



**Pennsylvania Association of
REALTORS®**

The Voice for Real Estate® in Pennsylvania

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June 12, 2006

The Honorable Thomas Gannon
Chairman, House Professional Licensure Committee
House Box 202020
Harrisburg, PA 17120

Dear Representative Gannon:

As an organization that represents nearly 33,000 of the Commonwealth's real estate licensees, we welcome the opportunity to provide input on the final proposed omitted regulation titled "Seller Property Disclosure Statement" (16A-5611).

Although we have some editorial comments which will be addressed later in this letter, our greatest concern lies with subparagraph (b) as it appears to go beyond what the State Real Estate Commission is able to do under the statutory language, and also has some practical difficulties.

Section 7304 of the law states that "A form of property disclosure statement that satisfies the requirements of this chapter shall be promulgated by the State Real Estate Commission. Nothing in this chapter shall preclude a seller from using a form of property disclosure statement that contains additional provisions that require greater specificity or that call for the disclosure of the condition or existence of other features of the property." (emphasis added)

The proposed regulation from the Commission notes that "Licensees who choose to expand upon the minimum requirements in subsection (b) shall conspicuously disclose on the statement that it contains topics beyond those required by Law and direct consumers to the Commission's web site for a copy of the statement which meets the minimum requirements."

Note that the law gives "the seller" the responsibility to fill out the form; while the Commission's proposal gives "licensees" this authority. While the Commission may interpret the law to create rules and regulations, it must stay within the confines of existing law to do so. The proposed change made by the Commission is a statutory, not regulatory, change and we therefore question its inclusion.

The law also requires that sellers disclose any relevant information relating to defects, regardless of whether there is a specific question on the form. From a practical standpoint, two questions arise:

- o What happens when a seller uses the minimum form and discloses more than is required by the language of that form?

- How is the consumer (or licensee) being protected by implicitly or explicitly encouraging sellers to disclose less information known about the property? This is especially troublesome where the disclosure would be required as a material defect, even if it is not a question on the minimum form. Pushing sellers to the minimum may make it more likely that they would not make the disclosure, thus passing on a defect to the unaware buyer and also opening the seller to liability.

We also have numerous editorial comments on issues included in the regulation:

- Paragraph 10(ii): The word “conditioned” should be added to the end of the line, and a line should be added to list the areas
- Paragraph 12(iv): The word “time” should be changed to “timer”
- Paragraph 13: The title should read “Land (soils, drainage, and boundaries).”
- Paragraph 13(ii): In notice language, the address and phone number of Mine Subsidence Insurance Fund is incorrect and should be listed as “25 Technology Drive, California Technology Park, Coal Center, PA 15413. (800) 922-1678 (in PA), (724) 769-1100 (outside PA)”
- Paragraph 14: After last line (“explain any ‘yes’ answers...”) lines should be added for explanation
- Paragraph 15: Please note that the first sentence of text in the Notice varies among all three versions of the form provided as supporting materials in the regulatory package. This language appears to be correct, as it tracks the original Act.

Again, thank you for the opportunity to comment on this regulatory proposal. Please feel free to contact me should you have any questions.

Sincerely,

Derenda Updegrave

Director, Government Affairs

Cc: William Rieger, Democratic Chairman, House Professional Licensure Committee
Basil Merenda, Commissioner, Bureau of Professional and Occupational Affairs
Peter Marks, Bureau of Professional and Occupational Affairs
Jim Smith, Independent Regulatory Review Commission