

Regulatory Analysis Form

RECEIVED
This space for use by IRRC

2008 SEP -2 AM 10: 11

INDEPENDENT REGULATORY
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-5614

IRRC Number: 2599

(3) Short Title

Consumer Notice

(4) PA Code Cite

49 Pa. Code §§ 35.201 and 35.336

(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
 Final Order Adopting Regulation
Policy Statement

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

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

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

The regulation simplifies and condenses the Consumer Notice adopted by the Commission on January 8, 2000 at 30 Pa.B. 228 under section 608 of the RELRA (63 P.S. § 455.608). Like the current version, the amendments advise consumers about agency relationships, fees, and services which licensees may provide to consumers. Licensees are required to provide consumers with the Consumer Notice during the first substantive discussion between a licensee and a consumer about the consumer's real estate needs.

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

The amendments are authorized under section 608 of the Real Estate Licensing and Registration Act, 63 P.S. §455.608.

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, section 608 of the RELRA, 63 P.S. § 455.608, requires the Commission to adopt the disclosure summary form by regulation.

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

Since its inception, licensees and consumers have complained to the Commission that the current disclosure summary is too lengthy and too difficult to understand. They requested that the Commission simplify the disclosure summary so that it would be consumer friendly and at the same time more useful to licensees.

(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.)

Consumers of real estate and the regulated community as a whole will benefit from a simplified disclosure summary. Currently, there are approximately 56,000 brokers, associate brokers and salespersons who will benefit from the regulations.

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 regulations.

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

All real estate brokers, associate brokers and salespersons will be required to comply with the regulation. Currently, there are approximately 56,000 licensees that fall within these categories.

(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 the proposed rulemaking was published at 37 Pa. B. 1499 (April 7, 2007). Publication was followed by a 30-day public comment period during which the Commission received 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. The Independent Regulatory Review Commission and the Senate Consumer Protection and Professional Licensure Committee 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.

The only costs associated with this regulation would be in reproducing the disclosure, retaining a signed acknowledgement and giving a copy of the disclosure to the consumer.

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.

Not applicable.

(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.

Not applicable.

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 Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government						
State Government						
Total Revenue Losses						

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

Not applicable.

Regulatory Analysis Form

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

Program	FY -3 FY 01-02 Actual	FY -2 FY 02-03 Actual	FY -1 FY 03-04 Projected	Current FY FY 04-05 Budgeted
State Real Estate Commission	\$2,654,819.51	\$2,803,605.90	\$3,150,494.59	\$3,541,000.00

(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.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Nonregulatory amendments were not considered because Section 608 of the Act, 63 P.S. §455.608, specifically requires that the Commission adopt the disclosure summary by regulation.

(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. See 22 above.

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.

Not applicable.

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

Numerous other states with agency laws require statutory mandated disclosures to be provided to consumers. The regulation will not put Pennsylvania at a competitive disadvantage.

(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 §§35.201 and 35.336. No other regulations will be affected by the rulemaking.

(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.

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.

The regulation will not change existing reporting requirements, record keeping or paperwork requirements as licensees have been required to keep a copy of the signed acknowledgment since the regulation was originally adopted on January 7, 2000.

(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 has perceived no special needs of any subset of its applicants or licensees for whom special accommodations should be made.

(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 thirty days from publication in the Pennsylvania Bulletin however, licensees will have 180 days to begin using the new Consumer Notice form.

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

The Commission reviews the effectiveness of its regulations on an ongoing basis.

RECEIVED

2008 SEP -2 AM 10:11

INDEPENDENT REGULATORY
REVIEW COMMISSION

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

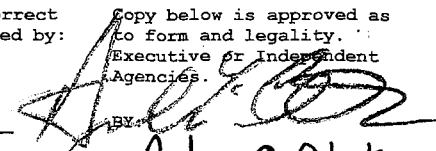
Copy below is hereby approved as to
form and legality. Attorney General

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: _____
(DEPUTY ATTORNEY GENERAL)

State Real Estate Commission
(AGENCY)

BY: 
Andrew C. Clark

DOCUMENT/FISCAL NOTE NO. 16A-5614

JUN 25 2008

DATE OF APPROVAL

DATE OF ADOPTION: _____

DATE OF APPROVAL

BY: Annie Hanna Cestra
Annie Hanna Cestra

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

TITLE: Chair
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

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

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

The State Real Estate Commission (Commission) hereby amends §§ 35.201 and 35.336 (relating to definitions; and 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) to read as set forth in Annex A.

