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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES

PROFESSIONAL LICENSURE – MAJORITY CHAIRMAN
AGRICULTURE & RURAL AFFAIRS
FINANCE
RULES
MAJORITY POLICY
CAPITOL PRESERVATION

May 23, 2007

2599

Mr. Kim Kaufman
Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

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

Dear Mr. Kaufman:

The House Professional Licensure Committee on this date voted to take no formal action on Regulation 16A-5614 until final regulation is promulgated and submit the following comments:

1. The Committee questions the elimination of the agent's duty to make a continuous and good faith effort to find a buyer/seller for the property except while the property is subject to an existing agreement.
2. The Committee questions the elimination of the agent's duty to take 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.
3. A licensee's duty to "exercise reasonable professional skill and care which meets the practice standards required by the act." has been shortened to "exercise reasonable professional skill and care." The Committee questions the deletion of the phrase "which meets the practice standards required by the act."
4. In dealing with negotiable contractual terms, since the intent is to simplify the language, the Committee questions the use of the phrase "compensation to other brokers" in lieu of the phrase "the sharing of fees."
5. The Committee suggests the signature line for the licensee include a space for the "licensees printed name" and "date" as well as the license number to clearly identify the licensee.
6. The Committee also suggests the paragraph at the end of the notice which states "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" also be placed at the beginning of the Consumer Notice for heightened impact.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Michael Sturla".

P. Michael Sturla
Chairman, House Professional Licensure Committee

RECEIVED
2007 MAY 23 PM 2:56
INDEPENDENT REGULATORY
REVIEW COMMISSION

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

PROPOSAL: Regulation 16A-5614 is a Proposed Regulation which was delivered to the House Professional Licensure Committee on March 28, 2007. The House Professional Licensure Committee has until June 6, 2007, to submit comments on the Proposed Regulation.

Regulation 16A-5614 amends Title 49 of the Pa. Code, Chapter 35, the Real Estate Licensing Commission. Specifically, Regulation 16A-5614 amends 49 Pa. Code §§ 35.201 relating to definitions; and 35.336 relating to disclosure summary for the purchase or sale of residential or commercial real estate, or for the lease of residential or commercial real estate when the licensee is working on behalf of the tenant.

PROPOSED REGULATION ANALYSIS: 49 Pa. Code § 35.201 would be amended to clarify the term "initial interview." The Commission believes the current definition is too broad and not in conformity with the definition of "initial interview" in 63 P.S. § 455.608(a) and proposes to amend the definition to more closely follow the language in the statute.

49 Pa. Code § 35.336 would be amended to provide a new version of the Consumer Notice. The new notice will explain the terms "Seller Agent", "Buyer Agent", "Dual Agent", "Designated Agent" and "Transaction Licensee."

Specifically, the term "Seller Agency" has been changed to "Seller Agent" and the proposed regulation eliminated the following list of duties: the duty 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 Agent" in the proposed regulation is described as a licensee where 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 must be kept confidential except that the licensee must reveal known material defects about the property. The explanation also specified that a subagent has the same duties and obligations as the seller agent. These duties are mirrored as duties of a "Buyer's Agent".

The following duties listed for a "Dual Agent" in the current regulation are that 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; and confidentiality, except that a licensee is required to disclose known material defects about the property. As proposed, a "Dual Agent" is a licensee who 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 except for the disclosure of any known material defects about the property. Written consent is required by both parties before a licensee may act as a dual agent.

Currently, if the agent is a "Designated Agent", the duties of a dual agent applies in addition to taking reasonable care to protect any confidential information disclosed to the licensee; and 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 new description of a "Designated Agent" states that the broker of a 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. The broker supervises all the licensees, therefore, automatically serving as a dual agent. Each designated licensee is required to act in the applicable capacity as buyer agent or seller agent. The broker has the duty to take reasonable steps to assure that confidential information is not disclosed within the company.

A "Transaction Licensee", in the previous consumer notice, provided communication, document preparation services, or other acts without being an agent or advocate. The duties for a transaction licensee were to not disclose that the seller/landlord will accept a price less than the asking/list 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. In the new consumer notice, the transaction licensee is described as providing real estate services without having any agency relationship with a consumer. There is no duty of loyalty or confidentiality. A transaction licensee is prohibited from disclosing the information relating to pricing and finance terms as in the previous consumer notice.

In addition, the notice contains: a list of duties owed to the consumer which include the duty to exercise reasonable professional skill and care which meets the practice standards required by the act; the duty to deal honestly and in good faith; and the duty to comply with Real Estate Seller Disclosure Act.

The consumer notice will also contain a list of negotiable contractual terms which include the licensee's fees or commission and the scope of the licensee's activities or practices. The consumer notice also includes a statement that all sales agreements must contain the property's zoning classification except where the zoning is solely or primarily to permit single family dwellings; an explanation of the Real Estate Recovery Fund; and a statement informing the consumer that unless a business relationship is selected by signing a written agreement, the consumer is not represented by a licensee.

RECOMMENDATION: It is recommended the House Professional Licensure Committee take no formal action until final regulations are promulgated and submit the following comments:

1. The Committee questions the elimination of the agent's duty to make a continuous and good faith effort to find a buyer/seller for the property except while the property is subject to an existing agreement.
2. The Committee questions the elimination of the agent's duty to take 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.

3. A licensee's duty to "exercise reasonable professional skill and care which meets the practice standards required by the act." has been shortened to "exercise reasonable professional skill and care. The Committee questions the deletion of the phrase "which meets the practice standards required by the act."
4. In dealing with negotiable contractual terms, since the intent is to simplify the language, the Committee questions the use of the phrase "compensation to other brokers" in lieu of the phrase "the sharing of fees."
5. The Committee suggests the signature line for the licensee include a space for the "licensees printed name" and "date" as well as the license number to clearly identify the licensee.
6. The Committee also suggests the paragraph at the end of the notice which states "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" also be placed at the beginning of the Consumer Notice for heightened impact.

House of Representatives
Professional Licensure Committee
May 23, 2007