted 6 points. A month of full-time employment is defined as a month in which the applicant devoted full-time to performing in this capacity and which the applicant did not perform or earn points for any other real estate activity.

An applicant who is not licensed may be considered to have fulfilled the experience requirement if the applicant has 3 years of equivalent experience (that is, services which fall within the exemptions in section 203 of the RELRA). An applicant who possesses a real estate broker's license in another jurisdiction will be awarded credit for out-of-state experience provided that the Commission received a certification of licensure from the real estate licensing authority of that jurisdiction indicating active licensure within the last 5 years prior to the application date.

§ 35.272. Examination for salesperson's license.

§ 35.274. Examination for builder-owner salesperson's license.

Subsections 35.272(c) and 35.274(b) refer to "A licensee who is converting that license...." The HPLC and PAR recommended that the Commission replace the word "that" with "reciprocal." Owing to the HPLC's and PAR's concerns, the Commission has revised the wording of both provisions.

§ 35.272. Examination for salesperson's license.

§ 35.273. Examination for cemetery broker's license.

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

Proposed §§ 35.273(a)(5) and 35.275(b)(4) set forth the requirement that in order to qualify for a standard license, the applicant's education had to be completed within 10 years prior to passing the examination except for applicants converting a reciprocal license to a standard license. PAR recommended that the same provision be added to § 35.275(b)(4). In that the subsections immediately following each of the provisions contain an exception for applicants converting a reciprocal license to a standard license, the Commission believes that the additional provisions are unnecessary. Accordingly, in final form, the Commission has deleted the exception in §§ 35.273(a)(5) and 35.275(b)(4).

The HPLC recommended that § 35.275 be renumbered. Finding this recommendation to be reasonable, the Commission has renumbered the section.

§ 35.325. Escrow account.

In § 35.325(b), the Commission replaced the reference to an employing broker with broker of a sole proprietorship and removed partnership, association or corporation. The HPLC questioned whether the change reflects a policy change and if so, sought the Commission's rationale. By amending this subsection, the Commission merely made a corrective amendment. "Broker of record" is defined as a broker responsible for the real estate transactions of a partnership, association or corporation. Given this definition, the inclusion of "partnership, association or corporation" was mere surplusage. Similarly, in

the sole proprietorship context, the correct reference is to a broker who is a sole proprietor rather than an employing broker.

§ 35.384. Required courses.

The HPLC and IRRC questioned why the Commission was deleting the requirement that licensees complete a required course developed by the Commission. The deletion of this requirement actually stemmed from a final form regulation package (16A-561) that was simultaneously undergoing regulatory review and became effective on December 11, 2004. See 34 Pa. B. 6530. In the preamble to that regulation, the Commission explained that:

“In determining whether to retain the required course, the Commission considered the frequency of amendments to the RELRA and the regulations as well as the number of fair housing disciplinary cases. The Commission determined that except in cases where the RELRA or regulations are substantially modified or where, in the Commission’s view, licensees require specific Commission guidance, licensees should be able to take continuing education in subjects that directly benefit their practice or interest. As part of its on-going review of its regulations, however, the Commission intends to monitor trends in disciplinary proceedings. Where the Commission finds an increase in specific violations, it will consider reinstating a required course. As in the past, if a required course becomes necessary, the Commission will notify all licensees and real estate education providers at least 6 months prior to the end of the renewal period.”

Because subsection (b) was also being amended in this proposed regulation package, the Commission included the amendatory language from the prior regulatory package as well.

SUBCHAPTER H. CONTINUING EDUCATION

In final form, the Commission also amended §§ 35.382-35.384 to include the revisions made in the former package at 34 Pa. B. 6530.

Fiscal Impact and Paperwork Requirements

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

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 13, 2003, the Commission submitted a copy of the notice of proposed rulemaking, published at 34 Pa. B. 4913, to the Independent Regulatory Review Commission (IRRC), and the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Commission has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, the final-form rulemaking was approved by the HPLC. On _____, the final-form rulemaking was deemed approved by SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, and approved the final-form rulemaking.

Contact Person

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

Findings

The Commission finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 34 Pa. B. 4913 on September 4, 2004.

(4) The final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in this Preamble.

Order

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

- (a) The regulations of the Commission, 49 Pa. Code Chapter 35, are amended to read as set forth in Annex A.
- (b) The Commission shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.
- (c) The Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

Beverly R. Brookes, Chair
State Real Estate Commission

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

SUBCHAPTER B. GENERAL PROVISIONS

§35.201. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * *

Branch office—Any fixed location in this Commonwealth, other than the main office, maintained by a broker or cemetery broker, devoted to the transaction of real estate business.

