

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 1483

Session of  
1983

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INTRODUCED BY GREENWOOD, KLINGAMAN, CALTAGIRONE, SWEET,  
B. SMITH, SEMMEL, HERSHEY, REINARD, JOHNSON, GAMBLE,  
ALDERETTE, MICHLOVIC, MOEHLMANN, LASHINGER, ITKIN,  
D. W. SNYDER, HAGARTY, COLAFELLA, MICOZZIE, DeLUCA, FARGO,  
KASUNIC, SALOOM AND PRATT, SEPTEMBER 27, 1983

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AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF  
REPRESENTATIVES, AS AMENDED, SEPTEMBER 19, 1984

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## AN ACT

1 Amending the act of February 19, 1980 (P.L.15, No.9), entitled  
2 "An act establishing the State Real Estate Commission and  
3 providing for the licensing of real estate brokers and  
4 salesmen," further providing for civil penalties and for the  
5 regulation of promotional land sales.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. Sections 305, 604(a)(25) and 605 of the act of  
9 February 19, 1980 (P.L.15, No.9), known as the Real Estate  
10 Licensing and Registration Act, added or amended March 29, 1984  
11 (P.L.162, No.32), are amended to read:

12 Section 305. Civil penalty.

13 (a) In addition to any other civil remedy or criminal  
14 penalty provided for in this act, the commission, by a vote of  
15 the majority of the maximum number of the authorized membership  
16 of the commission as provided by law, or by a vote of the  
17 majority of the duly qualified and confirmed membership or a

1 minimum of five members, whichever is greater, may levy a civil  
2 penalty of up to \$1,000 on any current licensee or registrant  
3 who violates any provision of this act or on any person who  
4 practices real estate without being properly licensed or  
5 registered to do so under this act.

6 (b) The commission shall levy this penalty only after  
7 affording the accused party the opportunity for a hearing, as  
8 provided in Title 2 of the Pennsylvania Consolidated Statutes  
9 (relating to administrative law and procedure).

10 Section 604. Prohibited acts.

11 (a) The commission may upon its own motion, and shall  
12 promptly upon the verified complaint in writing of any person  
13 setting forth a complaint under this section, ascertain the  
14 facts and, if warranted, hold a hearing for the suspension or  
15 revocation of a license or registration certificate or for the  
16 imposition of fines not exceeding \$1,000, or both. The  
17 commission shall have power to refuse a license or registration  
18 certificate for cause or to suspend or revoke a license or  
19 registration certificate or to levy fines up to \$1,000, or both,  
20 where the said license has been obtained by false  
21 representation, or by fraudulent act or conduct, or where a  
22 licensee or registrant, in performing or attempting to perform  
23 any of the acts mentioned herein, is found guilty of:

24 \* \* \*

25 (25) Violating section 605, 606 or 607.

26 \* \* \*

27 Section 605. Promotional land sales; approval.

28 (a) Any person who proposes to engage in real estate  
29 transactions [of a promotional nature] involving promotional  
30 real estate in this Commonwealth for a property located inside

1 or outside of this Commonwealth, shall first register with the  
2 commission for its approval before so doing, and shall comply  
3 with such restrictions and conditions pertaining thereto as the  
4 commission may impose by rule or regulation. [Registration shall  
5 not be required for property located within or outside of this  
6 Commonwealth which is subject to a statutory exemption under the  
7 Federal Interstate Land Sales Full Disclosure Act (Public Law  
8 90-448, 82 Stat. 590, 15 U.S.C. § 1702).]

9 (b) As used in this section the term "promotional real  
10 estate" means [an interest in property] real estate as defined  
11 in [this act] section 201 which is a part of a common  
12 promotional plan undertaken by a single developer or group of  
13 developers acting together to offer interests in real estate for  
14 sale or lease through advertising by mail, newspaper or  
15 periodical, by radio, television, telephone or other electronic  
16 means which is contiguous[, ] or known, designated or advertised  
17 as a common unit or by a common name[: Provided, however, That  
18 the]. The term includes, but is not limited to, second home  
19 sites, campsites, timeshare or recreational dwellings. The term  
20 shall not mean real estate interest involving less than 50 lots  
21 or shares, cemetery lots and land involving less than 25 acres  
22 or a primary family residence plan, as defined by regulations of  
23 the commission. No filing shall be required by the commission to  
24 verify such exemptions.

25 (c) A person [may] shall apply to the commission for  
26 registration of promotional land sales by filing a [statement of  
27 record] registration form and meeting the requirements of this  
28 section. Each registration shall be renewed annually. In lieu of  
29 registration or renewal, the commission [shall] may accept  
30 registrations, property reports or similar disclosure documents

1 filed in other states or with the Federal Government[: Provided,  
2 That the] that the commission has determined to be of the same  
3 or similar substantive nature as a registration form required by  
4 the commission. The commission may require other information it  
5 deems pertinent. The commission may suspend or revoke the  
6 registration on its own motion or when the Federal Government or  
7 a registering state suspends or revokes [a regulation] the  
8 registration. The commission [shall] may, by rule and  
9 regulation, cooperate with similar jurisdictions in other states  
10 to establish uniform filing procedures and forms, public  
11 offering statements and similar forms. The commission shall  
12 charge [an application fee] such application and registration  
13 fees as determined by regulation to cover costs [associated with  
14 processing applications for registrations and renewals].

