

Regulatory Analysis Form

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REVIEW COMMISSION

(1) Agency
 Department of State, Bureau of Professional and Occupational Affairs, State Real Estate Commission

(2) I.D. Number (Governor's Office Use)
 16A-5610

IRRC Number: 2421

(3) Short Title
 Reciprocity

(4) PA Code Cite
 49 Pa. Code §§35.201, 35.203, 35.321-35.229, 35.241, 35.244, 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)

 Proposed Rulemaking X
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

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

 No X
 Yes: By the Attorney General
 Yes: By the Governor

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

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 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).

Regulatory Analysis Form

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

Yes. 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 place of business is outside of the Commonwealth be classified as “reciprocal licensees” and all other licensees be classified as “standard 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 will 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, will be able to obtain and maintain a reciprocal license without further requirement. The Commission cannot quantify the number of out-of-state licensees that will apply for a license.

Regulatory Analysis Form

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

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

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

Applicants for a reciprocal license will be 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, 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.

In compliance with Executive Order 1996-1, the Commission extended an invitation to the following individuals and associations to preliminarily review and comment on the Commission's draft regulatory proposal: Laurel D. McAdams; Jim Stoup, Director of Government Affairs,

(Continued on Page 9)

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

There should be no 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.

Regulatory Analysis Form

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

N/A

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

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.

Regulatory Analysis Form

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

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
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

Regulatory Analysis Form

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

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

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

There should be no adverse effects and costs associated with compliance with the regulation. 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.

Regulatory Analysis Form

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

N/A

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

This regulation is mandated by Act 58 of 2003. Alabama, Arkansas, Colorado, Georgia, Hawaii, Idaho, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, New York, Oklahoma, Oregon, South Dakota, West Virginia and Wyoming have indicated a willingness to enter into reciprocal agreements with the Commission whereby applicants would receive the equivalent of a reciprocal license without further examination, education or experience. The Arkansas and West Virginia Real Estate Commissions have provided executed reciprocal agreements for the Commission's approval at its May 25, 2004 meeting. Agreements are also pending from the Wyoming and Oklahoma Real Estate Commissions.

California, Delaware, Texas and Vermont have advised that they do not have the authority to enter into reciprocal agreements. Maine and Ohio have advised that they may enter into reciprocal agreements, however additional education/experience/examination requirements must be completed prior to issuing a license to a Pennsylvania applicant. The Commission has not received a reply from the Maryland and New Jersey Real Estate Commissions, but the Commission understands that statutory changes would also be required.

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

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

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

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

Regulatory Analysis Form

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

Yes. Instead of taking the Pennsylvania portion of the licensure examination, reciprocal licensure applicants will only be 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 No. 16)

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

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

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

2004 JUN 23 11:25
REVIEW COMMISSION

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

2421

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

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

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

BY: Amy M. Elliott
(DEPUTY ATTORNEY GENERAL)

State Real Estate Commission
(AGENCY)

BY: [Signature]
6/15/04

DOCUMENT/FISCAL NOTE NO. 16A-5618

AUG 02 2004

DATE OF APPROVAL

DATE OF ADOPTION:

BY: [Signature]
Joseph J. McGettigan

DATE OF APPROVAL

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

TITLE: Chairman
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

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

PROPOSED 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) proposes to amend 49 Pa. Code, Chapter 35 to read as set forth in Annex A relating to reciprocal licenses.

A. Effective Date

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

B. Statutory Authority

The amendments are proposed under the authority of sections 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 (known as 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 Pennsylvania licensees. 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 the Commonwealth be classified as “reciprocal licensees” and all other licensees in Pennsylvania 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 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.
- 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 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:
 - Certifies that the license is active and in good standing.
 - Describes any past disciplinary action taken by the licensing authority against the applicant.
 - 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 Amendments

§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 (63 P.S. §455.602(a)).

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 (63 P.S. §455.602(a)) that the reciprocal licensee's principal place of business must be outside of the 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 (63 P.S. §455.602(a)). 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 (63 P.S. §455.602(c)(4)) mandates that the licensure fees for reciprocal licenses be the same as those for standard licenses. Accordingly, §35.203 has been amended throughout to reflect that the fees apply equally to standard and reciprocal licenses.

§35.221. General requirements.