* * *

Broker—An individual or entity holding either a standard or reciprocal license, ~~unless otherwise specified,~~ that, for another and for a fee, commission or other valuable consideration, does one or more of the following:

* * *

Broker of record—The individual broker responsible for the real estate transactions of a partnership, association or corporation that holds a broker's license[, or the individual broker or limited broker responsible for the real estate transactions of a partnership, association or corporation that holds a limited broker's license].

Builder-owner salesperson—An individual holding either a standard or reciprocal license, unless otherwise specified, who is a full-time employee of a builder-owner of single- and multi-family dwellings located in this Commonwealth and who is authorized, for and on behalf of, the builder-owner, to do one or more of the following:

* * *

Campground membership salesperson—An individual holding either a standard or reciprocal license, unless otherwise specified, who, either as an employee or an independent contractor, sells or offers to sell campground memberships [. The individual shall sell campground memberships] under the active supervision of a broker. A licensed broker, salesperson or time-share salesperson does not need to possess a campground membership salesperson's license to sell campground memberships.

* * *

Cemetery broker—An individual or entity holding either a standard or reciprocal license, unless otherwise specified, that is engaged as, or carrying on the business or acting in the capacity of, a broker exclusively within the limited field or branch of business that applies to cemetery lots, plots and mausoleum spaces or openings.

* * *

Cemetery salesperson—An individual holding either a standard or reciprocal license, unless otherwise specified, employed by a broker or cemetery broker exclusively to perform the duties of a cemetery broker.

* * *

Licensee—An individual or entity [licensed] holding either a standard or reciprocal license, unless otherwise specified, under the act. For purposes of the consumer notice in §35.336(a)(relating to disclosure summary for the purchase or sale of residential or

commercial real estate or for the lease of residential or commercial real estate when the licensee is working on behalf of the tenant), the term means a broker or salesperson.

* * *

Main office—The fixed location OTHER THAN A BRANCH OFFICE of the broker or cemetery broker in this Commonwealth or another state devoted to the transaction of real estate business.

* * *

Principal place of business—The fixed location of the broker or cemetery broker in the state where the licensee holds the equivalent of a standard license.

* * *

Reciprocal license—A license issued to an individual or entity whose principal place of business for the provision of real estate services is outside of this Commonwealth and who holds a current license to provide real estate services from a state that EITHER has executed a reciprocal agreement with the Commission OR HAS QUALIFICATIONS FOR LICENSURE WHICH ARE SUBSTANTIALLY COMPARABLE TO THOSE REQUIRED BY THE COMMISSION.

* * *

Salesperson—An individual holding either a standard or reciprocal license, ~~unless otherwise specified,~~ who is employed by a broker to do one or more of the following:

* * *

Standard license—A license, OTHER THAN A RECIPROCAL LICENSE, issued to an individual or entity who has fulfilled the education/experience and examination requirements of the act.

§35.203. Fees.

The following fees are charged by the Commission:

* * *

Application for standard or reciprocal licensure of:

* * *

Initial standard or reciprocal licensure for broker, cemetery broker, branch office, rental listing referral agent, or broker of record, partner or officer for a partnership, association or corporation:

* * *

Initial standard or reciprocal registration of cemetery company or initial standard or reciprocal licensure for associate broker, salesperson, cemetery associate broker, builder-owner salesperson, time-share salesperson, campground membership salesperson:

* * *

Biennial renewal of standard or reciprocal license of broker, cemetery broker, branch office, rental listing referral agent, or broker of record, partner or officer for a partnership, association or corporation.....\$84

Biennial renewal of cemetery company registration or standard or reciprocal license of associate broker, salesperson, cemetery associate broker, cemetery salesperson or campground membership salesperson.....\$64

* * *

Certification of current status of standard or reciprocal licensure, registration or approval.....\$15

Certification of history of <u>standard or reciprocal</u> licensure, registration or approval.....	\$40
Duplicate <u>standard or reciprocal</u> license.....	\$5
Late renewal of <u>standard or reciprocal</u> license.....	In addition to the prescribed renewal fee, \$5 for each month or part of the month beyond the renewal date

SUBCHAPTER C. LICENSURE
LICENSURE REQUIREMENTS

§35.221. General requirements.

