### SECTION I: PROFILE

1. **Agency:**
   Department of State, Bureau of Professional and Occupational Affairs, State Real Estate Commission

2. **Agency Number:**
   Identification Number: **16A-5618**

3. **Short Title:**
   Seller Property Disclosure Statement

4. **PA Code Cite:**
   49 Pa. Code §§ 35.284a and 35.335a

5. **Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):**
   
   **Primary Contact:** Judith Pachter Schulder, Counsel, State Real Estate Commission P.O. Box 2649, Harrisburg, PA 17110-2056 (phone—783-7200 fax—787-0251) jschulder@state.pa.us.

   **Secondary Contact:** Joyce McKeever, Deputy Chief Counsel, Department of State P.O. Box 2649, Harrisburg, PA 17110-2056 (phone—783-7200 fax—787-0251 jmckeever@state.pa.us).

6. **Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:**
   
   (All Comments will appear on IRRC'S website)

7. **Type of Ratemaking (check applicable box):**
   - [ ] Proposed Regulation
   - [X] Final Regulation
   - [ ] Final Omitted Regulation
   - [ ] Emergency Certification Regulation;
   - [ ] Certification by the Governor
   - [ ] Certification by the Attorney General
(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The regulation adds a seller property disclosure statement to the Commission’s regulations as required by section 7304(a) of the Real Estate Seller Disclosure Law (SDL) (68 Pa. C.S. §7304(a)) and adds the duties of licensees under the SDL to § 35.284a.

(9) Include a schedule for review of the regulation including:

A. The date by which the agency must receive public comments: n/a

B. The date or dates on which public meetings or hearings will be held: n/a

C. The expected date of promulgation of the proposed regulation as a final-form regulation: n/a

D. The expected effective date of the final-form regulation: Upon publication of the final-form rulemaking in the Pennsylvania Bulletin.

E. The date by which compliance with the final-form regulation will be required: Upon publication of the final-form rulemaking in the Pennsylvania Bulletin.

F. The date by which required permits, licenses or other approvals must be obtained: n/a

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

The Board continuously reviews its regulations.

(11) State the statutory authority for the regulation. Include specific statutory citation.

Section 7304(a) of the Real Estate Seller Disclosure Law (SDL) (68 Pa. C.S. § 7304(a)) directs the Commission to promulgate a property disclosure statement that satisfies the requirements of § 7304(b). Additionally, Section 404 of the Real Estate Licensing and Registration Act (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 604(a)(15.1) of the RELRA (63 P.S. § 455.604(a)(15.1)) makes failing to provide a disclosure required by another law in connection with a real estate transaction a disciplinary offense.
Yes. Under section 7304(a) of the SDL (68 Pa. C.S. § 7304(a)), the Commission is required to promulgate a property disclosure statement that satisfies the requirements of subsection (b). Until that time, under subsection (c), the statement contained in the SDA satisfies the requirements of the SDL.

The regulation is necessary to implement section 7304(a) of the SDL (68 Pa. C.S. §7304(a). Additionally, the Commission has received questions and has disciplined licensees in connection the duties on licensees under the SDL.

There are no perceived people or groups of people who will be adversely affected. Since the passage of the Real Estate Seller Disclosure Act (SDA)(68 P.S. 1021-1036), repealed and replaced by the SDL, licensees have been required to advise sellers about their disclosure requirements in certain residential transfers and provide sellers with a property disclosure statement.
(16) 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 brokers, associate brokers and salespersons that represent buyers and sellers are required to provide copies of the property disclosure statement to their principals. Currently, there are approximately 5,000 brokers, 4,275 associate brokers and 36,760 salespersons in the Commonwealth.

SECTION III: COST AND IMPACT ANALYSIS

(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. Explain how the dollar estimates were derived.

The regulation will not result in increased costs or savings to the regulated community and will not require legal, accounting or consulting procedures.

(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. Explain how the dollar estimates were derived.

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

(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. Explain how the dollar estimates were derived.

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

<table>
<thead>
<tr>
<th></th>
<th>Current FY Year</th>
<th>FY +1 Year</th>
<th>FY +2 Year</th>
<th>FY +3 Year</th>
<th>FY +4 Year</th>
<th>FY +5 Year</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SAVINGS:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regulated Community</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Local Government</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>State Government</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Total Savings</strong></td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

| COSTS:             |                 |            |            |            |            |            |
| Regulated Community| N/A             | N/A        | N/A        | N/A        | N/A        | N/A        |
| Local Government   | N/A             | N/A        | N/A        | N/A        | N/A        | N/A        |
| State Government   | N/A             | N/A        | N/A        | N/A        | N/A        | N/A        |
| **Total Costs**    | N/A             | N/A        | N/A        | N/A        | N/A        | N/A        |

| **REVENUE LOSSES:**|                 |            |            |            |            |            |
| Regulated Community| N/A             | N/A        | N/A        | N/A        | N/A        | N/A        |
| Local Government   | N/A             | N/A        | N/A        | N/A        | N/A        | N/A        |
| State Government   | N/A             | N/A        | N/A        | N/A        | N/A        | N/A        |
| **Total Revenue Losses** | N/A | N/A | N/A | N/A | N/A | N/A |

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

<table>
<thead>
<tr>
<th>Program</th>
<th>FY -3</th>
<th>FY -2</th>
<th>FY -1</th>
<th>Current FY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>State Real Estate Commission</strong></td>
<td><strong>$2,654,819.51</strong></td>
<td><strong>$2,803,605.90</strong></td>
<td><strong>$3,150,494.59</strong></td>
<td><strong>$3,541,000.00</strong></td>
</tr>
</tbody>
</table>

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.
In that there are no additional costs associated with this regulation and there should be no adverse effects and costs associated with compliance as licensees currently provide a property disclosure statement to consumers.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

Notice of proposed rulemaking was published at 40 Pa.B. 2281 (May 1, 2010). Publication was followed by a 30-day public comment period during which the Board received a public comment from the Pennsylvania Association of Realtors (PAR), Donna Olson, Linda McKissick, Robin Zellers, Anthony Rocchino, Frank Bartalotta, Diane M. LePera, and Terry Sutton. Following the close of the public comment period, the Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

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

(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 regulations.

There are no federal licensure standards.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania’s ability to compete with other states?

Each state has its own Property Disclosure Statement mandated by its state statute.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation will not affect any regulations of the Board or other state agencies.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for
implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The regulation does not change existing reporting requirements, record keeping or paperwork requirements as licensees are already required to provide a property disclosure statement to consumers.