Section 604(c) of the RELRA (63 P.S. §455.602(c)) 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 above sections currently refers to obtaining a Pennsylvania license. Act 58 of 2003 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. All applicants must 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 reciprocal license applicants, the Commission is proposing tracking the language of Section 602(d) and (e) of the RELRA (63 P.S. §§455.602(d) and 455.602(e)) 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, where the applicant applies from a state which would require a standard license applicant to complete additional education, experience and/or examination requirements, 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 (63 P.S. §455.602(c)) for each of the reciprocal classifications. Where 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. Where 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. In order 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 (63 P.S. §455.602(h)(2)) which exempts reciprocal licensees from the continuing education requirements in Section 404.1 of the RELRA (63 P.S. §455.404a). In order to renew, reciprocal licensees, in addition to completing the application and paying the renewal fee, must 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 (63 P.S. §455.602(h)(2)) which exempts reciprocal licensees from the reactivation requirements in Section 501(b) of the RELRA (63 P.S. §455.501(b)). 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 (63 P.S. §455.602(g)) which requires a reciprocal licensee to obtain a standard license if the reciprocal licensee changes his principal place of business to a location within Pennsylvania. The Commission proposes clarifying that where the reciprocal licensee changes this principal place of business or where 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 (63 P.S. §455.602(g)), 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 versus John and Margaret versus 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 (63 P.S. §455.602(h)(2)) exempts reciprocal licensees from the continuing education requirements in Section 404.1 of the RELRA (63 P.S. §455.404a). Accordingly, the Commission proposes amending §§35.382-35.384 by substituting "standard license holders" or "holding a standard license" for "licensees" throughout.

E. Compliance with Executive Order 1996-1

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

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.

F. Fiscal Impact and Paperwork Requirements

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

G. Sunset Date

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

H. Regulatory Review

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

Reciprocal license
16A-5610
August 18, 2004

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 shall 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 Board/Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

I. 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. Please reference No. 16A-5610 (Reciprocal Licenses), when submitting comments.

Joseph J. McGettigan, Chairman

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.

* * *

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, 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] cemetary 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 comply with §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. Where 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 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 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 [with] a certification from the real estate licensing authority of the other [jurisdiction] state [containing the following information]:
- (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] Confirming that the applicant's license [has been] is active [within the last 5 years] and in good standing.
- [(iii)](ii) [A description of] Describing any past disciplinary action taken by the licensing authority against the applicant.
- [(iv)] (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] 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. Where 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:

(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] state [containing the following information]:

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

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

[(iv)] (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 state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. Where 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.

(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.

[(b)] (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 (relating to general requirements) 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. Where 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 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 (relating to general requirements) 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. Where 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) (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 he 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. Where 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 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.

(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. § 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. Where 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 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 state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. Where 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 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 employe to carry on the business of the office for the employe's sole benefit.

(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 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 and the branch office out of which each licensed employe works.

(e) A broker or cemetery holding a reciprocal license shall maintain at the branch office a list of employes 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 re-examined 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. In order 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.

* * *

§ 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.]

(b) A reciprocal licensee who is converting that license to a standard broker's license is exempt from the requirements in 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:

* * *

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

* * *

(4) Courses shall have been completed within 10 years prior to the date of successful completion of the licensing examination.

(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:

* * *

(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.

(b) A reciprocal licensee who is converting that license to a standard cemetery broker's license is exempt from the requirements in 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:

* * *

(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.

(b) 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 a nickname for their first names [(for example, Jack v. John or

Margaret v. Peggy)] 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 written authority to deposit money into an escrow account and may give a licensed employe 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 address a critical issue of current relevance to licensees.

* * *



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) 783-3658

August 23, 2004

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

Re: Proposed Regulation
State Real Estate Commission
16A-5610: Reciprocity

Dear Chairman McGinley:

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

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

Sincerely,

Joseph J. McGettigan, Chairperson
State Real Estate Commission

JJM:JPS:kmh

Enclosure

cc: Linda C. Barrett, Chief Counsel
Department of State
Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
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

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

2421

TYPE OF REGULATION

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

RECEIVED
2004 AUG 23 AM 11:25
REGULATORY REVIEW ACT

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
8/23	<i>Sandra Harper</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
	<i>Ken Cleaver</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
8/23/04	<i>John F. Harper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL
8/23	<i>C. La. B.</i>	LEGISLATIVE REFERENCE BUREAU

August 12, 2004