

# Regulatory Analysis Form

This space for use by IRRC

(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

RECEIVED  
 2017 MAR 28 AM 11:57  
 INDEPENDENT REGULATION  
 REVIEW COMMISSION

(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 proposed amendments advise consumers about agency relationships, fees, and services which licensees may provide to consumers. Licensees will be 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 regulation is proposed under the statutory authority of 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.**

**No, however, the disclosure summary is mandated under section 608 of the RELRA, 63 P.S. § 455.608.**

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

**Within the last 2 years, 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 proposed regulations.

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

All 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.**

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

(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.**

The only costs associated with this regulation would be in reproducing the disclosure, retaining a signed acknowledgment 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
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government						
State Government						
Total Savings						
<b>COSTS:</b>						
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government						
State Government						
Total Costs						
<b>REVENUE LOSSES:</b>						
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	1,984,809.47	2,371,710.25	2,634,693.11	2,932,000.00

**(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 does not affect existing or proposed regulations.**

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

**The Commission has had numerous public meetings wherein it discussed the disclosure notice as proposed. The Commission will have additional meetings to discuss the disclosure notice during the regulatory review process. Meetings are held monthly. A schedule appears on the Commission's web page at [www.dos.state.pa.us/estate](http://www.dos.state.pa.us/estate).**

## 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.



**(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.**

**(Continued from page 3)**

**Association, Carbon County Association, Carlisle Association; Central Montgomery County Association, Central Susquehanna Valley Board, Centre County Association, Chester County 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, Montgomery County Association, Greater Hagerstown Realtors, Realtors Assoc. of York & Adams Counties, Pennsylvania Realtors Institute, Pennsylvania Association of Private School Administrators, 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, The Pennsylvania Federation of Housing Counselors and Agencies, and The Real Estate Consumer Council.**

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

RECEIVED

2007 MAR 28 AM 10: 57

INDEPENDENT REGULATORY  
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

2599

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

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

BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

MAR 02 2007

DATE OF APPROVAL

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

State Real Estate Commission  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-5614

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

BY:   
Joseph V. Tarantino, Jr.,

TITLE: Chairman  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

BY: \_\_\_\_\_  
Andrew C. Clark

FEB 8 2007

DATE OF APPROVAL

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

[ ] 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  
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 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.

B. Statutory Authority

The amendments are proposed under the authority of 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 (63 P.S. §455.608), real estate licensees are required to provide consumers with a disclosure summary at the initial interview that delineates the following eleven items:

1. The relationships in which the consumer may engage the broker.
2. 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.
3. 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.
4. 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.
5. 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.

6. A statement of the broker's policies regarding cooperation with other brokers, including the sharing of fees.
7. 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.
8. A statement that the duration of the broker's employment and the broker's fees are negotiable.
9. 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.
10. A statement that the duration of the listing agreement or contract and the broker's commission are negotiable.
11. 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.

On January 8, 2000, the Commission adopted a disclosure statement in accordance with section 608 of the RELRA (63 P.S. §455.608), published at 30 *Pa.B.* 228 (January 8, 2000). 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 (63 P.S. §455.608(a)). 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 statute. 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 (63 P.S. §455.608) 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 delete the current Consumer Notice and insert a simplified and condensed version. The proposed Consumer Notice first explains the various relationships available to the consumer, then the duties required of all licensees set out 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 (63 P.S. §455.608) that licensees retain a copy of the signed/refused Acknowledgement and provide the consumer with a copy of the entire disclosure.

E. Compliance with Executive Order 1996-1

In compliance with Executive Order 1996-1, 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 proposal.

F. Fiscal Impact and Paperwork Requirements

The proposed amendments 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 regulation 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 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 March 28, 2007, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

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

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-5614 (Consumer Notice), when submitting

Consumer Notice  
16A-5614  
March 28, 2007

comments.

---

Joseph Tarantino, Jr., 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.**

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 must provide the consumer with the Consumer Notice at their



initial interview.

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

## **CONSUMER NOTICE**

### **THIS IS NOT A CONTRACT**

[Pennsylvania law requires real estate brokers and salespersons (licensees) advise consumers who are seeking to sell or purchase residential or commercial real estate or tenants who are seeking to lease residential or commercial real estate where the licensee is working on behalf of the tenant of the business relationships permitted by the Real Estate Licensing and Registration Act. This notice must be provided to the consumer at the first contact where a substantive discussion about real estate occurs unless an oral disclosure has been previously provided. If the oral disclosure was provided, this Notice must be provided at the first meeting or the first time a property is shown to the consumer by the broker or salesperson.

Before you disclose any information to a licensee, be advised that unless you select an agency relationship the licensee is not representing you. A business relationship of any kind will not be presumed but may be established between the

consumer and the licensee.

Any licensee who provides you with real estate services owes you the following duties:

- Exercise reasonable professional skill and care which meets the practice standards required by the act.
- Deal honestly and in good faith.
- Present, in a reasonably practicable period of time, all offers, notices, and communications to and from the parties in writing. The duty to present written offers and counteroffers may be waived if the waiver is in writing.
- Comply with Real Estate Seller Disclosure Act.
- Account for escrow and deposit funds.
- Disclose all conflicts of interest in a reasonable practicable period of time.
- 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.