(28) 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 Board is aware of no special needs of any subset or group which should be excepted.
A. Dislodgement.
(B) Air embolism.
(C) Local infection.
(D) Sepsis.
(E) Catheter migration.
(F) Catheter occlusion.
(G) Vessel thrombosis.
(H) Damaged catheter.
(I) Superior Vena Cava Syndrome.
(J) Skin erosion.
(vi) Maintaining central venous infusions (differentiate for types of access devices):
(A) Checking placement.
(B) Changing dressings.
(C) Changing IV tubing and solution.
(D) Changing catheter cap.
(E) Flushing.
(F) Administering primary or secondary infusion.
(G) Obtaining a blood sample.
(H) Determining intake and output.
(I) Documenting.
(II) Special considerations:
(i) Setting:
(A) Acute care.
(B) Home care.
(C) Long-term care.
(D) Ambulatory care.
(E) Hospice care.
(ii) Patient education.
(iii) Ethical/cultural issues.
(iv) Other—geographical practice setting differences.

STATE REAL ESTATE COMMISSION
[49 PA. CODE CH. 35]
Seller Property Disclosure Statement

The State Real Estate Commission (Commission) proposes to add §§ 35.284a and 35.335a (relating to disclosures required by the Real Estate Seller Disclosure Law; and seller's property disclosure statement) to read as set forth in Annex A.

A. Effective Date

The regulations will be effective upon publication of the final-form regulations in the Pennsylvania Bulletin.

B. Statutory Authority

The regulations are proposed under the authority of section 7304(a) of the Real Estate Seller Disclosure Law (SDL) (68 Pa.C.S. § 7304(a)), and sections 404 and 604(a)(15.1) of the Real Estate Licensing and Registration Act (RELRA) (63 P.S. §§ 455.404 and 455.604(a)(15.1)).

C. Background and Purpose

Section 604(a)(15.1) of the RELRA (63 P.S. § 455.604(a)(15.1)) makes failing to provide a disclosure required by another law in connection with a real estate transaction a disciplinary offense. The SDL, which replaced the repealed Real Estate Seller Disclosure Act (SDA) (68 P.S. §§ 1021—1036), establishes disclosure duties on real estate licensees and sellers for certain types of residential real estate transfers and delineates specific aspects of the property that must be disclosed by the seller to a prospective buyer.

Specifically, section 7313(c) of the SDL (68 Pa.C.S. § 7313(a)) requires seller's agents to advise sellers of their responsibilities under section 7303 of the SDL (68 Pa.C.S. § 7303) and provide sellers with a property disclosure statement. Under the SDL, sellers are required to: disclose any known material defects to the buyer before signing an agreement of transfer by completing a property disclosure statement that meets or exceeds the requirements of section 7304 of the SDL (68 Pa.C.S. § 7304), deliver the completed property disclosure statement to buyers or buyers agent under section 7305 of the SDL (68 Pa.C.S. § 7305), and notify buyers of any inaccuracies in accordance with section 7307 of the SDL (68 Pa.C.S. § 7307).

Under section 7304(a) of the SDL, the Commission is required to promulgate a property disclosure statement that satisfies the requirements of subsection (b). Until that time, under subsection (c), the statement contained in the SDA satisfies the requirements of the SDL.

Having reviewed the SDA property disclosure statement for 5 years and determining that it satisfactorily reflected the requirements of the SDL, the Commission attempted to promulgate a final-form regulation, with proposed rulemaking omitted under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240), known as the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202), that included the SDL property disclosure statement and specific duties on licensees as set forth in the SDL. On May 26, 2006, the Commission submitted the proposed-omitted final form regulations to the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC).

After extensive discussions with the HPLC, on June 7, 2006, the Commission tolled the review of the regulations under section 5.1(g)(1) of the Regulatory Review Act (71 P.S. § 745.5a(g)(1)), to allow it to make revisions to the text of the Annex recommended by the HPLC. Ultimately, after being requested by the HPLC to resubmit the regulations in proposed form, the Commission withdrew the regulations on June 13, 2006.

After that withdrawal, the Commission considered whether to further amend the previously submitted regulations and solicited comment from stakeholders. Following extended discussions at regularly scheduled meetings, the Commission voted to resubmit the regulations in proposed form. The proposed regulations are essentially the same disclosure form proposed in 2006. Two sections are rearranged to enhance clarity.

PENNSYLVANIA BULLETIN, VOL. 40, NO. 18, MAY 1, 2010
D. Description of Proposed Regulations

§ 35.284a—Disclosures required by the Real Estate Seller Disclosure Law.

Proposed subsection (a) tracks the duties on seller's agents under the SDL. Seller's agents must advise sellers of their duty to disclose known material defects with the property, provide sellers with a property disclosure statement that meets or exceeds the disclosures in proposed § 35.335a, and deliver either the completed property disclosure statement or one marked “refused” to buyers or buyers agent prior to the execution of an agreement of sale.

Proposed subsection (b) tracks the duties on buyer's agents under the SDL. Buyer's agents must advise buyers that sellers have the duty to disclose known material defects with the property, and deliver either the completed property disclosure statement or one marked “refused” to the buyer prior to the execution of an agreement of sale.

Proposed subsection (c) conforms to section 7310 of the SDL (68 Pa.C.S. § 7310) by requiring seller's agents and buyer's agents to disclose, to the buyer in writing, material defects that the seller did not disclose and of which the licensee has actual knowledge. New subsection (d) provides that neither seller's agents nor buyer's agents are required to conduct an independent investigation to confirm seller's disclosures on the property disclosure statement.

While the SDL does not specifically state that seller may refuse to complete a property disclosure statement, section 7311 of the SDL (68 Pa.C.S. § 7311) addresses the penalty on a seller for failing to comply with the SDL. Because, in the Commission's experience it is aware that some sellers refuse to complete the property disclosure statement, and because section 7311 specifically states that a residential real estate transaction will not be invalidated solely because of a failure to comply with the SDL, the Commission added refusal language to both subsections (a) and (b) to provide guidance to licensees.

§ 35.335—Seller's property disclosure statement.

Proposed § 35.335a sets forth the Commission's property disclosure statement. Its language is identical to the property disclosure statement previously set forth in the SDA. The Commission believes that this property disclosure statement meets the requirements of section 7304(b) of the SDL. Further, because section 7304(a) permits sellers to provide a disclosure statement that exceeds the requirements of section 7304(b), and in the Commission's experience, licensees generally provided a more comprehensive disclosure, the language previously set forth in the SDA suffices as a minimum requirement.

E. Compliance with Executive Order 1996-1

In compliance with Executive Order 1996-1, the Commission extended an invitation to the following boards, associations, real estate education providers 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-Philadelphia 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 regulations should have no fiscal impact on, or create additional paperwork for, the regulated community or the political subdivisions of this Commonwealth. Real estate licensees have been providing property disclosure statements to sellers and buyers of applicable residential real estate since the enactment of the SDA. This proposal does not alter that requirement.

