

REAL ESTATE LICENSING AND REGISTRATION ACT - OMNIBUS AMENDMENT
Act of Nov. 25, 1998, P.L. 908, No. 112
Session of 1998
No. 1998-112

Cl. 63

HB 1172

AN ACT

Amending the act of February 19, 1980 (P.L.15, No.9), entitled "An act establishing the State Real Estate Commission and providing for the licensing of real estate brokers and salesmen," further providing for definitions, for continuing education and for broker's disclosure to seller; providing for duties of licensees generally, for duties of seller's agent, for duties of buyer's broker, for duties of dual agent, for duties of designated agent and for duties of a transactional licensee; further providing for broker's disclosure to buyer and for information to be given at initial interview; providing for written agreement with broker and for mandatory provisions of sales contract; and further providing for cemetery broker's disclosure.

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

Section 1. The definitions of "broker" and "salesperson" in section 201 of the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, amended March 29, 1984 (P.L.162, No.32) and repealed in part July 2, 1996 (P.L.460, No.71), are amended and the section is amended by adding definitions to read:

Section 201. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Agency relationship." A relationship whereby the broker or licensees in the employ of the broker act as fiduciaries for a consumer of real estate services by the express authority of the consumer of real estate services.

* * *

"Broker." Any person who, for another and for a fee, commission or other valuable consideration:

- (1) negotiates with or aids any person in locating or obtaining for purchase, lease or **an** acquisition of interest in any real estate;
- (2) negotiates the listing, sale, purchase, exchange, lease, time share and similarly designated interests, financing or option for any real estate;
- (3) manages [or appraises] any real estate;
- (4) represents himself [as] **to be** a real estate consultant, counsellor, [house] **agent or** finder;
- (5) undertakes to promote the sale, exchange, purchase

or rental of real estate: Provided, however, That this provision shall not include any person whose main business is that of advertising, promotion or public relations; [or]

(5.1) undertakes to perform a comparative market analysis; or

(6) attempts to perform any of the above acts.

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"Buyer agent." Any licensee who has entered into an agency relationship with a consumer buyer of real estate.

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"Comparative market analysis." A written analysis, opinion or conclusion by a contracted buyer's agent, transactional licensee or an actual or potential seller's agent relating to the probable sale price of a specified piece of real estate in an identified real estate market at a specified time, offered either for the purpose of determining the asking/offering price for the property by a specific actual or potential consumer or for the purpose of securing a listing agreement with a seller.

"Consumer." A person who is the recipient of any real estate service.

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"Designated agent." One or more licensees designated by the employing broker with the consent of the principal to act exclusively as an agent or as agents on behalf of the principal to the exclusion of all other licensees within the broker's employ.

"Disclosure." Provision of all relevant facts without reservation, ambiguity or distortion so as to enable a consumer to understand the options and weigh the risks and benefits in order to make a decision in his or her own best interest.

"Dual agent." A licensee who acts as an agent for the buyer and seller or lessee and landlord in the same transaction.

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"Listing broker." A broker engaged as a seller's agent, dual agent or transaction licensee to market the property of a seller/landlord for sale or lease pursuant to a written agreement with the seller/landlord.

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"Principal." A consumer of real estate services who has entered into an agency relationship with a broker.

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"Real estate service." An act or acts requiring a real estate license.

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"Salesperson." Any person employed by a licensed real estate broker **to perform comparative market analyses or** to list for sale, sell or offer for sale, to buy or offer to buy or to negotiate the purchase or sale or exchange of real estate or to negotiate a loan on real estate or to lease or rent or offer to lease, rent or place for rent any real estate or collect or offer or attempt to collect rent for the use of real estate for or in behalf of such real estate broker. No person employed by a broker to perform duties other than those activities as defined herein under "broker" shall be required to be licensed as a salesperson.

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"Seller agent." Any licensee who has entered into an agency relationship with a seller of real estate.

"Subagent." A broker, not in the employ of the listing broker, who is engaged to act for or cooperate with the listing broker in selling property as an agent of the seller. A subagent is deemed to have an agency relationship with the seller.

* * *

"Transaction licensee." A licensed broker or salesperson who provides communication or document preparation services or performs acts described under the definition of "broker" or "salesperson" for which a license is required, without being an agent or advocate of the consumer.

Section 2. Section 404.1(c) of the act, added July 9, 1990 (P.L.338, No.77), is amended to read:

Section 404.1. Continuing education.

* * *

(c) All courses, materials, locations and instructors shall be approved by the commission. No credit shall be given for any course in office management **except for courses offered to brokers that are intended to promote knowledge of the supervisory duties imposed upon brokers by this act and by the rules and regulations promulgated by the commission having to do with document preparation and retention, recordkeeping, deposit and maintenance of escrow accounts, advertising and solicitation limitations and requirements, conflicts of interest, disclosures to prospective sellers and buyers and the general ethical responsibilities of licensees .**

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Section 3. Section 604(a) of the act is amended by adding a paragraph to read:

Section 604. Prohibited acts.

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

* * *

(15.1) Failing to provide a disclosure required by this act or any other Federal or State law imposing a disclosure obligation on licensees in connection with real estate transactions.

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Section 4. Section 606 of the act, amended July 1, 1990 (P.L.304, No.69), is amended to read:

Section 606. [Broker's disclosure to seller.