A licensee may have the following business relationships with the consumer:

*Seller Agency:*

Seller agency is a relationship where the licensee, upon entering into a written agreement, works only for a seller/ landlord. Seller's agents owe the additional duties of:

- Loyalty to the seller/landlord by acting in the seller's/landlord's best interest.
- Confidentiality, except that a licensee has a duty to reveal known material defects about the property.
- Making a continuous and good faith effort to find a buyer for the property, except while the property is subject to an existing agreement.
- Disclosure to other parties in the transaction that the licensee has been engaged as a seller's agent.

A seller's agent may compensate other brokers as subagents if the seller/landlord agrees in writing. Subagents have the same duties and obligations as the seller's agent. Seller's agents may also compensate buyer's agents and transaction licensees who do not have the same duties and obligations as seller's agents.

If you enter into a written agreement, the licensees in the real estate company owe you the additional duties identified above under seller agency. The exception is designated agency. See the designated agency section in this notice for more information.

*Buyer Agency:*

Buyer agency is a relationship where the licensee, upon entering into a written agreement, works only for the buyer/tenant. Buyer's agents owe the additional duties of:

- Loyalty to the buyer/tenant by acting in the buyer's/tenant's best interest.
- Confidentiality, except that a licensee is required to disclose known material defects about the property.
- Making a continuous and good faith effort to find a property for the buyer/tenant, except while the property is subject to an existing agreement.
- Disclosure to other parties in the transaction that the licensee has been engaged as a buyer's agent.

A buyer's agent may be paid fees, which may include a percentage of the purchase price, and, even if paid by the seller/landlord, will represent the interests of the buyer/tenant.

If you enter into a written agreement, the licensees in the real estate company owe you the additional duties identified above under buyer agency. The exception is designated agency. See the designated agency section in this notice for more information.

*Dual Agency:*

Dual agency is a relationship where the licensee acts as the agent for both the seller/landlord and the buyer/tenant in the same transaction with the written consent of all parties. Dual agents owe the additional duties of:

- Taking no action that is adverse or detrimental to either party's interest in the transaction.
- Unless otherwise agreed to in writing, making a continuous and good faith effort to find a buyer for the property and a property for the buyer, unless either are subject to an existing contract.

- Confidentiality, except that a licensee is required to disclose known material defects about the property.

*Designated Agency:*

In designated agency, the employing broker may, with your consent, designate one or more licensees from the real estate company to represent you. Other licensees in the company may represent another party and shall not be provided with any confidential information. The designated agent(s) shall have the duties as listed above under seller agency and buyer agency.

In designated agency, the employing broker will be a dual agent and have the additional duties of:

- Taking reasonable care to protect any confidential information disclosed to the licensee.
- Taking responsibility to direct and supervise the business activities of the licensees who represent the seller and buyer while taking no action that is adverse or detrimental to either party's interest in the transaction.

The designation may take place at the time that the parties enter into a written agreement, but may occur at a later time. Regardless of when the designation takes place, the employing broker is responsible for ensuring that confidential information is not disclosed.

*Transaction Licensee:*

A transaction licensee is a broker or salesperson who provides communication or document preparation services or performs other acts for which a license is required without being the agent or

advocate for either the seller/landlord or the buyer/tenant. Upon signing a written agreement or disclosure statement, a transaction licensee has the additional duty of limited confidentiality in that the following information may not be disclosed:

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

Other information deemed confidential by the consumer shall not be provided to the transaction licensee.

#### **OTHER INFORMATION ABOUT REAL ESTATE TRANSACTIONS**

The following are negotiable and shall be addressed in an agreement/disclosure statement with the licensee:

- 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 other brokers, including the sharing of fees.

Any sales agreement must contain the zoning classification except in cases 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.

---

**ACKNOWLEDGMENT**

I ACKNOWLEDGE THAT I HAVE RECEIVED THIS DISCLOSURE.

DATE:

\_\_\_\_\_  
PRINT (CONSUMER)

\_\_\_\_\_  
PRINT (CONSUMER)

\_\_\_\_\_  
SIGNED (CONSUMER)

\_\_\_\_\_  
SIGNED (CONSUMER)

\_\_\_\_\_  
ADDRESS (OPTIONAL)

\_\_\_\_\_  
ADDRESS (OPTIONAL)

\_\_\_\_\_  
PHONE NUMBER

\_\_\_\_\_  
PHONE NUMBER

\_\_\_\_\_  
(OPTIONAL):

\_\_\_\_\_  
(OPTIONAL):

---

I CERTIFY THAT I HAVE PROVIDED THIS DOCUMENT TO THE ABOVE  
CONSUMER.

DATE:

\_\_\_\_\_  
PRINT

\_\_\_\_\_  
LICENSEE

\_\_\_\_\_  
SIGNED

\_\_\_\_\_  
LICENSEE

ADOPTED BY THE STATE REAL ESTATE COMMISSION AT 49 PA. CODE §35.336.]

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 above. 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.*

\* \* \* \*



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

March 28, 2007

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

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

Dear Chairman Coccodrilli:

Enclosed is a copy of a proposed 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, appearing to read "Joseph J. McGettigan, Sr.", written over a horizontal line.

Joseph J. McGettigan, Sr., Chairperson  
State Real Estate Commission

JJM/JPS:ara

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  
Department of State  
Gerald 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-5614  
 SUBJECT: CONSUMER NOTICE  
 AGENCY: DEPARTMENT OF STATE  
 STATE REAL ESTATE COMMISSION

**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  
 2007 MAR 28 AM 10:58  
 INDEPENDENT REGULATORY  
 REVIEW COMMISSION

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
3/28/07	<i>Sebra Brown</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
3/28/07	<i>Benny Mitchell</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
3/28/07	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
3/28/07	<i>C Lee Brown</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)