Statutory Authority

The amendments are authorized under section 608 of the Real Estate Licensing and Registration Act (RELRA)(63 P.S. §455.608).

Response to Public Comments and Regulatory Review and Description of Amendments to the Final-Form Rulemaking

Notice of the proposed rulemaking was published at 37 Pa.B. 1499 (April 7, 2007). 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). The Independent Regulatory Review Commission (IRRC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment.

The following is a discussion of the comments received and the Commission's response:

§ 35.336 – General Comments

PAR asked that the Commission explain whether the Commission intends to prescribe the “shape and size” of the Consumer Notice or merely the content in its requirement in subsection (c) that the Consumer Notice be in the “format available from the Commission.” While the Commission has no preference whether the Consumer Notice is printed in portrait or landscape, the Commission's intention is for the Consumer Notice to not only contain the content required by § 35.336, but also the exact language in the order found in § 35.336.

The HPLC recommended that the Commission include the cautionary language about not disclosing confidential information until after a business relationship agreement is signed at the beginning and end of the Consumer Notice for heightened impact. In proposed form, the Commission moved this cautionary language from the beginning of the Notice to immediately above the consumer's signature. In the Commission's experience, it has found that consumers pay more attention to bolded language located immediately above a signature than to language at the beginning of the document. As a result, it has not reinserted the cautionary language at the beginning of the Consumer Notice as recommended.

§ 35.336(c)—Seller Agent/Buyer Agent

The HPLC questioned why the Commission eliminated the duty that seller agents make a continuous and good faith effort to find a buyer for the property except while the property is subject to an existing agreement and that buyer agents make a continuous and good faith effort to find a property for the buyer/tenant. The Commission concurs with the HPLC and has reinserted this language under both seller agent and buyer agent.

PAR commented that the statement that licensees must reveal known material defects about the property is repeated in the specific sections for seller agent, buyer agent and again under the duties for all licensees. PAR suggested that to streamline the form, the requirement to disclose all material defects should be included under the duties of all licensees only. The Commission has not made this change because it wants to assure that consumers know about the disclosure requirement within each relationship.

§ 35.336(c)—Dual agent/Designated Agent

The HPLC questioned why the Commission eliminated the duty of the broker to take responsibility to direct and supervise the business activities of the licensees who represent the buyers and sellers without taking any action that is adverse or detrimental to either party's interest in the transaction. While the bullet that contained this information in the current Consumer Notice has been eliminated in the revised form, the Commission has not eliminated this requirement. Instead, it is found in part in the dual agent section and in part in the designated agent section. Under the designated agent section, the Consumer Notice advises, "Because the broker supervises all of the licensees, the broker automatically serves as a dual agent." Under the dual agent section, the Consumer Notice advises, "A dual agent may not take any action that is adverse or detrimental to either party."

§ 35.336(c)—Transaction licensee

PAR recommended that the section on transaction licensee be formatted similar to seller agent, buyer agent, dual agent and designated agent. Unlike the other relationships mentioned, transaction licensees do not have an agency relationship with the consumer. As such, the Commission cannot include transaction licensees under the categories of agency relationships that licensees may enter into with consumers.

§ 35.336(c)—Duty owed to all consumers

The HPLC questioned why the Commission deleted the phrase "which meets the practice standards required by the act" from the requirement that licensees exercise reasonable skill and care in the first bullet. Upon further reflection, the Commission has reinserted this language.

PAR recommended that the Commission change the fourth bullet to “Real Estate Seller Disclosure Law” rather than “Act.” The Commission concurs and has made that change.

§ 35.336(c)—Negotiable terms

The HPLC recommended that the Commission substitute the phrase “the sharing of fees” in the fourth bullet for “compensation to other brokers.” The Commission concurs with this suggestion, and since the broker may cooperate and share fees with other brokers, has revised the bullet to read “The broker’s cooperation and sharing of fees with other brokers.”

§ 35.336(c)—Acknowledgement

Finally, the HPLC recommended that the Commission add to the signature line for the licensee a space for the licensee's printed name and the date signed, as well as the license number to clearly identify the licensee. The Commission concurs and has made the recommended change to the form in the final rulemaking.