In addition to meeting the other requirements of this subchapter pertaining to the specific license sought, an applicant for a [Pennsylvania] standard or reciprocal real estate license shall submit the following to the Commission with the license application:

* * *

§35.222. Licensure as a broker.

(a) [Except as provided in subsection (b), an] An individual who wants to obtain a [Pennsylvania] standard broker's license shall comply with §35.221 (relating to general requirements) and:

- (1) Have scored a passing grade on each part of the broker's licensing examination within 3 years prior to submission of a properly completed license application except that an applicant who has been actively licensed as a broker by another state within the last 5 years shall take and pass only the Pennsylvania portion of the examination. See §35.271 (relating to examination for broker's license).

(2) Comply with §§ 35.241 and 35.242 (relating to general office requirement; and office of broker or [limited] cemetery broker).

(3) Submit a completed [license] application to the Commission with recommendations attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence from:

(i) One real estate broker [licensed] holding either a current standard or reciprocal license issued by the Commission.

* * *

(b) An individual [holding a broker's license issued by another jurisdiction] who wants to obtain a [Pennsylvania's] reciprocal broker's license [either] shall comply with [subsection (a) or] shall] §35.221 and:

(1) Possess a current broker's license issued by another [jurisdiction that has been active within 5 years prior to the submission of a properly completed license application] state that agrees to issue a license to a standard Pennsylvania licensee without further requirement, OR HAS QUALIFICATIONS FOR LICENSURE SUBSTANTIALLY COMPARABLE TO THOSE REQUIRED BY THE COMMISSION. ~~When an~~ A RECIPROCAL applicant applies from a state which would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the RECIPROCAL applicant shall complete equivalent requirements FOR LICENSURE IN THIS COMMONWEALTH.

(2) [Have scored a passing grade on the Pennsylvania portion of the broker's examination within 3 years prior to the submission of a properly completed license application. See §35.271.

(3)] Comply with §35.241 and §35.242.

[(4)](3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either the Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

~~(iv) The applicant consents to service of process as described in §35.221(3).~~

(4) If the applicant will be acting as an associate broker, submit a sworn statement from the broker with whom the applicant desires to be affiliated:

(i) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.

(ii) Certifying that the applicant will be actively supervised and trained by the broker.

(5) Submit a certification from the real estate licensing authority of the other [jurisdiction] containing the following information] state:

(i) [The applicant's license number, the date of issuance of the license and confirmation that the applicant obtained initial licensure by written examination.

(ii) Whether the] Confirming that the applicant's license [has been] is active [within the last 5 years] and in good standing.

[(iii) A description of] (ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

[(iv)] The] (iii) Listing the applicant's office address and the name of the applicant's [employer] employing broker.

(c) A partnership, association or corporation that wants to obtain a [Pennsylvania] standard or reciprocal broker's license shall:

(1) Ensure that each member of the partnership or association, or each officer of the corporation, who intends to engage in the real estate business [is licensed] holds either a current standard or reciprocal license issued by the Commission as a salesperson or broker.

* * *

§ 35.223. Licensure as salesperson.

(a) [Except as provided in subsection (b), an] An individual who wants to obtain a [Pennsylvania] standard salesperson's license shall comply with §35.221 (relating to general requirements) and:

(1) Have scored a passing grade on each part of the salesperson's licensing examination within 3 years prior to the submission of a properly completed license application except that an applicant who has been actively licensed as a broker or a salesperson by another state within the last 5 years shall

take and pass only the Pennsylvania portion of the examination.

(relating to examination for salesperson's license).

* * *

(b) An individual [holding a broker's or salesperson's license issued by another jurisdiction] who wants to obtain a [Pennsylvania] reciprocal salesperson's license [shall comply with subsection (a) or] shall comply with §35.221 and:

(1) Possess a current broker's or salesperson's license issued by another [jurisdiction that has been active within 5 years prior to the submission of a properly completed license application] state that agrees to issue a license to a standard Pennsylvania licensee without further requirement OR HAS QUALIFICATIONS FOR LICENSURE WHICH ARE SUBSTANTIALLY COMPARABLE TO THOSE REQUIRED BY THE COMMISSION. When an A RECIPROCAL applicant applies from a state which would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the RECIPROCAL applicant shall complete equivalent requirements FOR LICENSURE IN THIS COMMONWEALTH.