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 April 21, 2010, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the IIPRC and the SCP/PLC. 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 regulations to Judith Pachter Scholder, Counsel,
STATE REAL ESTATE COMMISSION, P. O. Box 2649, Harrisburg, PA 17105-2649 or jschulder@state.pa.us within 30 days of publication of this proposed rulemaking. Reference No. 16A-5618 (Seller Property Disclosure Statement), when submitting comments.

JOSEPH TARANTINO, Jr., Chairperson

Fiscal Note: 16A-5618. 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 E. STANDARDS OF CONDUCT AND PRACTICE

GENERAL ETHICAL RESPONSIBILITIES

§ 35.284a. Disclosures required by the Real Estate Seller Disclosure Law.

(a) Seller’s agents shall:

(1) Advise sellers of their duty to disclose any known material defects with the property by completing a property disclosure statement that satisfies the requirements in 68 Pa.C.S.A. § 7304 (relating to disclosure form).

(2) Provide sellers with a property disclosure statement that meets or exceeds the disclosures set forth in § 35.335a (relating to seller property disclosure statement).

(3) Deliver the completed property disclosure statement or the property disclosure statement marked “refused” to the buyer or buyer’s agent prior to the execution of an agreement of sale.

(b) Buyer’s agents shall:

(1) Advise buyers that sellers have a duty to provide a completed property disclosure statement.

(2) Deliver the completed property disclosure statement or the property disclosure statement marked “refused” to the buyer prior to the execution of an agreement of sale.

(c) Both seller’s agents and buyer’s agents (licensees) are required to disclose, to the buyer in writing, all material defects that are not otherwise disclosed and of which the licensee has actual knowledge.

(d) Neither seller’s agents nor buyer’s agents are required to conduct an independent investigation to confirm seller’s disclosures on the property disclosure statement.

REAL ESTATE DOCUMENTS

§ 35.335a. Seller property disclosure statement.

The seller’s property disclosure statement must, at a minimum, contain the following disclosures:

Seller’s Property Disclosure Statement

Property address: __________________________

Seller: __________________________

A seller must disclose to a buyer all known material defects about property being sold that are not readily observable. This disclosure statement is designed to assist the seller in complying with disclosure requirements and to assist the buyer in evaluating the property being considered.

This statement discloses the seller’s knowledge of the condition of the property as of the date signed by the seller and is not a substitute for any inspections or warranties that the buyer may wish to obtain. This statement is not a warranty of any kind by the seller or a warranty or representation by any listing real estate broker, any selling real estate broker or their agents. The buyer is encouraged to address concerns about the condition of the property that may not be included in this statement. This statement does not relieve the seller of the obligation to disclose a material defect that may not be addressed on this form.

A material defect is a problem with the property or any portion of it that would have a significant adverse impact on the value of the residential real property or that involves an unreasonable risk to people on the land. The fact that a structural element, system or subsystem is near, at or beyond the end of its normal useful life is not by itself a material defect.

(1) Seller’s expertise. The seller does not possess expertise in contracting, engineering, architecture or other areas related to the construction and condition of the property and its improvements, except as follows:

(2) Occupancy. Do you, the seller, currently occupy this property? ______ yes ______ no

If “no,” when did you last occupy the property? ______

(3) Roof.

(i) Date roof was installed: __________________________

Documented? ______ yes ______ no ______ unknown

(ii) Has the roof been replaced or repaired during your ownership? ______ yes ______ no

If “yes,” were the existing shingles removed? ______ yes ______ no ______ unknown

(iii) Has the roof ever leaked during your ownership? ______ yes ______ no

(iv) Do you know of any problems with the roof, gutters or downspouts? ______ yes ______ no

Explain any “yes” answers that you give in this section:

________________________________________________________

(4) Basements and crawl spaces (Complete only if applicable).

(i) Does the property have a sump pump? ______ yes ______ no ______ unknown

(ii) Are you aware of any water leakage, accumulation or dampness within the basement or crawl space? ______ yes ______ no

If “yes,” describe in detail:

________________________________________________________

(iii) Do you know of any repairs or other attempts to control any water or dampness problem in the basement or crawl space? ______ yes ______ no

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If “yes,” describe the location, extent, date and name of the person who did the repair or control effort:

(5) Termites/wood destroying insects, dry rot, pests.
   (i) Are you aware of any termites/wood destroying insects, dry rot or pests affecting the property?  
      yes no
   (ii) Are you aware of any damage to the property caused by termites/wood destroying insects, dry rot or pests?  
        yes no
   (iii) Is your property currently under contract by a licensed pest control company?  
         yes no
   (iv) Are you aware of any termite/pest control reports or treatments for the property in the last 5 years?  
        yes no
   Explain any “yes” answers that you give in this section:

(6) Structural items.
   (i) Are you aware of any past or present water leakage in the house or other structures?  
       yes no
   (ii) Are you aware of any past or present movement, shifting, deterioration or other problems with walls, foundations or other structural components?  
        yes no
   (iii) Are you aware of any past or present problems with driveways, walkways, patios or retaining walls on the property?  
        yes no
   Explain any “yes” answers that you give in this section:

When explaining efforts to control or repair, please describe the location and extent of the problem and the date and person by whom the work was done, if known:

(7) Additions/remodeling. Have you made any additions, structural changes or other alterations to the property?  
      yes no
   If “yes,” please describe:

(8) Water and sewage.
   (i) What is the source of your drinking water?  
       public community system well on property other
   If “other,” please explain:

   (ii) If your drinking water source is not public:
   When was your water last tested?  
   What was the result of the test?

   Is the pumping system in working order?  
      yes no
   If “no,” please explain:

   (iii) Do you have a softener, filter or other purification system?  
         yes no
   If “yes,” is the system: leased owned
   (iv) What is the type of sewage system?  
        public sewer private sewer septic tank cesspool other
   If “other,” please explain:

   (v) Is there a sewage pump?  
       yes no
   If “yes,” is it in working order?  
      yes no
   (vi) If applicable, when was the septic system or cesspool last serviced?