Other Amendments to the Final-Form Rulemaking

In the proposed rulemaking, the Commission intended to retain the requirements previously espoused in section 608 of the RELRA, 63 P.S. § 455.608, that licensees retain a copy of the signed or refused acknowledgement for six months and that licensees provide the consumer a copy of the entire disclosure summary. However, this language was inadvertently replaced with the language that appeared in subsection (b) of the proposed rulemaking as published, which is identical to the first paragraph of the Consumer Notice. In the final-form rulemaking, the Commission is deleting the redundant language and is inserting the intended language as subsection (b).

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 March 28, 2007, the Commission submitted a copy of the notice of proposed rulemaking, published at 37 Pa. B. 1499 (April 7, 2007), 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. In preparing the final-form rulemaking, the Commission has considered all comments from the HPLC 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 Patricia A. Ridley, 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) The amendments to the final-form rulemaking do not enlarge the purpose of proposed rulemaking published at 37 Pa. B. 1499 on April 7, 2007.

(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) The amendments will be effective 30 days after publication of the final-form regulation in the *Pennsylvania Bulletin*; however, licensees will have 180 days to begin using the new Consumer Notice form.

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:

* * * * *

Initial interview—The first [communication] substantive discussion between a [broker or salesperson] licensee and a consumer [involving the personal/business or financial] about the consumer's real estate needs [and motivations of the consumer. A discussion of the objective facts about the property, including dimensions, zoning classification, age, description or list price/lease amount, is not by itself a substantive discussion].

* * * * *

Subchapter E. STANDARDS OF CONDUCT AND PRACTICE

* * * * *

REAL ESTATE DOCUMENTS

* * * * *

§ 35.336. 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.

(a) Licensees shall provide the consumer with the Consumer Notice at their initial interview.

(b) In an effort to enable consumers of real estate services to make informed decisions about the business relationships they may have with real estate brokers and salespersons (licensees), the Real Estate Licensing and Registration Act (RELRA) requires that consumers be provided with this notice at the initial interview. LICENSEES SHALL RETAIN A COPY OF THE SIGNED/REFUSED ACKNOWLEDGEMENT FOR SIX MONTHS AND SHALL PROVIDE THE CONSUMER A COPY OF THE ENTIRE DISCLOSURE SUMMARY.

(c) The Disclosure Summary [shall] must be entitled “Consumer Notice” and [shall] must be in the following format available from the Commission office upon request by phone, fax or internet:

CONSUMER NOTICE

THIS IS NOT A CONTRACT

(Editor’s Note: As part of this final rulemaking, the Board is deleting the text of the form which appears in 49 Pa. Code pages 35-62.1—35-62.4, serial pages (287915) to (287918), and is replacing it with the following text.)

In an effort to enable consumers of real estate services to make informed decisions about the business relationships they may have with real estate brokers and salespersons (licensees), the Real Estate Licensing and Registration Act (RELRA) requires that consumers be provided with this Notice at the initial interview.

- Licensees may enter into the following agency relationships with consumers:

Seller Agent

As a seller agent, the licensee and the licensee's company works exclusively for the seller/landlord and must act in the seller's/landlord's best interest, INCLUDING MAKING A CONTINUOUS AND GOOD FAITH EFFORT TO FIND A BUYER/TENANT EXCEPT WHILE THE PROPERTY IS SUBJECT TO AN EXISTING AGREEMENT. All confidential information relayed by the seller/landlord must be kept confidential except that a licensee must reveal known material defects about the property. A subagent has the same duties and obligations as the seller agent.

Buyer Agent

As a buyer agent, the licensee and the licensee's company work exclusively for the buyer/tenant even if paid by the seller/landlord. The buyer agent must act in the buyer/tenant's best interest, INCLUDING MAKING A CONTINUOUS AND GOOD FAITH EFFORT TO FIND A PROPERTY FOR THE BUYER/TENANT, EXCEPT WHILE THE BUYER IS SUBJECT TO AN EXISTING CONTRACT, and must keep all confidential information, other than known material defects about the property, confidential.

Dual Agent

As a dual agent, the licensee works for both the seller/landlord and the buyer/tenant. A dual agent may not take any action that is adverse or detrimental to either party but must disclose known material defects about the property. A licensee must have the written consent of both parties before acting as a dual agent.