(2) [Have scored a passing grade on the Pennsylvania portion of the salesperson's examination within 3 years prior to the submission of a properly completed license application. See § 35.272.] Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either this Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

~~(iv) — The applicant consents to service of process as described in §35-221(3).~~

(3) Submit [a completed license application to the Commission with] a certification from the real estate licensing authority of the other [jurisdiction containing the following information] state:

(i) [The applicant's license number, the date of issuance of the license and confirmation that the applicant obtained initial licensure by written examination.

(ii) An indication of whether] Confirming that the applicant's license [has been] is active [within the last 5 years] and in good standing.

[(iii) A description of] (ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

[(iv) The] (iii) Listing the applicant's office address and the name of the applicant's [employer]employing broker.

(4) Submit a sworn statement from a standard or reciprocal broker with whom the applicant will be affiliated:

(i) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.

(ii) Certifying that the applicant will be actively supervised and trained by the broker.

§ 35.224. Licensure as cemetery broker.

(a) An individual who wants to obtain a [Pennsylvania] standard cemetery broker's license shall comply with §35.221 (relating to general requirements) and:

(1) Have scored a passing grade on each part of the salesperson's licensing examination within 3 years prior to submission of a properly completed license application except that an applicant who has been actively licensed as a cemetery broker by another state within the last 5 years shall take and pass only the Pennsylvania portion of the examination. See §35.273 (relating to examination for cemetery broker's license).

* * *

(3) Submit a completed [license] application to the Commission with recommendations attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence from:

(i) One real estate broker [licensed] holding either a current standard or reciprocal license issued by the Commission.

* * *

(b) An individual who wants to obtain a reciprocal cemetery broker's license shall comply with §35.221 and:

(1) Possess a current cemetery broker's license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement OR HAS QUALIFICATIONS FOR LICENSURE WHICH ARE SUBSTANTIALLY COMPARABLE TO THOSE REQUIRED BY THE

COMMISSION. When an A RECIPROCAL applicant applies from a state that would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the RECIPROCAL applicant shall complete equivalent requirements FOR LICENSURE IN THIS COMMONWEALTH.

(2) Comply with §35.241 and §35.242.

(3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either this Commonwealth or another state.

(v) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(vi) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

~~(vii) The applicant consents to service of process as described in §35.221(3).~~

(4) If the applicant will be acting as an associate cemetery broker, submit a sworn statement from the broker with whom the applicant will be affiliated:

(i) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.

(ii) Certifying that the applicant will be actively supervised and trained by the broker.

(5) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the applicant's license is active and in good standing.

(ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

(iii) Listing the applicant's office address and the name of the applicant's employing broker.

(c) A partnership, association or corporation that wants to obtain a [Pennsylvania] standard cemetery broker's license shall:

(1) Ensure that each member of the partnership, association[,] or each officer of the corporation, who intends to engage in the real estate business [is licensed by the Commission] possesses a standard license as a broker or cemetery broker issued by the Commission.

* * *

(d) A partnership, association or corporation that wants to obtain a reciprocal cemetery broker's license shall:

(1) Ensure that each member of the partnership, association or each officer of the corporation, who intends to engage in the real estate business possesses a standard or reciprocal license as a broker or cemetery broker issued by the Commission.

(2) Designate a broker or cemetery broker holding a standard or reciprocal license to serve as broker of record.

(3) Comply with §§ 35.241 and 35.242.

(4) Submit a complete license application to the Commission.

§ 35.225. Licensure as cemetery salesperson.

(a) An individual who wants to obtain a [Pennsylvania] standard cemetery salespersons license shall comply with §35.221 (relating to general requirements) and:

* * *

(b) An individual who wants to obtain a reciprocal cemetery salesperson's license shall comply with §35.221 and:

(1) Possess a current cemetery salesperson's license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement OR HAS QUALIFICATIONS FOR LICENSURE WHICH ARE SUBSTANTIALLY COMPARABLE TO THOSE REQUIRED BY THE COMMISSION. When an A RECIPROCAL applicant applies from a state that would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the RECIPROCAL applicant shall complete equivalent requirements FOR LICENSURE IN THIS COMMONWEALTH.

(2) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the applicant's license is active and in good standing.

- (ii) Describing any past disciplinary action taken by the licensing authority against the applicant.
- (iii) Listing the applicant's office address and the name of the applicant's employing broker.
- (3) Submit a completed license application to the Commission with a verified statement that:
- (i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either this Commonwealth or another state.
- (ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this Chapter.
- (iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.
- ~~(iv) The applicant consents to service of process as described in §35-221(3).~~
- (4) Submit a sworn statement from the broker with whom the applicant will be affiliated:
- (i) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.
- (ii) Certifying that the applicant will be actively supervised and trained by the broker.

