

Regulatory Analysis Form

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 INDEPENDENT REGULATORY
 BOARD 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-5617

IRRC Number: **2602**

(3) Short Title

Consumer Notice--Commercial Property Exception

(4) PA Code Cite

49 Pa. Code § 35.284

(5) Agency Contacts & Telephone Numbers

Primary Contact: **Judith Pachter Schulder, Counsel
State Real Estate Commission (717) 783-7200**
 Secondary Contact: **Joyce McKeever, Deputy Chief
Counsel, Department of State (717) 783-7200**

(6) Type of Rulemaking (check one)

Proposed Rulemaking
 Final Order Adopting Regulation (with
Proposed Rulemaking Omitted)
 Policy Statement

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

No.

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

Section 608 of the Real Estate Licensing and Registration Act (63 P.S. § 455.608) (RELRA), requires real estate licensees to provide consumers with a Consumer Notice that set forth the various agency relationships licensees were permitted to have with consumers. The Consumer Notice had to be provided to every consumer at the initial interview regardless of the type of property.

Act 125 of 2006 carved out an exception from the Consumer Notice requirement for transactions involving the sale or lease of commercial property to consumers who are not individuals. This regulation adds this exception to the Commission's consumer notice requirements in Section 35.284.

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

The amendments are proposed under the authority of Sections 404 and 608 of the Act (63 P.S. §§455.404 and 455.608).

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(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.

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

The regulation implements the exception from the Consumer Notice requirement carved out by Act 125 of 2006.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

The regulation is necessary so that the Commission's regulations are not inconsistent with Act 125 of 2006. Failure to amend the regulations could lead to confusion among licensees and consumers of real estate services.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Real estate salespersons, associate brokers and brokers as well as the general public benefit from this regulation because it will eliminate the confusion that results when the regulations of the Commission conflict with the provisions of the RELRA. Currently, there are approximately 4,815 brokers, 4,172 associate brokers and 41,464 salespersons. The Commission routinely receives calls from licensees and the public asking about the Consumer Notice requirements.

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(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.

(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.)

Real estate salespersons, associate brokers and brokers must provide consumers with the Consumer Notice whenever there is a substantive discussion about real estate for residential properties and commercial properties to individuals. Currently, there are approximately 4,815 brokers, 4,172 associate brokers and 41,464 salespersons.

(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.

Because the regulation is mandated by Act 125 of 2006, public input in drafting the regulation was not required.

(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 regulation will not be associated with either costs or savings to the regulated community. The regulation does not impose new legal, accounting or consulting procedures.

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(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.

The regulation will not result in costs or savings to local government.

(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.

The regulation will not result in increased costs or savings to state government and will not require legal, accounting or consulting procedures.

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

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

The regulation does not require any activity that could be associated with a cost. Licensees may realize savings in commercial transactions with entities because they would no longer be required to provide a copy of the Consumer Notice. However, they would still need to provide Consumer Notices in all residential transactions and those commercial transactions involving consumers who are individuals, so the savings would be minimal.

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

Program	FY 03-04 Actual	FY04-05 Actual	FY05-06 Projected	FY05-06 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 are 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.

The Commission did not consider any nonregulatory alternatives because it is necessary to amend existing regulations in order to implement the mandate of Act 125 of 2006.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Because this regulation was mandated by statute, no other regulatory schemes were considered.

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(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.

There are no federal licensure standards.

(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 disclosures to be provided to consumers and utilize a similar form. 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 regulations of other state agencies. The Commission has a related proposed rulemaking package that will propose amendments to the form of the consumer notice to be provided (16A-5614).

(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. There are no public hearings or informational meetings scheduled to review this regulation.

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(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 only change existing reporting, record keeping or other paperwork requirements for transactions involving the sale or lease of commercial property to consumers who are not individuals. These transactions will not require the Consumer Notice. In all other transactions, existing reporting, record keeping or other paperwork requirements will not be changed.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The Commission is aware of no special needs of any subset or group which should be excepted.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will be effective upon publication in the *Pennsylvania Bulletin*. The regulation does not impose any new compliance requirements.

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

The rules and regulations committee of the Commission continuously reviews its regulations.