Designated Agent

As a designated agent, the broker of the selected real estate company designates certain licensees within the company to act exclusively as the seller/landlord agent and other licensees within the company to act exclusively as the buyer/tenant agent in the transaction. Because the broker supervises all of the licensees, the broker automatically serves as a dual agent. Each of the designated licensees are required to act in the applicable capacity explained previously. Additionally, the broker has the duty to take reasonable steps to assure that confidential information is not disclosed within the company.

- In addition, a licensee may serve as a Transaction Licensee.

A transaction licensee provides real estate services without having any agency relationship with a consumer. Although a transaction licensee has no duty of loyalty or confidentiality, a transaction licensee is prohibited from disclosing that:

- The seller will accept a price less than the asking/listing price.
- The buyer will pay a price greater than the price submitted in the written offer, and

- The seller or buyer will agree to financing terms other than those offered.

Like licensees in agency relationships, transaction licensees must disclose known material defects about the property.

- Regardless of the business relationship selected, all licensees owe consumers the duty to:
 - Exercise reasonable professional skill and care WHICH MEETS THE PRACTICE STANDARDS REQUIRED BY THE RELRA.
 - Deal honestly and in good faith.
 - Present, as soon as practicable, all written offers, counteroffers, notices and communications to and from the parties. This duty may be waived by the seller where the seller's property is under contract and the waiver is in writing.
 - Comply with Real Estate Seller Disclosure Act LAW.
 - Account for escrow and deposit funds.
 - Disclose, as soon as practicable, all conflicts of interest and financial interests.
 - Provide assistance with document preparation and advise the consumer regarding compliance with laws pertaining to real estate transactions.
 - Advise the consumer to seek expert advice on matters about the transaction that are beyond the licensee's expertise.
 - Keep the consumer informed about the transaction and the tasks to be completed.
 - Disclose financial interest in a service, such as financial, title transfer and preparation

- Disclose financial interest in a service, such as financial, title transfer and preparation services, insurance, construction, repair or inspection, at the time service is recommended or the first time the licensee learns that the service will be used.

- The following contractual terms are *negotiable* between the licensee and the consumer and must be addressed in an agreement/disclosure statement:
 - The duration of the licensee's employment, listing agreement or contract.
 - The licensee's fees or commission.
 - The scope of the licensee's activities or practices.
 - The broker's cooperation with and SHARING OF FEES WITH ~~compensation to other~~ brokers .

- All sales agreements must contain the property's zoning classification except where the property is zoned solely or primarily to permit single family dwellings.

- The Real Estate Recovery Fund exists to reimburse any person who has obtained a final civil judgment against a Pennsylvania real estate licensee owing to fraud, misrepresentation, or deceit in a real estate transaction and who has been unable to collect the judgment after exhausting all legal and equitable remedies. For complete details about the Fund, call (717) 783-3658.

Before you disclose any financial information to a licensee, be advised that unless you select a business relationship by signing a written agreement, the licensee is NOT representing you. A business relationship is NOT presumed.

ACKNOWLEDGMENT

I acknowledge that I have received this disclosure.

Date: _____
(Consumer's printed name) (Consumer's signature)

Date: _____
(Consumer's printed name) (Consumer's signature)

I certify that I have provided this document to the above consumer during the initial interview.

Date: _____

(Licensee'S PRINTED NAME) (LICENSEE'S SIGNATURE) (LICENSE #)

Adopted by the State Real Estate Commission at 49 Pa. Code §35.336.

* * * * *

(1) An AIT program which has been discontinued by a period of full-time military service may be completed within a year after that military service.

(2) An AIT program which has been discontinued for any reason other than military service may not be completed if the absence exceeds 1 year from the date of discontinuance.

(3) If an AIT program has been discontinued before completion for any reason beyond AIT or supervisor control, the AIT and supervisor may apply to the Board for consideration of credit for the period of time completed.

(i) The AIT requesting consideration shall explain why the AIT program was discontinued, how the AIT intends to complete the training and document progress in the manner required by § 39.104 (relating to AIT program reports).

(ii) The supervisor requesting consideration shall explain why the AIT program was discontinued and document the hours that the supervisor spent on the training program.

(4) Only one discontinuance will be permitted.

§ 39.103. AIT program reports.