§ 35.226. Licensure as builder-owner salesperson.

(a) An individual who wants to obtain a [Pennsylvania] standard builder-owner salesperson's license shall comply with §35.221 (relating to general requirements) and:

(1) Have scored a passing grade on each part of the salesperson's licensing examination within 3 years prior to submission of a properly completed license application except that an applicant who has been actively licensed as a broker, salesperson or builder-owner salesperson by another state within the last 5 years shall take and pass only the Pennsylvania portion of the examination. See §35.274 (relating to examination for builder-owner salesperson's license).

* * *

(b) An individual who wants to obtain a reciprocal license as a builder-owner salesperson shall comply with §35.221 and:

(1) Possess a current builder-owner salesperson license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement OR HAS QUALIFICATIONS FOR LICENSURE WHICH ARE SUBSTANTIALLY COMPARABLE TO THOSE REQUIRED BY THE COMMISSION. When ~~an~~ A RECIPROCAL applicant applies from a state that would require a ~~standard~~ Pennsylvania licensee to complete additional education, experience or examination requirements, the RECIPROCAL applicant shall complete equivalent requirements FOR LICENSURE IN THIS COMMONWEALTH.

(2) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the applicant's license is active and in good standing.

(ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

(iii) Listing the applicant's office address and the name of the applicant's employing broker.

(3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either this Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

~~(iv) The applicant consents to service of process as described in §35.221(3) (related to general requirements).~~

(4) Submit a sworn statement from the builder-owner with whom the applicant will be affiliated:

(i) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.

(ii) Certifying that the BUILDER-OWNER is a builder-owner of single or multifamily dwellings and employs the applicant.

§ 35.227. Licensure as rental listing referral agent.

(a) An individual who wants to obtain a [Pennsylvania] standard rental listing referral agent's license shall comply with §35.221 (relating to general requirements) and:

(1) Have scored a passing grade on each part of the salesperson's examination within 3 years prior to submission of a properly completed license application except that an applicant who has been actively licensed as a broker, salesperson or rental listing referral agent by another state within the last 5 years shall take and pass only the Pennsylvania portion of the examination. See §35.275 (relating to examination for rental listing referral agent's license).

* * *

(b) An individual who wants to who wants to obtain a reciprocal rental listing referral agent's license shall comply with §35.221 and:

(1) Possess a current rental listing referral agent's license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement OR HAS QUALIFICATIONS FOR LICENSURE WHICH ARE SUBSTANTIALLY COMPARABLE TO THOSE REQUIRED BY THE COMMISSION. ~~When an~~ A RECIPROCAL applicant applies from a state that would require a ~~standard~~ Pennsylvania licensee to complete additional education, experience or examination requirements, the RECIPROCAL applicant shall complete equivalent requirements FOR LICENSURE IN THIS COMMONWEALTH.

(2) Submit a certification from the real estate licensing authority of

the other state:

(i) Confirming that the license is active and in good standing.

(ii) Describing any past disciplinary action taken by the
licensing authority against the applicant.

(iii) Listing the applicant's office address and the name of the
applicant's employing broker.

(3) Submit a completed license application to the Commission with a

verified statement that:

(i) To the applicant's knowledge, the applicant is not the
subject of discipline or a current investigation or proceeding alleging
misconduct under a licensing law or criminal law of either this
Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to
be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record
in any disciplinary proceeding involving alleged misconduct by the
applicant from any state in which the applicant is or has been licensed.

~~(iv) The applicant consents to service of process as described in
§35.221(3).~~

(4) Comply with § 35.241 (relating to general office requirement).

(c) A partnership, association or corporation that wants to obtain a
[Pennsylvania] standard or reciprocal rental listing referral agent's license shall:

(1) Designate an individual who HOLDS either a current standard or reciprocal LICENSE as a rental listing referral agent issued by the Commission to serve as manager of record.

* * *

§ 35.228. Licensure as campground membership salesperson.