There were no commentators for regulation 16A-5617:Consumer Notice – Commercial Property Exception.

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INDEPENDENT REGULATORY
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

2602

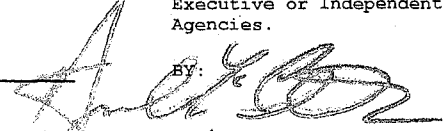
Copy below is hereby approved as to
form and legality. Attorney General

Copy below is hereby certified to be a true and correct
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Executive or Independent
Agencies.

BY: _____
(DEPUTY ATTORNEY GENERAL)

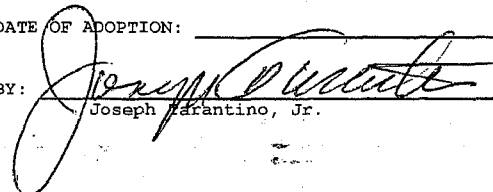
State Real Estate Commission
(AGENCY)

BY: 
Andrew C. Clark

DOCUMENT/FISCAL NOTE NO. 16A-5617

DATE OF APPROVAL

DATE OF ADOPTION: _____

BY: 
Joseph Sarantino, Jr.

DATE OF APPROVAL
MAR 13 2007
(Deputy General Counsel
(Enter 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 PROPOSED OMITTED RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE REAL ESTATE COMMISSION
49 Pa. Code, Chapter 35
Consumer Notice- COMMERCIAL PROPERTY EXCEPTION

PREAMBLE

The State Real Estate Commission (Commission) hereby amends §35.284 (relating to disclosure of business relationships), to read as set forth in Annex A.

Omission of Proposed Rulemaking

Under section 204 of the Act of July 31, 1968 (P.L. 769, No. 240)(45 P.S. §1204), known as the Commonwealth Documents Law (CDL), the Board is authorized to omit the procedures for proposed rulemaking in sections 201 and 202 of the CDL (45 P.S. §§1201 and 1202) if the Board finds that the criteria of section 204 are met.

Under authority of section 204(3) of the CDL (45 P.S. §1204(3)), proposed rulemaking has been omitted as unnecessary because the rulemaking is merely incorporating the statutory exception for commercial property transactions mandated by the Act of October 27, 2006 (P.L. 1189, No. 125) (Act 125), which was effective on January 25, 2007.

Description of the Amendment

Section 608 of the Real Estate Licensing and Registration Act (63 P.S. § 455.608) (RELRA) requires real estate licensees to provide consumers with a "consumer notice" that sets forth the various agency relationships licensees are permitted to have with consumers. The consumer notice was to be provided to every consumer at the initial interview regardless of the type of property.

Act 125 carved out an exception from the consumer notice requirement for transactions involving the sale or lease of commercial property to consumers who are not individuals. This rulemaking incorporates the commercial property exception in §35.284 (relating to disclosures of business relationships). The amendment is necessary to avoid confusion. Without it, the Commission's regulations would conflict with section 608, as amended.

Statutory authority

Section 404 of the RELRA (63 P.S. §455.404) authorizes the Commission to promulgate and adopt regulations in order to administer and effectuate the purposes of the RELRA. Section 608 of the RELRA (63 P.S. §455.608), as amended, requires licensees to provide the consumer notice to consumers prior to any substantive discussion in all real estate transactions, except for the sale or lease of commercial property to consumers who are not individuals.

Fiscal impact and Paperwork Requirements

The amendment will not have a fiscal impact on, or create additional paperwork for, the regulated community or the political subdivisions of the Commonwealth. It eliminates the paperwork requirement for real estate transactions involving the sale or lease of commercial property to consumers who are not individuals.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (RRA) (71 P.S. §745.5a(c)), on March 30, 2007, the Commission submitted copies of the final rulemaking with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC), and the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). On the same date, the Commission submitted a copy of the regulation to the Office of Attorney General under the Commonwealth Attorneys Act (71 P.S. §§732-101-732-506).

Under section 5.1(j.2) of the (RRA) (71 P.S. §745.5(j.2)), the final rulemaking was approved by the HPLC on _____, 2007, and deemed approved by the SCP/PLC on _____, 2007. Under section 5.1(e) of the RRA (71 P.S. § 745.5a(e)), IRRC met on _____, 2007, and approved the final rulemaking.