Within 30 days of the completion of the AIT program, the AIT and supervisor shall submit to the Board a report on the AIT's progress on forms provided by the Board. The AIT and supervisor shall sign the report, verifying the accuracy of the information. The report must include, at a minimum:

- (1) The names of the AIT and supervisor.
- (2) The place of training.
- (3) A statement of the subject areas covered during the program.
- (4) A list of the departments in which the AIT trained, as well as initials of department managers to verify that the AIT trained in those departments.
- (5) The number of hours the AIT has completed during the program in each subject area.
- (6) A description of the administrative activities in which the AIT has participated.
- (7) Suggestions for improvement in the program.
- (8) Other information the Board requests.

[Pa.B. Doc. No. 07-596. Filed for public inspection April 6, 2007. 9:00 a.m.]

**STATE REAL
ESTATE COMMISSION**

[49 PA. CODE CH. 35]
Consumer Notice

The State Real Estate Commission (Commission) proposes to amend §§ 35.201 and 35.336 (relating to definitions; and 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) to read as set forth in Annex A.

A. Effective Date

The proposed rulemaking will be effective 30 days after final-form publication in the *Pennsylvania Bulletin*. However, licensees will have 180 days to begin using the new Consumer Notice form.

B. Statutory Authority

The amendments are proposed under section 608 of the Real Estate Licensing and Registration Act (RELRA) (63 P. S. § 455.608).

C. Background and Purpose

The act of November 25, 1998 (P. L. 908, No. 112) (Act 112) amended the RELRA to establish the various agency relationships that real estate licensees are permitted to enter into with consumers. In accordance with section 608 of the RELRA, real estate licensees are required to provide consumers with a disclosure summary at the initial interview that delineates the following eleven items:

- The relationships in which the consumer may engage the broker.
- A statement informing sellers and buyers of their option to have an agency relationship with a broker, that an agency relationship is not to be presumed and that it will exist only as set forth in a written agreement between the broker and the consumer.
- A statement that a consumer has the right to enter into a negotiated agreement with the broker limiting the activities or practices that the broker will provide for on behalf of the consumer and that the fees and services to be provided are to be determined by negotiations between the consumer and the broker.
- A statement identifying any possibility that the broker may provide services to another consumer who may be party to the transaction and, if so, an explanation of the duties the broker may owe the other party and whether the broker may accept a fee for those services.
- A statement identifying any possibility that the broker may designate one or more licensees affiliated with the broker to represent the separate interest of the parties to the transaction.
- A statement of the broker's policies regarding cooperation with other brokers, including the sharing of fees.
- A statement that a buyer's broker may be paid a fee that is a percentage of the purchase price and the buyer's broker, even if compensated by the listing broker, will represent the interests of the buyer.
- A statement that the duration of the broker's employment and the broker's fees are negotiable.
- The purpose of the Real Estate Recovery Fund and the telephone number of the Commission at which further information about the fund may be obtained.
- A statement that the duration of the listing agreement or contract and the broker's commission are negotiable.
- A statement that any sales agreement must contain zoning classification of a property except in cases where the property (or each parcel thereof, if subdivided) is zoned solely or primarily to permit single-family dwellings.

At 30 Pa.B. 228 (January 8, 2000), the Commission published a final-form rulemaking containing a disclosure statement in accordance with section 608 of the RELRA. Licensees have advised the Commission that the current

disclosure statement is too long and difficult for consumers to understand. They have requested that the Commission revise the disclosure statement so that it is more consumer-friendly.

D. Description of Proposed Amendments

§ 35.201. Definitions.

Currently, the definition of "initial interview" includes any conversation between a broker or salesperson and a consumer about the consumer's personal, business or financial needs and motivations. With the passage of time, the Commission has found this definition too broad and not in conformity with the definition of "initial interview" in section 608(a) of the RELRA. The Commission has found that information about a consumer's personal or business needs is often aspirational and not relevant to the consumer's actual purchasing ability. The Commission proposes amending this definition to more closely follow the language in the RELRA. Under the definition, consumers must be provided with the Consumer Notice during the first substantive discussion between a licensee and a consumer about the consumer's real estate needs.

§ 35.336. 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.

Proposed subsection (a) would contain the requirement in section 608 of the RELRA that real estate brokers, associate brokers and salespersons provide the disclosure summary, called the Consumer Notice, to consumers at the initial interview.