   (vii) Is either the water or sewage system shared?  
         yes no
   If “yes,” please explain:

   (viii) Are you aware of any leaks, backups or other problems relating to any of the plumbing, water and sewage-related items?  
          yes no
   If “yes,” please explain:

(9) Plumbing system.
   (i) Type of plumbing: copper galvanized lead PVC unknown other
   If “other,” please explain:

   (ii) Are you aware of any problems with any of your plumbing fixtures (including, but not limited to: kitchen, laundry or bathroom fixtures, wet bars, hot water heater, etc.)?  
        yes no
   If “yes,” please explain:

(10) Heating and air conditioning.
   (i) Type of air conditioning: central electric central gas wall none
   (ii) List any areas of the house that are not air conditioned:

   (iii) Type of heating: electric fuel oil natural gas other
   If “other,” please explain:

   (iv) List any areas of the house that are not heated:
(v) Type of water heating: ___ electric ___ gas
___ solar ___ other
If “other,” please explain:
________________________________________________________________________

(vi) Are you aware of any underground fuel tanks on the property? ___ yes ___ no
If “yes,” please describe:
________________________________________________________________________

Are you aware of any problems with any item in this section? ___ yes ___ no
If “yes,” please explain:
________________________________________________________________________

(11) Electrical system. Are you aware of any problems or repairs needed in the electrical system? ___ yes ___ no
If “yes,” please explain:
________________________________________________________________________

(12) Equipment and appliances.
The following items included in the sale are in need of repair or replacement:
________________________________________________________________________

(13) Land (soils, drainage and boundaries).
(i) Are you aware of any fill or expansive soil on the property? ___ yes ___ no
(ii) Are you aware of any sliding, settling, earth movement, upheaval, subsidence or earth stability problems that have occurred on or that affect the property? ___ yes ___ no

NOTE TO BUYER: Some properties may be subject to mine subsidence damage. Maps of the counties and mines where mine subsidence damage may occur and mine subsidence insurance are available through:

Department of Environmental Protection
Mine Subsidence Insurance Fund
25 Technology Drive, California Technology Park
Coal Center, PA 15413
(in PA) (800) 922-1678
(outside PA) (724) 769-1100

(iii) Are you aware of any existing or proposed mining, strip mining or any other excavations that might affect this property? ___ yes ___ no

(iv) To your knowledge, is this property or part of it located in a flood zone or wetlands area? ___ yes ___ no

(14) Hazardous substances.
(i) Are you aware of any underground tanks or hazardous substances present on the property (structure or soil), including, but not limited to, asbestos, polychlorinated byphenyls (PCBs), radon, lead paint, urea-formaldehyde foam insulation (UFII), etc.? ___ yes ___ no

(ii) To your knowledge, has the property been tested for any hazardous substances? ___ yes ___ no

(iii) Do you know of any other environmental concerns that might impact upon the property? ___ yes ___ no

Explain any “yes” answers that you give in this section:
________________________________________________________________________

(15) Condominiums and other homeowners associations (complete only if applicable).
Type: ___ condominium ___ cooperative ___ homeowners association ___ other
If “other,” please explain:
________________________________________________________________________

NOTE REGARDING CONDOMINIUMS AND COOPERATIVES:

According to section 3407 of the Uniform Condominium Act (68 Pa.C.S. § 3407) (relating to resales of units) and 68 Pa.C.S. § 4409 (relating to resales of cooperative interests), a buyer of a resale unit in a condominium or cooperative must receive a certificate of resale issued by the association in the condominium or cooperative. The buyer will have the option of canceling the agreement with return of all deposit moneys until the certificate has been provided to the buyer and for 5 days thereafter or until conveyance, whichever occurs first.

(16) Miscellaneous.
(i) Are you aware of any existing or threatened legal action affecting the property? ___ yes ___ no

(ii) Do you know of any violations of Federal, State or local laws or regulations relating to this property? ___ yes ___ no

NOTE TO BUYER: Most properties have easements running across them for utility services and other reasons. In many cases, the easements do not restrict the ordinary use of the property, and the seller may not be readily aware of them. Buyers may wish to determine the existence of easements and restrictions by examining the property and ordering an abstract of title or searching the records in the Office of the Recorder of Deeds for the county before entering into an agreement of sale.

(16) Miscellaneous.
(i) Are you aware of any existing or threatened legal action affecting the property? ___ yes ___ no

(ii) Do you know of any violations of Federal, State or local laws or regulations relating to this property? ___ yes ___ no
(iii) Are you aware of any public improvement, condominium or homeowner association assessments against the property that remain unpaid or of any violations of zoning, housing, building safety or fire ordinances that remain uncorrected? yes no

(iv) Are you aware of any judgment, encumbrance, lien (for example, comaker or equity loan) or other debt against this property that cannot be satisfied by the proceeds of this sale? yes no

(v) Are you aware of any reason, including a defect in title, that would prevent you from giving a warranty deed or conveying title to the property? yes no

(vi) Are you aware of any material defects to the property, dwelling or fixtures which are not disclosed elsewhere on this form? yes no

A material defect is a problem with the property or any portion of it that would have a significant adverse impact on the value of the residential real property or that involves an unreasonable risk to people on the land.

Explain any “yes” answers that you give in this section:

The undersigned seller represents that the information set forth in this disclosure statement is accurate and complete to the best of the seller’s knowledge. The seller hereby authorizes any agent for the seller to provide this information to prospective buyers of the property and to other real estate agents. The seller alone is responsible for the accuracy of the information contained in this statement. The seller shall cause the buyer to be notified in writing of any information supplied on this form that is rendered inaccurate by a change in the condition of the property following the completion of this form.

SELLER DATE
SELLER DATE
SELLER DATE

EXECUTOR, ADMINISTRATOR, TRUSTEE

The undersigned has never occupied the property and lacks the personal knowledge necessary to complete this disclosure statement.

DATE

RECEIPT AND ACKNOWLEDGMENT BY BUYER

The undersigned buyer acknowledges receipt of this disclosure statement. The buyer acknowledges that this statement is not a warranty and that, unless stated otherwise in the sales contract, the buyer is purchasing this property in its present condition. It is the buyer’s responsibility to satisfy himself or herself as to the condition of the property. The buyer may request that the property be inspected, at the buyer’s expense and by qualified professionals, to determine the condition of the structure or its components.

BUYER DATE
BUYER DATE
BUYER DATE

LIST OF PUBLIC COMMENTATORS

Donna Olson
Century 21
www.donna.olson@century21.com

Robin Zellers
PO Box 8910
Camp Hill, PA 17001
Tele: 717-761-5070
Fax: 717-975-9835
www.rzellers@naicir.com

Frank Bartalotta
ERA One Source Realty
1559 Main Street
Peckville, PA 18452
Tele: 570-383-9000 ext. 113
www.frankb@nepahomesales.com

Diane M. LePera
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Derenda Updegrave
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500 North 12th Street
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Tele: 717-561-1303
www.parealtor.org

Terry Sutton
Alliance Commercial Realty
232 South George Street
York, PA 17401
Tele: 717-718-4100
Fax: 717-718-4101
www.tsutton@alliancecommercialrealty.com

Linda McKissick
Weichert Realtors
606 E. Baltimore Pike
Media, PA 19063
www.lsmckissick@aol.com

Anthony Rocchino
Better Homes PA
www.anthonybhpa@comcast.net
Copy below is hereby approved as to form and legality. Attorney General

[DEPUTY ATTORNEY GENERAL]

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-5618

DATE OF ADOPTION:

[DEPUTY GENERAL COUNSEL]

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 days 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
SELLER PROPERTY DISCLOSURE STATEMENT
The State Real Estate Commission (Commission) hereby adds §§ 35.284a and 35.335a (relating to disclosures required by the Real Estate Seller Disclosure Law; and seller’s property disclosure statement), to read as set forth in Annex A.