(a) An individual who wants to obtain a [Pennsylvania] standard campground membership salesperson's license shall comply with §35.221 (relating to general requirements) and:

(b) An individual who [sells campground memberships without a license may be subject to disciplinary action by the Commission for unlicensed practice as a campground membership salesperson under section 301 of the act (63 P.S. § 466.301)] wants to obtain a reciprocal campground membership salesperson's license shall comply with §35.221 and:

(1) Possess a current campground membership salesperson's license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement OR HAS QUALIFICATIONS FOR LICENSURE WHICH ARE SUBSTANTIALLY COMPARABLE TO THOSE REQUIRED BY THE COMMISSION. When an A RECIPROCAL applicant applies from a state that would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the RECIPROCAL applicant shall complete equivalent requirements FOR LICENSURE IN THIS COMMONWEALTH.

(2) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the applicant's license is active and in good standing.

(ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

(iii) Listing the applicant's office address and the name of the applicant's employing broker.

(3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either the Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

~~(iv) The applicant consents to service of process as described in §35.221(3).~~

(4) Submit a sworn statement from the broker from whom the applicant received his onsite training certifying that the broker actively trained

and supervised the applicant and providing other information regarding the onsite training the Commission may require.

§ 35.229. Licensure as time-share salesperson.

(a) An individual who wants to obtain a [Pennsylvania] standard time-share salesperson's license shall comply with §35.221 (relating to general requirements) and:

* * *

(b) An individual who [sells time shares without a license may be subject to disciplinary action by the Commission for unlicensed practice as a time-share salesperson under section 301 of the act (63 P.S. § 466.301)] wants to obtain a reciprocal time-share salesperson's license shall comply with §35.221 and:

(1) Possess a current time-share salesperson's license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement OR HAS QUALIFICATIONS FOR LICENSURE WHICH ARE SUBSTANTIALLY COMPARABLE TO THOSE REQUIRED BY THE COMMISSION. When ~~an~~ A RECIPROCAL applicant applies from a state that would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the RECIPROCAL applicant shall complete equivalent requirements FOR LICENSURE IN THIS COMMONWEALTH.

(2) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the applicant's license is active and in good standing.

- (ii) Describing any past disciplinary action taken by the licensing authority against the applicant.
- (iii) Listing the applicant's office address and the name of the applicant's employing broker.
- (3) Submit a completed license application to the Commission with a verified statement that:
- (i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either this Commonwealth or another state.
- (ii) The applicant has reviewed and is familiar with the act and the regulations and agrees to be bound by the act and regulations.
- (iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.
- ~~(iv) The applicant consents to service of process as described in §35.221(3).~~
- (4) Submit a sworn statement from the broker from whom the applicant received his onsite training certifying that he actively trained and supervised the applicant and providing other information regarding the onsite training the Commission may require.

OFFICES

§35.241. General office requirement.

(a) A broker, cemetery broker, or rental listing referral agent shall maintain a [fixed] main office in this Commonwealth unless he maintains a [fixed] main office in another [jurisdiction] state where he [is licensed] holds the equivalent of a standard license.

* * *

§35.242. Office of a broker or cemetery broker.

(a) The office of a broker or cemetery broker in this Commonwealth shall be devoted to the transaction of real estate business and be arranged to permit business to be conducted in privacy.

(b) If the office of a broker or cemetery broker in this Commonwealth is located in a private residence, the entrance to the office shall be separate from the entrance to the residence.

(c) The business name of the broker or cemetery broker, as designated on the license, shall be displayed and in permanent fashion outside the office in this Commonwealth.

(d) A branch office operated by a broker or cemetery broker in this Commonwealth shall be in compliance with this section.

* * *

§35.244. Supervision and operation of office.

(a) The main or branch office in this Commonwealth of a broker shall be under the direction and supervision of a broker or associate broker holding either a standard or reciprocal license.

(b) The main or branch office in this Commonwealth of a cemetery broker shall be under the direction and supervision of a broker, cemetery broker, associate broker or associate cemetery broker holding either a standard or reciprocal license.

(c) An associate broker, salesperson, cemetery salesperson, campground membership salesperson or time-share salesperson shall practice in affiliation with a broker holding either a reciprocal or standard license issued by the Commission.

(d) A branch office in this Commonwealth may not be operated in a manner that permits, or is intended to permit, an [employee] employee to carry on the business of the office for the [employee's] employee's sole benefit.

[(d)] (e) The office in this Commonwealth of a rental listing referral agent shall be under the direction and supervision of a rental listing referral agent holding either a standard or reciprocal license issued by the Commission. A rental listing referral agent may not supervise more than one office.

§35.245. Display of licenses in office.

(a) COMMENCING WITH THE 2006-2008 RENEWAL PERIOD ~~The~~ current license of a broker, cemetery broker or rental listing referral agent holding a standard license and those licensees employed by OR AFFILIATED WITH that broker, cemetery broker or rental listing referral agent shall be displayed in a conspicuous place MAINTAINED at the main office.