15 (d) [Unless prior approval has been granted by the  
16 commission or the promotional plan is currently registered with  
17 the Department of Housing and Urban Development pursuant to the  
18 Federal Interstate Land Sales Full Disclosure Act or pursuant to  
19 State law, the statement of record] The registration form shall  
20 contain the information and be accompanied by documents  
21 specified as follows:

22 (1) The name and address of each person having an  
23 interest in the property to be covered by the [statement of  
24 record] registration and the extent of such interest[, except  
25 that in]. In the case of a corporation the statement shall  
26 list all officers and all holders of 10% or more of the  
27 subscribed or issued stock of the corporations.

28 (2) A legal description of, and a statement of the total  
29 area included in the property and a statement of the  
30 topography thereof, together with a map showing the division

1 proposed and the dimensions of the property to be covered by  
2 the statement of record and their relation to existing  
3 streets and roads.

4 (3) A statement of the condition of the title to the  
5 land comprising the property including all encumbrances,  
6 mortgages, judgments, liens or unpaid taxes and deed  
7 restrictions and covenants applicable thereto.

8 (4) A statement of the general terms and conditions,  
9 including the range of selling prices or rents at which it is  
10 proposed to dispense of the property.

11 (5) A statement of the present condition of access to  
12 the property, the existence of any unusual conditions  
13 relating to safety which are known to the developer,  
14 completed improvements including, but not limited to,  
15 streets, sidewalks, sewage disposal facilities and other  
16 public utilities, the proximity in miles of the subdivision  
17 to nearby municipalities and the nature of any improvements  
18 to be installed by the developer and his estimated schedule  
19 for completion.

20 (6) A statement of any encumbrance, a statement of the  
21 consequences for the purchaser of a failure by the person or  
22 persons bound to fulfill obligations under any instrument or  
23 instruments creating such encumbrance and the steps, if any,  
24 taken to protect the purchaser in such eventuality.

25 (7) A copy of the articles of incorporation with all  
26 amendments thereto, if the developer is a corporation, copies  
27 of all instruments by which a deed of trust is created or  
28 declared, if the developer is a trust, copies of articles of  
29 partnership or association and all other papers pertaining to  
30 its organization if the developer is a partnership,

unincorporated association, joint stock company or other form of organization and if the purported holder of legal title is a person other than the developer, copies of the above documents for such person.

(8) Copies of the deed or other instrument establishing title to the property in the developer or other person and copies of any instrument creating a lien or encumbrance upon the title of the developer or other person or copies of the opinion or opinions of counsel in respect to the title to the subdivision in the developer or other person or copies of the title insurance policy guaranteeing such title.

(9) Copies of all forms of conveyance to be used in selling or leasing lots to purchasers.

(10) Copies of instruments creating easements or other restrictions.

(11) Certified financial statements of the developer or an uncertified financial statement if a certified statement is not available as may be required by the commission.

(12) Such other information and such other documents and certifications as the commission may require as being reasonably necessary or appropriate to assure that prospective purchasers have access to truthful and accurate information concerning the offering.

(13) Consent to submit to the jurisdiction of the Commonwealth Court with respect to any action arising under this section.

(e) If at any time subsequent to the date of filing of a [statement of record] registration form with the commission, a change shall occur affecting any material facts required to be contained in the statement, the developer shall promptly file an

1 amendment thereto.

2 (f) If it appears to the commission that the [statement of  
3 record] registration form or any amendment thereto, is on its  
4 face incomplete or inaccurate in any material respect, the  
5 commission shall so advise the developer within a reasonable  
6 time after the filing of the statement or amendment. Failure of  
7 the developer to provide the information requested by the  
8 commission within 90 days shall result in an automatic denial of  
9 an application or a suspension of registration.

10 (g) If it appears to the commission that a [statement of  
11 record] registration form includes any untrue statement of  
12 material facts or omits to state any material fact required to  
13 be stated therein or necessary to make the statements therein  
14 not misleading, the commission may reject such application. The  
15 commission shall make an investigation of all consumer  
16 complaints concerning real estate promotions in the absence of a  
17 reciprocal agreement to handle onsite inspections. Under no  
18 circumstances shall a member or an employee of the commission  
19 perform an onsite inspection. If the commission determines that  
20 a violation of this section has occurred, the commission may:

21 (1) suspend or revoke any registration;

22 (2) refer the complaint to the Consumer Protection  
23 Bureau of the Office of Attorney General; or

24 (3) seek an injunction or temporary restraining order to  
25 prohibit the complained of activity in the Commonwealth  
26 Court.

27 (h) Upon rejection of an application or amendment, the  
28 applicant may within 20 days after such notice request a hearing  
29 before the commission. Prior to, and in conjunction with such  
30 hearing, the commission, or its designee, shall have access to

1 and may demand the production of any books and papers of, and  
2 may examine, the developer, any agents or any other person in  
3 respect of any matter relevant to the application. If the  
4 developer or any agents fail to cooperate or obstruct or refuse  
5 to permit the making of an investigation, such conduct shall be  
6 grounds for the denial of the application.