Statutory Authority

The regulations are authorized under section 7304(a) of the Real Estate Seller Disclosure Law (SDL) (68 Pa. C.S. § 7304(a)), and sections 404 and 604(a)(15.1) of the Real Estate Licensing and Registration Act (RELRA) (63 P.S. §§ 455.404 and 455.604(a)(15.1)).

Summary

New § 35.284a (relating to disclosures required by the Real Estate Seller Disclosure Law) tracks the duties imposed on licensees who represent sellers and buyers as well as transaction licensees under the SDL (63 Pa. C.S. §§ 7304-7313). New § 35.335a (relating to seller’s property disclosure statement) sets forth the minimum property disclosure statement required by section 7304(b) of the SDL (68 Pa. C.S. § 7304(b)).

Response to Comments

Notice of proposed rulemaking was published at 40 Pa.B. 2281 (May 1, 2010). Publication was followed by a 30-day public comment period during which the Board received a public comment from the Pennsylvania Association of Realtors (PAR), and comments from seven individual licensees: Frank Bartalotta, Diane M. LePera, Linda McKissick, Donna Olson, Anthony Rocchino, Terry Sutton and Robin Zellers. Following the close of the public comment period, the Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment.

§ 35.284a(a)—Seller’s agents
§ 35.284a(b)—Buyer’s agents

IRRC questioned whether “seller’s agents” and “buyer’s agents” adequately cover all of the agency relationships wherein a real estate licensee is required to provide seller/buyer with the disclosure statement. PAR recommended that the Commission consider “licensee working with the seller” and “licensee working with the buyer.” The Commission concurs with IRRC and PAR that “seller’s agents” and “buyer’s agents” are not inclusive enough as these titles do not include transaction licensees who have entered into agreements with sellers and buyers for document preparation and do not include subagents who work on behalf of the seller. However, because “licensees working with the seller/buyer” is too broad, in final form, the Commission has amended these titles to read “a licensee who represents sellers or a transaction licensee who has entered into an
agreement with sellers” in subsection (a) and “a licensee who represents buyers or a transaction licensee who has entered into an agreement with buyers” in subsection (b). As part of this amendment, the Commission has addressed the HPLC’s question as to whether the references to “seller’s agents” and “buyer’s agents” were grammatically correct, by making the subject singular.

§ 35.284a(a)(1) —Seller’s agent must advise sellers of duty to disclose known material defects by completing a property disclosure statement.

Terry Sutton and Robin Zellers questioned whether sellers of commercial, industrial or multi-family residential properties must also complete the seller disclosure statements. Section 7302 of the SDL (68 Pa. C.S. § 7302), delineates that only residential properties are included in the seller disclosure requirement. Residential real estate is defined in section 7103(a) of the SDL (68 Pa. C.S. § 7103(a)) as consisting of not less than one nor more than four residential dwelling units.

Anthony Rocchino and Donna Olsen questioned whether disclosure is required for new construction, estates or bank foreclosures. Ten exceptions to the requirement that the seller disclosure statement be provided for residential properties are listed in the SDL—eight in section 7103(a) and two in section 7302(b). Under those sections, transfers of estates, foreclosures and new residential construction are exempt.

Anthony Rocchino also questioned whether disclosures are required where the seller has not lived in the home or investment property or managed the property actively. These scenarios do not fall within the exceptions in sections 7103(a) and 7302(b), and a disclosure is required. However, under section 7306 of the SDL (68 Pa. C.S. §§ 7306), if an item of information required to be disclosed is unknown or not available to the seller, the seller may make a disclosure based on the best information available to the seller.

§ 35.284a(a)(3) —Seller must deliver a completed disclosure statement or one marked “refused” to buyer/buyer’s agent

PAR remarked that the SDL imposes the duty on the seller and not the licensee representing or working with the seller to deliver the disclosure statement, however acknowledged that in most cases licensees involved in the transaction assume this responsibility. The Commission concurs with PAR and therefore, under this regulation, requires licensees who represent sellers or transaction licensees who have entered into agreements with sellers to deliver either the completed disclosure statement or one marked refused.

Linda McKissick commented that sellers should not be permitted to refuse to complete the seller disclosure statement. Further, PAR commented that requiring the delivery of refused-marked statements could potentially increase the number of sellers who refuse to complete seller disclosure statements and increase liability. IRRC requested that the Commission address the impact of requiring delivery of disclosure statements marked “refused”.
Section 7311 of the SDL (68 Pa. C.S. § 7311) permits sellers to refuse to provide the disclosure statement by stating that the transaction will not be invalidated because the seller fails to provide the disclosure statement. Thus, the ability to refuse is not new. Requiring sellers to mark the disclosure statements refused provides applicable licensees with documentary evidence that they satisfied their duties. Further, there is no empirical evidence to suggest that the number of refusals will increase simply because licensees must deliver the refused-marked statement. To the contrary, it is not financially advantageous for sellers to refuse. First, section 7311 of the SDL (68 Pa. C.S. § 7311) subjects sellers who fail to complete disclosure statements to damages for failure to comply with the disclosure requirement. Second, because as PAR points out, it is commonplace for completed disclosure statements to be transmitted to the multiple listing service (MLS) and made available online, for marketing purposes it would be highly noticeable for a seller not to include a completed disclosure statement with the listing.

The Commission is also not persuaded by the concern that liability for licensees will increase because they will have more to disclose under the SDL, in that section 7310 of the SDL (68 Pa. C.S. § 7310) places an affirmative obligation of disclosure on agents for sellers and buyers who have actual knowledge of a material defect that was not disclosed to the buyer or of a misrepresentation relating to a material defect. Because this comment is premised on increased refusals and because the obligation on licensees to report known material defects is also not new, it is also only speculative that there will be an increase in liability. As such, in final form, the Commission has not amended this provision.

Both IRRC and PAR question what delivery method would be satisfactory under this provision. PAR recommended that the Commission add the clause “publishing the Seller’s Property Disclosure Statement at a location where selling agents have access.” While the Commission concurs with PAR that placement on the MLS is commonly used, and would in fact, favor such a method, section 7305 of the SDL (68 Pa. C.S. § 7305) restricts the method of delivery to “personal delivery; first class mail; certified mail, return receipt requested; or facsimile transmission.” As such, until the statute is amended, the Commission cannot permit online delivery to satisfy the statutory requirement. Accordingly, it has not incorporated the language recommended by PAR.