(b) ~~The current license of [an associate broker, salesperson, associate cemetery broker or cemetery salesperson] a broker, cemetery broker or rental listing referral agent holding a reciprocal license and those licensees employed by that broker, cemetery broker or rental listing referral agent shall be displayed in a conspicuous place at the branch office out of which the [licensee] broker, cemetery broker or rental listing referral agent works.~~

~~(e) The current license of a branch office shall be displayed in a conspicuous place at the branch office.~~

~~(d) A broker or cemetery broker holding a standard license shall maintain at the main office a list of licensed [employees] employees and the branch office out of which each licensed [employee] employee works.~~

~~(e) A broker or cemetery BROKER holding a reciprocal license shall maintain at the branch office a list of employees licensed in this Commonwealth and LICENSEES EMPLOYED OR AFFILIATED WITH THE BROKER OR CEMETERY BROKER AT the branch office out of which each licensed employee LICENSEE works.~~

§35.246. Inspection of office.

(a) *Routine inspections.* No more than four times a year during regular business hours, the Commission or its authorized representatives may conduct a routine inspection of the main office ~~of a broker, cemetery broker or rental listing referral agent holding a standard license~~ or a branch office of a broker, cemetery broker or rental listing referral agent ~~holding either a standard or reciprocal license~~ for the purpose of determining whether the office is being operated in compliance with the act and this chapter.

(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 a main ~~office of a standard license holder~~ or a branch office ~~of a standard or reciprocal license holder~~:

* * *

STATUS OF LICENSURE

* * *

§35.255. Reciprocal licenses.

(a) *Renewal.* In addition to completing the application and paying the fee, the A licensee APPLYING FOR RENEWAL OF A RECIPROCAL LICENSE shall provide the Commission with a certification that the license is current and in good standing from the state where the licensee has his principal place of business.

(b) *Reactivation.* A licensee who fails to renew a reciprocal license may reactivate the license without being reexamined provided that he holds the equivalent of a current standard license in the state where the licensee has his principal place of business.

(c) *Conversion to standard license.* A reciprocal licensee who designates his principal place of business as in this Commonwealth or who fails to maintain a current standard license in the state of his principal place of business shall notify the Commission within 9030 days of the change. To continue to practice in this Commonwealth at the end of the renewal period, the reciprocal licensee shall obtain a standard license in accordance with the applicable requirements of this chapter. Thereafter, the standard licensee shall comply with the requirements for a standard license, including completion of the continuing education requirement.

Subchapter D. LICENSING EXAMINATIONS

§ 35.271. Examination for broker's license.

(a) An individual who wants to take the broker's examination for a [Pennsylvania] standard broker's license shall:

* * *

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

* * *

(2) [Except as provided in paragraph (6), 2] Two of the required 16 credits shall be in a Commission-developed or approved real estate office management course and 2 of the required 16 credits shall be in a Commission-developed or approved law course. At least 6 of the remaining 12 credits shall be in 3 or more of the Commission-developed courses listed in this paragraph. The remaining 6 credits shall be in real estate courses but not necessarily those listed in this paragraph. A candidate may not apply credits used to qualify for the salesperson's examination toward fulfillment of the broker education requirement.

* * *

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

(c) A reciprocal licensee who is converting that license to a standard broker's license is exempt from subsection (a) and is only required to pass the state portion of the examination.

§ 35.272. Examination for salesperson's license.

(a) An individual who wants to take the salesperson's examination for the purpose of obtaining a [Pennsylvania] standard salesperson's license shall:

* * *

(c) A licensee who is converting that A RECIPROCAL license to a standard salesperson's license is exempt from the requirements in subsections (a) and (b) and is only required to pass the state portion of the examination.

§ 35.273. Examination for cemetery broker's license.

(a) An individual who wants to take the salesperson's examination for the purpose of obtaining a [Pennsylvania] standard cemetery broker's license shall:

* * *

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

(5) Courses shall have been completed within 10 years prior to the date of successful completion of the licensing examination ~~except for applicants who are converting a reciprocal license to a standard license or hold a current license in another state.~~

(c) A reciprocal licensee who is converting that A RECIPROCAL license to a standard cemetery broker's license is exempt from subsection (a) and is only required to pass the state portion of the examination.

§ 35.274. Examination for builder-owner salesperson's license.