Additional Information

For additional information about the final rulemaking, submit inquiries to Patricia A. Ridley, State Real Estate Commission, P.O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-1389, ST-REALESTATE@state.pa.us/estate.

Findings

The Commission finds that:

- (1) Public notice of the Commission's intention to amend its regulations under the procedures in sections 201 and 202 of the CDL (45 P.S. §§1201 and 1202) has been omitted under the authority of section 204 of the CDL (45 P.S. §1204), because public comment is unnecessary in that the amendment merely incorporates a statutory exception required by the Act of October 27, 2006 (P.L. 1189, No. 125) (Act 125), which was effective on January 25, 2007.

- (2) The amendment of the Commission's regulation in the manner provided in this order is necessary and appropriate for the administration of the RELRA.

Order

The Commission, acting under its authorizing statute, orders that:

- (a) The regulations of the Commission, 49 Pa. Code, Chapter 35, at § 35.284 (relating to disclosure of business relationships), 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 for approval as to form and legality as required by law.
- (c) The Commission shall certify this order and Annex and deposit them with the Legislative Reference Bureau as required by law.
- (d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

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 E. STANDARDS OF CONDUCT AND PRACTICE

* * * * *

GENERAL ETHICAL RESPONSIBILITIES

* * * * *

§ 35.284. Disclosures of business relationships.

(a) *Disclosure to consumers seeking to sell or purchase residential or commercial real estate.*

(1) [A] Except as provided in subsection (e), a licensee shall provide the disclosure summary in § 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) to consumers seeking to purchase or sell real estate at the initial interview if the interview occurs in person.

* * * * *

(b) *Disclosure to tenants seeking to lease residential or commercial real estate.*

(1) [A] Except as provided in subsection (e), a licensee who is working on behalf of the tenant shall provide the disclosure summary in § 35.336 as required in subsection (a).

(2) [A] Except as provided in subsection (e), a licensee who is working on behalf of the owner shall provide the disclosure summary in § 35.337 (relating to disclosure summary for the lease of residential or commercial real estate when the licensee is working on behalf of the owner) to tenants seeking to lease residential or commercial property at the initial interview.

* * * * *

(e) Exception. The disclosures required under subsections (a) and (b) do not apply to transactions involving the sale or lease of commercial property, as defined in section 201 of the act (63 P.S. § 455.201), to consumers who are not individuals.

* * * * *



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 30, 2007

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

Re: Final Omitted Regulation
State Real Estate Commission
16A-5617: Consumer Notice – Commercial Property Exception

Dear Chairman Coccodrilli:

Enclosed is a copy of a final omitted rulemaking package of the State Real Estate Commission pertaining to consumer notice – commercial property exception.

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.", with a long horizontal flourish extending to the right.

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**

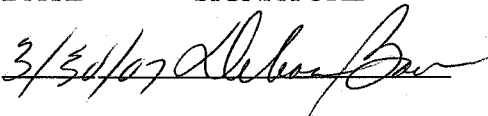
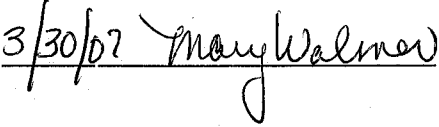
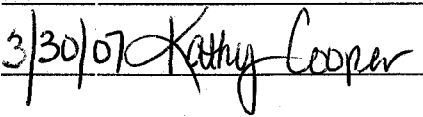
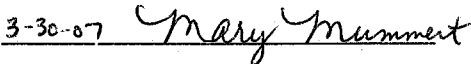
I.D. NUMBER: 16A-5617
SUBJECT: CONSUMER NOTICE – COMMERCIAL PROPERTY EXCEPTION
AGENCY: DEPARTMENT OF STATE
STATE REAL ESTATE COMMISSION

TYPE OF REGULATION

- 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

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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
3/30/07		HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
3/30/07		SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
3/30/07		INDEPENDENT REGULATORY REVIEW COMMISSION
3-30-07		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)