§ 35.284a(b)(1)—Buyer’s agent must advise buyers of seller’s duty

In the event that the buyer is not represented, PAR recommended that the Commission should require that the licensee who has entered into a business relationship with the seller bear the responsibilities in § 35.284a(b)(1). While the Commission has chosen not to implement this affirmative duty, it believes that such conversation will occur when, under subsection (a)(3), licensees who represent sellers or transaction licensees who have entered into agreements with sellers deliver either the completed disclosure statement or one marked refused to the buyer where buyer has no representation.
§ 35.284a(b)(2)—Buyer’s agent must deliver a completed disclosure statement or one marked “refused” to buyer

PAR commented that delivery of the completed/refused-marked disclosure statement by the buyer’s agent would be redundant if delivery had already been made under subsection (a). IRRC requested the Commission to clarify this issue. The Commission concurs with this comment and in final form has changed the requirement from delivery to assurance that delivery has been made.

§ 35.284a(c) and (d)—Seller’s agents and buyers agents are required to disclose known defects but are not required to make independent inspection

IRRC requested that the Commission address whether these provisions should apply to anyone involved in the transaction. Like its comment to subsections (a) and (b), PAR recommended that they do. The Commission concurs with PAR and has revised these provisions consistent with the changes made to subsections (a) and (b).

Diane M. LePera questioned what are “known material defects?” Section 7102 of the SDL (68 Pa. C.S. § 7102) defines "material defect" as “a problem with a residential real property or any portion of it that would have a significant adverse impact on the value of the property or that involves an unreasonable risk to people on the property. The fact that a structural element, system or subsystem is near, at or beyond the end of the normal useful life of such a structural element, system or subsystem is not by itself a material defect.” When sellers, licensees representing sellers/buyers or transaction licensees who have entered into agreements with them know of such conditions it is a “known material defect.”

Linda McKissick questioned whether this section requires licensees to verify the information provided by seller on the disclosure statement. Under section 7310 of the SDL (68 Pa. C.S. § 7310), licensees representing sellers/buyers or transaction licensees who have entered into agreements with them are not liable for any violation of the SDL unless the aforementioned licensee had actual knowledge of a material defect that was not disclosed to the buyer or of a misrepresentation relating to a material defect. In fact, while sellers are required to provide accurate information about known material defects under sections 7303 and 7308 of the SDL (68 Pa. C.S. §§ 7303 and 7308), they too are not required to conduct any specific investigation or inquiry in an effort to complete the property disclosure statement.

§ 35.335a—Seller disclosure statement

PAR commented that Question 12 on the disclosure statement should require a listing of items that are included in the sale and not just those in need of repair. In that section 7103 of the SDL (68 Pa. C.S. § 7103) only requires sellers to disclose material defects, the Commission believes that it is overly burdensome to require a listing of all appliances that are included in the sale rather than simply those that are in need of repair.
HPLC recommended that the Commission delete the address and telephone number in Question (13) so that the regulations would not have to be amended in the event that the Mine Subsidence Insurance Fund changes its address or telephone number. The Commission agrees with HPLC and has removed this information.

HPLC questioned whether it would be useful to list another reason for easements other than utility service in Question (13)(vi). The Commission appreciates that in addition to utility service easements may be granted for flag-lots, walking trails and shared driveways. Nonetheless, because the statute only lists utility service and the Commission has chosen not to amend the former disclosure statement in any other area aside from removing an address and a telephone number at the HPLC’s urging, the Commission has not amended this question.

Frank Bartakotta recommended that the Commission include specific questions about lead-based paint and mold on the disclosure statement. These conditions are currently included within Question 14 on the disclosure form so no further amendment is required.

HPLC questioned why there was an asterisk in Question (15) following “condominium.” The Commission has removed this typographical error in final form.

Fiscal Impact and Paperwork Requirements

The amendments will have no adverse fiscal impact or paperwork requirements on the Board, licensees, the Commonwealth, its political subdivisions or the public sector.

Sunset Date

The Board continually monitors the effectiveness of its regulations through communication with the regulated population; accordingly, no sunset date has been set.

Regulatory Review

Under § 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Commission submitted copies of the notice of proposed rulemaking, published at 40 Pa.B. 2281 (May 1, 2010), to IRRC, SCP/PLC and HPLC for review and comment.

In compliance with § 5(b.1) of the Regulatory Review Act (71 P.S. § 745.5(b.1)), the Board also provided IRRC, SCP/PLC, and HPLC with copies of comments received as well as other documents. In preparing the final-form regulation, the Board has considered the comments received from IRRC, HPLC and the public.

Under § 5.1(d) of the Regulatory Review Act (71 P.S. § 745.5a(d)), this final-form regulation was approved by the HPLC on ________, 2010, and deemed approved by
SCP/PLC on_______, 2010. Under § 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), IRRC met on _______, 2010, and approved the final-form regulation.

Contact Person

Further information may be obtained by contacting Patricia Ridley, Administrator, State Real Estate Commission, at P. O. Box 2649, Harrisburg, PA 17105-2649; telephone (717) 783-3658.

Findings

The State Real Estate Commission finds that:

(1) Public notice of proposed rulemaking was given under §§ 201 and 202 of the Commonwealth Documents Law (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 40 Pa.B. 2281.

(4) This amendment is necessary and appropriate for administering and enforcing the authorizing Acts identified in Part B of this Preamble.

Order

The State Real Estate 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) This order shall take effect on 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. 284a. Disclosures required by the Real Estate Seller Disclosure Law.

(a) Seller's agents A LICENSEE WHO REPRESENTS SELLERS OR A TRANSACTION LICENSEE WHO HAS ENTERED INTO AN AGREEMENT WITH SELLERS shall:

   (1) Advise sellers of their duty to disclose any known material defects with the property by completing a property disclosure statement that satisfies the requirements in 68 Pa.C.S.A. § 7304 (relating to disclosure form).

   (2) Provide sellers with a property disclosure statement that meets or exceeds the disclosures set forth in § 35.335a (relating to seller property disclosure statement).

   (3) Deliver the completed property disclosure statement or the property disclosure statement marked "refused" to the buyer, or buyer's agent THE LICENSEE WHO REPRESENTS THE BUYER OR THE TRANSACTION LICENSEE WHO HAS ENTERED INTO AN AGREEMENT WITH THE BUYER prior to the execution of an agreement of sale.
(b) **Buyer’s agents** A LICENSEE WHO REPRESENTS BUYERS OR A TRANSACTION LICENSEE WHO HAS ENTERED INTO AN AGREEMENT WITH BUYERS shall:

1. Advise buyers that sellers have a duty to provide a completed property disclosure statement.
2. Deliver ASSURE THAT the completed property disclosure statement or the property disclosure statement marked “refused” WAS DELIVERED to the buyer prior to the execution of an agreement of sale.