(a) An individual who wants to take the salesperson's examination for the purpose of obtaining a [Pennsylvania] standard builder-owner salesperson's license shall:

* * *

(b) A reciprocal licensee who is converting that A RECIPROCAL license to a standard builder-owner salesperson's license is only required to pass the state portion of the examination.

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

(a) An individual who wants to take the salesperson's examination for the purpose of obtaining a [Pennsylvania] standard rental listing referral agent's license shall:

* * *

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

(4) Courses shall have been completed within 10 years prior to the date of successful completion of the licensing examination ~~except for applicants who are converting a reciprocal license to a standard license or hold a current license in another state.~~

(c) A reciprocal licensee who is converting that A RECIPROCAL license to a standard rental listing referral agent's license is exempt from the requirements in subsections (a) and (b) and is only required to pass the state portion of the examination.

SUBCHAPTER E. STANDARDS OF CONDUCT AND PRACTICE

ADVERTISING AND SOLICITATION

§35.305. Business name on advertisements.

(b) [Individual brokers of record, associate brokers, salespersons, cemetery associate brokers, cemetery salespersons and rental listing referral agents] Licensees who wish to use and advertise [nicknames (for example, Jack v. John or Margaret v. Peggy)] a

nickname for their first names shall include the [names] nickname on their licensure applications or biennial renewal applications.

* * *

ESCROW REQUIREMENTS

* * *

§35.325. Escrow Account.

* * *

(b) [The employing] A broker who is a sole proprietor or broker of record [of a partnership, association or corporation] may give an [employee] employee written authority to deposit money into an escrow account and may give a licensed [employee] employee written authority to withdraw funds from the escrow account for payments that are properly chargeable to the account.

* * *

SUBCHAPTER H. CONTINUING EDUCATION

* * *

§35.382. Requirement.

(a) *Condition precedent to renewal of current standard license.* [Beginning with the 1994-1996 biennial license period and continuing with each biennial license period thereafter, a] A broker or salesperson holding a standard license 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 MUST BE COMPLETED BY THE MAY 31 RENEWAL DEADLINE.**

(b) *Condition precedent to reactivation and renewal of noncurrent standard license.* [Effective March 1, 1994, a] A broker or salesperson holding a standard license 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 holding a standard license 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 reciprocal license holders or cemetery brokers, cemetery salespersons, builder-owner salespersons, timeshare salespersons, campground membership salespersons and rental listing referral agents who hold standard licenses.

(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] standard license holder seeking the waiver is unable to fulfill the requirement because of illness, emergency or hardship. THE FOLLOWING are examples of situations in which hardship waivers will be granted.

[(b)1] A [licensee] standard license holder 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] standard license holder 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] standard license holder who is a qualified continuing education instructor will be deemed eligible, 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.

* * *

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

(a) [*Qualifying courses.*] EXCEPT AS PROVIDED IN SUBSECTION (B), A LICENSEE SHALL COMPLETE 14 HOURS OF CONTINUING EDUCATION IN ACCEPTABLE COURSES IN A MINIMUM OF 2-HOUR INCREMENTS. A [licensee may] standard license holder shall satisfy the continuing education requirement by doing one of the following:

* * *

(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] standard

license holders, require [up to 3 hours in a topic that addresses a critical issue of current relevance to licensees.] THAT ALL OR PART OF THE 14 HOURS BE COMPLETED IN REQUIRED TOPICS.

(c) [*Elective topics.*] ACCEPTABLE COURSES INCLUDE THE FOLLOWING:

* * *



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE REAL ESTATE COMMISSION

Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7134

June 10, 2005

The Honorable John R. McGinley, Jr., Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harrisstown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
State Real Estate Commission
16A-5610: Reciprocal License

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Real Estate Commission pertaining to reciprocal license.

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

Sincerely,

A handwritten signature in black ink that reads "Beverly R. Brookes".

Beverly R. Brookes, Chair
State Real Estate Commission

BRB:JPS:apm

Enclosure

c: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Albert Masland, Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Gerald S. Smith, 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

RECEIVED

2005 JUN 10 PM 2: 25

I.D. NUMBER: 16A-5610
SUBJECT: State Real Estate Commission: Reciprocal License
AGENCY: DEPARTMENT OF STATE

REVIEW COMMISSION

TYPE OF REGULATION

Proposed Regulation

X Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
6/10/05	<i>Sandra J. Harper</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
6/10/05	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
6/10/05	<i>J. Bellett</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

May 31, 2005