Proposed subsection (b) would contain a simplified and condensed version of the current Consumer Notice. The proposed Consumer Notice first explains the various relationships available to the consumer, then the duties required of all licensees in section 606.1 of the RELRA (63 P. S. § 455.606a) and the contractual terms that must be contained in all agreements, followed by a caution against disclosing confidential information until an agreement selecting a relationship has been executed and an Acknowledgement.

Proposed subsection (c) contains the requirement in section 608 of the RELRA that licensees retain a copy of the signed/refused Acknowledgement and provide the consumer with a copy of the entire disclosure.

E. Review and Comment on Draft Regulatory Proposal

The Commission extended an invitation to the following boards, associations, school and licensees 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 proposed rulemaking.

F. Fiscal Impact and Paperwork Requirements

The proposed rulemaking should have no fiscal impact or impose additional paperwork requirements on the Commonwealth. The disclosure summary would be available on the Internet for downloading. This rulemaking would have a minimal fiscal impact and additional paperwork requirement on the regulated community in that licensees would incur the cost of reproducing the disclosure summary, keeping the signed acknowledgment and providing a copy of the entire disclosure to the consumer. The proposed rulemaking should not necessitate legal, accounting or reporting requirements on the regulated community.

G. Sunset Date

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

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 28, 2007, the Board 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 Board, 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 rulemaking within 30 days of publication of this proposed rulemaking to Judith Pachter Schulder, Coun-

sel, State Real Estate Commission, P. O. Box 2649, Harrisburg, PA 17105-2649. Reference No. 16A-5614 (Consumer Notice), when submitting comments.

JOSEPH J. MCGETTIGAN, Sr.,
Chairperson

Fiscal Note: 16A-5614. 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:

* * * * *

Initial interview—The first [communication] substantive discussion between a [broker or salesperson] licensee and a consumer [involving the personal/business or financial] about the consumer's real estate needs [and motivations of the consumer. A discussion of the objective facts about the property, including dimensions, zoning classification, age, description or list price/lease amount, is not by itself a substantive discussion].

* * * * *

Subchapter E. STANDARDS OF CONDUCT AND PRACTICE

REAL ESTATE DOCUMENTS

§ 35.336. 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.

(a) Licensees shall provide the consumer with the Consumer Notice at their initial interview.

(b) In an effort to enable consumers of real estate services to make informed decisions about the business relationships they may have with real estate brokers and salespersons (licensees), the Real Estate Licensing and Registration Act (RELRA) requires that consumers be provided with this notice at the initial interview.

(c) The Disclosure Summary [shall] must be entitled "Consumer Notice" and [shall] must be in the following format available from the Commission office upon request by phone, fax or internet:

(Editor's Note: As part of this proposed rulemaking, the Board is proposing to delete the text of the form which appears in 49 Pa. Code pages 35-62.1—35-62.4, serial pages (287915) to (287918), and replace it with the following text, which has been printed in regular type to enhance readability.)

CONSUMER NOTICE
THIS IS NOT A CONTRACT

In an effort to enable consumers of real estate services to make informed decisions about the business relationships they may have with real estate brokers and salespersons (licensees), the Real Estate Licensing and Registration Act (RELRA) requires that consumers be provided with this Notice at the initial interview.

• Licensees may enter into the following agency relationships with consumers:

Seller Agent

As a seller agent, the licensee and the licensee's company works exclusively for the seller/landlord and must act in the seller's/landlord's best interest. All confidential information relayed by the seller/landlord must be kept confidential except that a licensee must reveal known material defects about the property. A subagent has the same duties and obligations as the seller agent.

Buyer Agent

As a buyer agent, the licensee and the licensee's company work exclusively for the buyer/tenant even if paid by the seller/landlord. The buyer agent must act in the buyer/tenant's best interest and must keep all confidential information, other than known material defects about the property confidential.

Dual Agent

As a dual agent, the licensee works for both the seller/landlord and the buyer/tenant. A dual agent may not take any action that is adverse or detrimental to either party but must disclose known material defects about the property. A licensee must have the written consent of both parties before acting as a dual agent.

Designated Agent

As a designated agent, the broker of the selected real estate company designates certain licensees within the company to act exclusively as the seller/landlord agent and other licensees within the company to act exclusively as the buyer/tenant agent in the transaction. Because the broker supervises all of the licensees, the broker automatically serves as a dual agent. Each of the designated licensees are required to act in the applicable capacity explained previously. Additionally, the broker has the duty to take reasonable steps to assure that confidential information is not disclosed within the company.