(c) Both seller’s agents and buyer’s agents (licensees) LICENSEES DESCRIBED IN SUBSECTIONS (A) AND (B) are required to disclose, to the buyer in writing, all material defects that are not otherwise disclosed and of which the licensee has actual knowledge.

(d) Neither seller’s agents nor buyer’s agents LICENSEES DESCRIBED IN SUBSECTIONS (A) AND (B) are NOT required to conduct an independent investigation to confirm seller’s disclosures on the property disclosure statement.

**REAL ESTATE DOCUMENTS**

§ 35.335a. **Seller property disclosure statement.**

The seller’s property disclosure statement shall, at a minimum, contain the following disclosures:

**Seller’s Property Disclosure Statement**

Property address:........................................................................................................

Seller:.........................................................................................................................
A seller must disclose to a buyer all known material defects about property being sold that are not readily observable. This disclosure statement is designed to assist the seller in complying with disclosure requirements and to assist the buyer in evaluating the property being considered.

This statement discloses the seller’s knowledge of the condition of the property as of the date signed by the seller and is not a substitute for any inspections or warranties that the buyer may wish to obtain. This statement is not a warranty of any kind by the seller or a warranty or representation by any listing real estate broker, any selling real estate broker or their agents. The buyer is encouraged to address concerns about the condition of the property that may not be included in this statement. This statement does not relieve the seller of the obligation to disclose a material defect that may not be addressed on this form.

A material defect is a problem with the property or any portion of it that would have a significant adverse impact on the value of the residential real property or that involves an unreasonable risk to people on the land. The fact that a structural element, system or subsystem is near, at or beyond the end of its normal useful life is not by itself a material defect.

(1) **Seller's expertise.** The seller does not possess expertise in contracting, engineering, architecture or other areas related to the construction and condition of the property and its improvements, except as follows: .................................................................

(2) **Occupancy.** Do you, the seller, currently occupy this property? ......yes ......no
If “no,” when did you last occupy the property? .................................................................

(3) **Roof.**
(i) Date roof was installed: .................................................................

Documented? ....... yes ....... no ....... unknown

(ii) Has the roof been replaced or repaired during your ownership?

........... yes ....... no

If “yes,” were the existing shingles removed? ....... yes ....... no ....... unknown

(iii) Has the roof ever leaked during your ownership? ....... yes ....... no

(iv) Do you know of any problems with the roof, gutters or downspouts?

........... yes ....... no

Explain any “yes” answers that you give in this section: .................................................................
..........................................................................................................................................................
..........................................................................................................................................................
..........................................................................................................................................................

(4) Basements and crawl spaces (Complete only if applicable).

(i) Does the property have a sump pump? ....... yes ....... no ....... unknown

(ii) Are you aware of any water leakage, accumulation or dampness within the basement or crawl space? ....... yes ....... no

If “yes,” describe in detail: ..................................................................................................................
..........................................................................................................................................................
..........................................................................................................................................................

(iii) Do you know of any repairs or other attempts to control any water or dampness problem in the basement or crawl space? ....... yes ....... no

If “yes,” describe the location, extent, date and name of the person who did the repair or control effort: ..................................................................................................................
..........................................................................................................................................................
..........................................................................................................................................................

(5) Termites/wood destroying insects, dry rot, pests.
(i) Are you aware of any termites/wood destroying insects, dry rot or pests affecting the property? ......yes ......no

(ii) Are you aware of any damage to the property caused by termites/wood destroying insects, dry rot or pests? ......yes ......no

(iii) Is your property currently under contract by a licensed pest control company? ......yes ......no

(iv) Are you aware of any termite/pest control reports or treatments for the property in the last five years? ......yes ......no

Explain any “yes” answers that you give in this section: ..........................................................

........................................................................................................................................

........................................................................................................................................

(6) Structural items.

(i) Are you aware of any past or present water leakage in the house or other structures? ......yes ......no

(ii) Are you aware of any past or present movement, shifting, deterioration or other problems with walls, foundations or other structural components? ......yes ......no

(iii) Are you aware of any past or present problems with driveways, walkways, patios or retaining walls on the property? ......yes ......no

Explain any “yes” answers that you give in this section: ..........................................................

........................................................................................................................................

When explaining efforts to control or repair, please describe the location and extent of the problem and the date and person by whom the work was done, if known: ........................................................................................................................................
(7) **Additions/remodeling.** Have you made any additions, structural changes or other alterations to the property? yes no
If “yes,” please describe:

(8) **Water and sewage.**

(i) What is the source of your drinking water?

public community system well on property other

If “other,” please explain:

(ii) If your drinking water source is not public:

When was your water last tested?

What was the result of the test?

Is the pumping system in working order? yes no
If “no,” please explain:

(iii) Do you have a softener, filter or other purification system?

yes no
If “yes,” is the system: leased owned

(iv) What is the type of sewage system? public sewer private sewer septic tank cesspool other
If “other,” please explain:
(v) Is there a sewage pump?......yes ......no
If “yes,” is it in working order? ......yes ......no

(vi) If applicable, when was the septic system or cesspool last serviced?

(vii) Is either the water or sewage system shared? ......yes ...... no
If “yes,” please explain:........................................................................................................

(viii) Are you aware of any leaks, backups or other problems relating to any of the plumbing, water and sewage-related items? ......yes ...... no
If “yes,” please explain:........................................................................................................

(9) Plumbing system.
(i) Type of plumbing: ......copper ......galvanized ......lead ......PVC
...... unknown ......other
If “other,” please explain:........................................................................................................
(ii) Are you aware of any problems with any of your plumbing fixtures (including, but not limited to: kitchen, laundry or bathroom fixtures, wet bars, hot water heater, etc.)? ......yes ......no
If “yes,” please explain:........................................................................................................

(10) Heating and air conditioning.
(i) Type of air conditioning: ......central electric ......central gas
...... wall ...... none
(ii) List any areas of the house that are not air conditioned:
............................................................................................................................................
(iii) Type of heating: ...... electric ...... fuel oil ...... natural gas ...... other
If “other,” please explain: .................................................................

(iv) List any areas of the house that are not heated: ..............................

...........................................................................................................

(v) Type of water heating: ...... electric ...... gas ...... solar ...... other

If “other,” please explain: ........................................................................

(vi) Are you aware of any underground fuel tanks on the property?

......yes ......no

If “yes,” please describe: ........................................................................

