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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

July 1, 2010

Joseph Tarantino, Jr., Chair
State Real Estate Commission
c/o Debbie Sopko
2601 North Third Street
Harrisburg, PA 17110

Re: Regulation #16A-5618 (IRRC #2838)
State Real Estate Commission
Seller Property Disclosure Statement

Dear Mr. Tarantino:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable Robert M. Tomlinson, Majority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Michael P. McGeehan, Majority Chairman, House Professional Licensure Committee
Honorable Julie Harhart, Minority Chairman, House Professional Licensure Committee
Honorable Basil L. Merenda, Acting Secretary, Department of State
Robert A. Mulle, Esq., Office of Attorney General
Andrew Clark, Esq., Office of General Counsel

Comments of the Independent Regulatory Review Commission



State Real Estate Commission Regulation #16A-5618 (IRRC #2838)

Seller Property Disclosure Statement

July 1, 2010

We submit for your consideration the following comments on the proposed rulemaking published in the May 1, 2010 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Real Estate Commission (Commission) to respond to all comments received from us or any other source.

Section 35.284a. Disclosures required by the Real Estate Seller Disclosure Law. - Need; Implementation procedures; Clarity.

Subsections (a)(1) and (2)

These subsections explain the duties of seller's agents. Subsection (a)(1) requires a seller's agent to advise sellers of their duty to disclose known material defects in the property, and Subsection (a)(2) requires the agent to provide the seller a property disclosure statement. The PA Association of Realtors (PAR) asserts that there are circumstances where a seller may be working with a transaction licensee and not a seller's agent, or the seller is working without licensed assistance. The final-form regulation should clarify who under these circumstances would be responsible for performing the duties required in Subsection (a)(1) and (a)(2).

Subsection (a)(3)

In circumstances where a seller refuses to complete a disclosure form, this subsection directs the seller's agent to deliver the form marked "refused" to the buyer or the buyer's agent. Commentators question the need for this provision. PAR states that this subsection will increase the amount of refusals submitted, thus increasing liabilities for those involved in the transaction as well as defeating the purpose of property disclosure statements altogether. Has the Commission considered how this provision will impact the number of

sellers who refuse to complete the disclosure statement and the liabilities of other parties involved in the transaction?

Also, what does the Commission consider to be proper “delivery” of a refusal statement? Can it be submitted online? The final-form regulation should clarify this issue.

Subsection (b)(1)

Subsection (b)(1) requires a buyer’s agent to advise buyers of the seller’s duty to provide a property disclosure statement. However, like the seller’s agent, the buyer’s agent may not perform the actual sale. According to PAR, the transaction may involve a subagent, or the buyer could make the purchase directly through the seller’s agent. In these circumstances, which party would have the responsibility to advise the buyer that the seller has a duty to provide a completed property disclosure statement? The final-form regulation should clarify this issue.

Subsection (b)(2)

Subsection (b)(2) requires the buyer’s agent to deliver the property disclosure statement to the buyer before the execution of sale. PAR notes that someone other than the buyer’s agent may have already delivered the statement, for example the licensee working with the seller. As a result, the commentator is concerned that sellers’ agents could unnecessarily be held liable for faulty delivery. The Commission should clarify this issue in the final-form regulation.

Subsections (c) and (d)

Like Subsections (a) and (b), Subsections (c) and (d) only refer to sellers’ and buyers’ agents. Did the Commission intend for these provisions to pertain to any licensee involved in the transaction? The final-form regulation should clarify this issue.

Section 35.335a. Seller property disclosure statement. - Implementation procedures; Clarity.

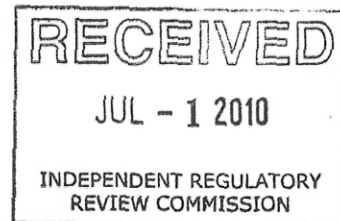
This section details the content of a seller property disclosure statement. A commentator indicates that his real estate agency includes lead-based paint and mold addendums with their property disclosure statements. The Commission should consider including this information in the form contained in this section.

Facsimile Cover Sheet



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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101



To: Tom Blackburn
Cynthia Montgomery
Agency: Department of State
Licensing Boards and Commissions
Phone: 3-7200
3-3394 (Cynthia Montgomery)
Fax: 7-0251
Date: July 1, 2010
Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on the State Real Estate Commission's regulation #16A-5618 (IRRC #2838). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by:

Cynthia K. Montgomery

Date:

7/1/10