In addition, a licensee may serve as a Transaction Licensee

A transaction licensee provides real estate services without having any agency relationship with a consumer. Although a transaction licensee has no duty of loyalty or confidentiality, a transaction licensee is prohibited from disclosing that:

- The seller will accept a price less than the asking/listing price,
- The buyer will pay a price greater than the price submitted in the written offer, and
- The seller or buyer will agree to financing terms other than those offered.

Like licensees in agency relationships, transaction licensees must disclose known material defects about the property.

• Regardless of the business relationship selected, all licensees owe consumers the duty to:

- Exercise reasonable professional skill and care.
- Deal honestly and in good faith.
- Present, as soon as practicable, all written offers, counteroffers, notices and communications to and from the parties. This duty may be waived *by* the seller *where* the seller's property is under contract and the waiver is in writing.
- Comply with Real Estate Seller Disclosure Act.
- Account for escrow and deposit funds.
- Disclose, as soon as practicable, all conflicts of interest and financial interests.
- Provide assistance with document preparation and advise the consumer regarding compliance with laws pertaining to real estate transactions.
- Advise the consumer to seek expert advice on matters about the transaction that are beyond the licensee's expertise.
- Keep the consumer informed about the transaction and the tasks to be completed.
- Disclose financial interest in a service, such as financial, title transfer and preparation services, insurance, construction, repair or inspection, at the time service is recommended or the first time the licensee learns that the service will be used.
- The following contractual terms are *negotiable* between the licensee and the consumer and must be addressed in an agreement/disclosure statement:
 - The duration of the licensee's employment, listing agreement or contract.
 - The licensee's fees or commission.
 - The scope of the licensee's activities or practices.
 - The broker's cooperation with and compensation to other brokers.

- All sales agreements must contain the property's zoning classification except where the property is zoned solely or primarily to permit single family dwellings.
- The Real Estate Recovery Fund exists to reimburse any person who has obtained a final civil judgment against a Pennsylvania real estate licensee owing to fraud, misrepresentation, or deceit in a real estate transaction and who has been unable to collect the judgment after exhausting all legal and equitable remedies. For complete details about the Fund, call (717) 783-3658.

Before you disclose any financial information to a licensee, be advised that unless you select a business relationship by signing a written agreement, the licensee is NOT representing you. A business relationship is NOT presumed.

ACKNOWLEDGMENT

I acknowledge that I have received this disclosure.

Date: _____
 (Consumer's printed name) (Consumer's signature)

_____)

_____)
 (Consumer's printed name) (Consumer's signature)

I certify that I have provided this document to the above consumer during the initial interview.

Date: _____
 (Licensee)

**Adopted by the State Real Estate Commission at
 49 Pa. Code § 35.336.**

[Pa.B. Doc. No. 07-597. Filed for public inspection April 6, 2007, 9:00 a.m.]

**STATE REAL ESTATE COMMISSION
16A-5614
CONSUMER NOTICE**

LIST OF PUBLIC COMMENTATORS

Derenda Updegrave
Director, Government Affairs
Pennsylvania Association of Realtors (PAR)
4501 Chambers Hill Road
Harrisburg, PA 17111-2406
Phone: 717-561-1303
Fax: 717-561-8796
www.parealtor.org



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) 783-7155

September 2, 2008

The Honorable Arthur Coccodrilli, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
State Real Estate Commission
16A-5614: Consumer Notice

Dear Chairman Coccodrilli:

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

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 "Annie H. Cestra".

Annie Hanna Cestra, Chairperson
State Real Estate Commission

AHC/JPS:pah

Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Albert H. Masland, Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel & 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-5614
 SUBJECT: CONSUMER NOTICE
 AGENCY: DEPARTMENT OF STATE
 STATE REAL ESTATE 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

RECEIVED
 2008 SEP -2 AM 10:11
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
9/2/08	<i>Madeleine Desormeaux</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE MAJORITY CHAIRMAN Robert M. Tomlinson <i>Mike SturLa</i>
9/2/08	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE MAJORITY CHAIRMAN Mike SturLa <i>Robert M. Tomlinson</i>
9/2/08	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL (for Final Omitted only) LEGISLATIVE REFERENCE BUREAU (for Proposed only)