7 (i) Any person violating the provisions of this section  
8 shall be subject to all criminal and civil penalties imposed by  
9 this act.

10 Section 2. The act is amended by adding sections to read:

11 Section 605.1. Establishment of the fund.

12 There is hereby established the Promotional Land Sales Fund  
13 for the purposes hereinafter set forth in this act.

14 Section 605.2. Funding of the fund.

15 (a) The commission shall, by regulation, allocate a portion  
16 of the registration fees charged pursuant to section 605 to the  
17 Promotional Land Sales Fund. All said fees shall be paid into  
18 the State Treasury and credited to the Promotional Land Sales  
19 Fund and said deposits shall be used solely for the purposes for  
20 which the fund is established. The fund shall be invested and  
21 interest and dividends shall accrue to the fund.

22 (b) When any aggrieved person obtains a final judgment in  
23 any court of competent jurisdiction against any person  
24 registered with the commission pursuant to section 605, upon  
25 grounds of fraud, misrepresentation or deceit with reference to  
26 any transaction for which registration is required and which  
27 cause of action occurred on or after the effective date of this  
28 act, the aggrieved person may, upon termination of all  
29 proceedings, including reviews and appeals, file an application  
30 in the court in which the judgment was entered for an order



1 directing payment out of the Promotional Land Sales Fund of the  
2 amount unpaid upon the judgment.

3 (c) The aggrieved person shall be required to show:

4 (1) That he is not a spouse of the debtor or the  
5 personal representative of said spouse.

6 (2) That he has obtained a final judgment as set forth  
7 in this section.

8 (3) That all reasonable personal acts, rights of  
9 discovery and such other remedies at law and in equity as  
10 exist have been exhausted in the collection thereof.

11 (4) That he is making said application no more than one  
12 year after the termination of the proceedings, including  
13 reviews and appeals in connection with the judgment.

14 (d) The commission shall have the right to answer actions  
15 provided for under this section and, subject to court approval,  
16 it may compromise a claim based upon the application of the  
17 aggrieved party.

18 (e) When there is an order of the court to make payment or a  
19 claim is otherwise to be levied against the fund, such amount  
20 shall be paid to the claimant in accordance with the limitations  
21 contained in this section. Notwithstanding any other provisions  
22 of this section, the liability of that portion of the fund  
23 allocated for the purpose of this act shall not exceed \$20,000  
24 for any one claim and shall not exceed \$100,000 per registrant.  
25 If the \$100,000 liability of the Promotional Land Sales Fund as  
26 provided herein is insufficient to pay in full claims  
27 adjudicated valid of all aggrieved persons against any one  
28 registrant, such \$100,000 shall be distributed among them in  
29 such ratio that the respective claims of the aggrieved  
30 applicants bear to the aggregate of such claims held valid. If,

1 at any time, the money deposited in the Promotional Land Sales  
2 Fund is insufficient to satisfy any duly authorized claim or  
3 portion thereof, the commission shall, when sufficient money has  
4 been deposited in the fund, satisfy such unpaid claims or  
5 portions thereof in the order that such claims or portions  
6 thereof were originally filed, plus accumulated interest at the  
7 rate of 6% a year.

8 (f) Upon petition of the commission, the court may require  
9 all claimants and prospective claimants against one licensee or  
10 registrant to be joined in one action, to the end that the  
11 respective rights of all such claimants to the Promotional Land  
12 Sales Fund may be equitably adjudicated and settled.

13 (g) Should the commission pay from the Promotional Land  
14 Sales Fund any amount in settlement of a claim as provided for  
15 in this act against a registrant, the registration of that  
16 person shall automatically suspend upon the effective date of  
17 the payment thereof by the commission. No such registrant shall  
18 be granted reinstatement until he has repaid in full, plus  
19 interest at the rate of 10% a year, the amount paid from the  
20 Promotional Land Sales Fund.

21 (H) NO PERSON OR CLAIMANT SHALL RECOVER FROM THE PROMOTIONAL <—  
22 LAND SALES FUND IF SUCH PERSON OR CLAIMANT HAS BEEN PAID A CLAIM  
23 AGAINST THE SAME LICENSEE OR REGISTRANT UNDER THE REAL ESTATE  
24 RECOVERY FUND.

25 SECTION 3. SECTION 803 OF THE ACT IS AMENDED BY ADDING A  
26 SUBSECTION TO READ:

27 SECTION 803. APPLICATION FOR RECOVERY FROM FUND.

28 \* \* \*

29 (H) NO PERSON OR CLAIMANT SHALL RECOVER FROM THE REAL ESTATE  
30 RECOVERY FUND IF SUCH PERSON OR CLAIMANT HAS BEEN PAID A CLAIM

1 AGAINST THE SAME LICENSEE OR REGISTRANT UNDER THE PROMOTIONAL  
2 LAND SALES FUND.

3 Section 3 4. This act shall take effect immediately.

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