Are you aware of any problems with any item in this section? ...... yes ...... no

If “yes,” please explain: ........................................................................

...........................................................................................................

(11) **Electrical system.** Are you aware of any problems or repairs needed in the
electrical system? ......yes ......no

If “yes,” please explain: ........................................................................

...........................................................................................................

(12) **Equipment and appliances.**

The following items included in the sale are in need of repair or replacement: ..............

...........................................................................................................

...........................................................................................................

(13) **Land (soils, drainage and boundaries).**

(i) Are you aware of any fill or expansive soil on the property? ......yes

......no
(ii) Are you aware of any sliding, settling, earth movement, upheaval, subsidence or earth stability problems that have occurred on or that affect the property? yes no

NOTE TO BUYER: Some properties may be subject to mine subsidence damage. Maps of the counties and mines where mine subsidence damage may occur and mine subsidence insurance are available through:

Department of Environmental Protection

Mine Subsidence Insurance Fund

25 Technology Drive, California Technology Park

Coal Center, PA 15413

(in PA) (800) 922-1678

(outside PA) (724) 769-1100

(iii) Are you aware of any existing or proposed mining, strip mining or any other excavations that might affect this property? yes no

(iv) To your knowledge, is this property or part of it located in a flood zone or wetlands area? yes no

(v) Do you know of any past or present drainage or flooding problems affecting the property? yes no

(vi) Do you know of any encroachments, boundary line disputes or easements? yes no

NOTE TO BUYER: Most properties have easements running across them for utility services and other reasons. In many cases, the easements do not restrict the ordinary use of the property, and the seller may not be readily aware of them.
Buyers may wish to determine the existence of easements and restrictions by examining the property and ordering an abstract of title or searching the records in the Office of the Recorder of Deeds for the county before entering into an agreement of sale.

(vii) Are you aware of any shared or common areas (for example, driveways, bridges, docks, walls, etc.) or maintenance agreements? .....yes .....no

Explain any "yes" answers that you give in this section: ..........................................................

..........................................................................................................................................

..........................................................................................................................................

(14) **Hazardous substances.**

(i) Are you aware of any underground tanks or hazardous substances present on the property (structure or soil), including, but not limited to, asbestos, polychlorinated byphenyls (PCBs), radon, lead paint, urea-formaldehyde foam insulation (UFFI), etc? .....yes .....no

(ii) To your knowledge, has the property been tested for any hazardous substances? .....yes .....no

(iii) Do you know of any other environmental concerns that might impact upon the property? .....yes .....no

Explain any “yes” answers that you give in this section: ..........................................................

..........................................................................................................................................

..........................................................................................................................................

(15) **Condominiums and other homeowners associations (complete only if applicable).**

Type: .......condominium* .......cooperative .......homeowners association .......other
If “other,” please explain: ...........................................................................................................


NOTICE REGARDING CONDOMINIUMS AND COOPERATIVES:

According to section 3407 of the Uniform Condominium Act (68 Pa. C.S. § 3407) (relating to resales of units) and 68 Pa. C.S. § 4409 (relating to resales of cooperative interests), a buyer of a resale unit in a condominium or cooperative must receive a certificate of resale issued by the association in the condominium or cooperative. The buyer will have the option of canceling the agreement with return of all deposit moneys until the certificate has been provided to the buyer and for 5 days thereafter or until conveyance, whichever occurs first.

(16) Miscellaneous.

(i) Are you aware of any existing or threatened legal action affecting the property? ......yes ......no

(ii) Do you know of any violations of Federal, State or local laws or regulations relating to this property? ......yes ......no

(iii) Are you aware of any public improvement, condominium or homeowner association assessments against the property that remain unpaid or of any violations of zoning, housing, building safety or fire ordinances that remain uncorrected? ......yes ......no

(iv) Are you aware of any judgment, encumbrance, lien (for example, comaker or equity loan) or other debt against this property that cannot be satisfied by the proceeds of this sale? ......yes ......no
(v) Are you aware of any reason, including a defect in title, that would prevent you from giving a warranty deed or conveying title to the property? ......yes ......no

(vi) Are you aware of any material defects to the property, dwelling or fixtures which are not disclosed elsewhere on this form? ......yes ......no

A material defect is a problem with the property or any portion of it that would have a significant adverse impact on the value of the residential real property or that involves an unreasonable risk to people on the land.

Explain any "yes" answers that you give in this section:

The undersigned seller represents that the information set forth in this disclosure statement is accurate and complete to the best of the seller's knowledge. The seller hereby authorizes any agent for the seller to provide this information to prospective buyers of the property and to other real estate agents. The seller alone is responsible for the accuracy of the information contained in this statement. The seller shall cause the buyer to be notified in writing of any information supplied on this form that is rendered inaccurate by a change in the condition of the property following the completion of this form.

SELLER........................................DATE........................................

SELLER........................................DATE........................................

SELLER........................................DATE........................................

EXECUTOR, ADMINISTRATOR, TRUSTEE
The undersigned has never occupied the property and lacks the personal knowledge necessary to complete this disclosure statement.

RECEIPT AND ACKNOWLEDGMENT BY BUYER

The undersigned buyer acknowledges receipt of this disclosure statement. The buyer acknowledges that this statement is not a warranty and that, unless stated otherwise in the sales contract, the buyer is purchasing this property in its present condition. It is the buyer’s responsibility to satisfy himself or herself as to the condition of the property. The buyer may request that the property be inspected, at the buyer’s expense and by qualified professionals, to determine the condition of the structure or its components.

BUYER...DATE...

BUYER...DATE...

BUYER...DATE...

***
September 10, 2010

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-5618: Seller Property Disclosure Statement

Dear Chairman Coccodrilli:

Enclosed is a copy of a final rulemaking package of the State Real Estate Commission pertaining to Seller Property Disclosure Statement.

The Commission will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

[Signature]
Joseph Tarantino, Jr., Chairman
State Real Estate Commission

cc: Basil L. Merenda, Acting Secretary and Commissioner of
Bureau of Professional and Occupational Affairs
Steven V. Turner, Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
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-5618
SUBJECT: SELLER PROPERTY DISCLOSURE STATEMENT
AGENCY: DEPARTMENT OF STATE
STATE REAL ESTATE COMMISSION

TYPE OF REGULATION

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FILING OF REGULATION

DATE SIGNATURE DESIGNATION
August 2010 Michael McGeehan HOUSE COMMITTEE ON PROFESSIONAL LICENSURE

July 15 Mary Walmer SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE

August 10 D. Sullivan INDEPENDENT REGULATORY REVIEW COMMISSION

August 27, 2010 ATTORNEY GENERAL (for Final Omitted only)

August 27, 2010 LEGISLATIVE REFERENCE BUREAU (for Proposed only)