In any listing agreement or contract of agency, the broker

shall make the following disclosures to any seller of real property:

(1) A statement that the broker's commission and the time period of the listing have been determined as a result of negotiations between the broker and the seller.

(2) A statement describing the purpose of the Real Estate Recovery Fund established under section 801 and the telephone number of the commission at which the seller can receive further information about the fund.] **Relationships between brokers and consumers of real estate services.**

A broker may act in a real estate transaction, subject to the provisions of this act, as a seller/landlord agent, buyer/tenant agent, as a dual agent for seller/landlord and buyer/tenant or as a transaction licensee. Licensees employed by a broker shall bear the same relationship to the consumer as the broker, except that a broker serving as a dual agent may designate a licensee to act exclusively as agent of the seller/landlord and designate another licensee to act exclusively as agent of the buyer/tenant.

Section 5. The act is amended by adding sections to read:

Section 606.1. Duties of licensee generally.

(a) Regardless of whether a licensee is acting within the scope of an agency relationship with a consumer, a licensee owes to all consumers to whom the licensee renders real estate services the following duties which may not be waived:

(1) to exercise reasonable professional skill and care which meets the practice standards required by this act;

(2) to deal honestly and in good faith;

(3) to present all written offers, written notices and other written communications to and from parties to a real estate transaction in a timely manner, except that the duty of a licensee under this paragraph to present written offers may be waived by a seller of a property that is subject to an existing contract for sale if:

(i) the waiver is in writing; and

(ii) the waiver is in the manner prescribed by the commission by regulation;

(4) to comply with those obligations imposed upon a licensee by the act of July 2, 1996 (P.L.500, No.84), known as the "Real Estate Seller Disclosure Act";

(5) to account in a timely manner for all money and property received from or on behalf of any consumer to a transaction consistent with the provisions of section 604(a)(5);

(6) to provide the consumer with information at the initial interview pursuant to section 608;

(7) to timely disclose to the consumer any conflicts of interest;

(8) to advise the consumer to seek expert advice on matters relating to the transaction that are beyond the licensee's expertise;

(9) to ensure that all services that are to be provided to the consumer are provided in a reasonable, professional and competent manner in accordance with the practice standards of this act;

(10) to advise the consumer regarding the status of the transaction;

(11) to advise the consumer of tasks that must be completed to satisfy an agreement or condition for settlement, provide assistance with document preparation and advise the consumer regarding compliance with laws pertaining to real estate transactions;

(12) to present all offers and counteroffers in a timely manner unless a party has directed the licensee otherwise in writing; and

(13) to provide disclosure to the consumer regarding any financial interest, including, but not limited to, a referral fee or commission, which a licensee has in any services to be provided to the consumer by any other person, including, but not limited to, financial services, title transfer and preparation services, insurance, construction, repair or inspection services. The licensee shall also provide disclosure regarding any financial interest which an affiliated licensee may have in any services to be provided to the consumer by any other person. The disclosures required by this paragraph shall be made at the time the licensee first recommends that the consumer purchase a service in which the licensee or an affiliated licensee has a financial interest or when the licensee first learns that the consumer will be purchasing a service in which the licensee or an affiliated licensee has a financial interest.

(b) (1) A licensee may not perform a service for a consumer of real estate services for a fee, commission or other valuable consideration paid by or on behalf of the consumer unless the nature of the service and the fee to be charged are set forth in a written agreement between the broker and the consumer that is signed by the consumer.

(2) Notwithstanding clause (1), an open listing agreement may be oral if the seller is provided with a written memorandum stating the terms of the agreement.

(3) Nothing in this subsection shall require a transaction licensee or subagent who is cooperating with the listing broker to obtain a written agreement from the seller.

(4) A subagent or transaction licensee who is cooperating with the listing broker for a fee paid by the listing broker or seller shall provide the buyer, prior to performing any services, with a written disclosure statement signed by the buyer, describing the nature of the services to be performed by the subagent or transaction licensee and containing the information required by section 608.

(c) A broker may not extend or delegate the broker's agency relationship with a principal to another broker without the written consent of the principal.

(d) A broker may compensate another broker who assists in the marketing and sale/lease of a consumer's property. Payment of compensation alone does not create an agency relationship between the consumer and the other broker.

(e) The fact that a licensee representing a seller/landlord also presents alternative properties to prospective buyer/tenants does not in itself constitute a breach of a duty

or obligation owed by the licensee to the seller/landlord.

(f) The fact that a licensee representing a buyer/tenant also presents alternative properties in which that buyer/tenant is interested to other prospective buyer/tenants does not in itself constitute a breach of a duty or obligation owed by the licensee to that buyer/tenant.

(g) A licensee may not knowingly, during or following the termination of an agency relationship, reveal confidential information of the principal or use confidential information of the principal to the advantage of the licensee or a third party, except when:

(1) disclosure is made with the consent of the principal;

(2) the information is disclosed to another licensee or third party acting solely on the principal's behalf and not for any other party;

(3) the information is required to be disclosed under subpoena or court order;

(4) it is the intention of the principal to commit a crime and the disclosure of information is believed necessary to prevent the crime; or

(5) the information is used to defend the licensee in a legal proceeding against an accusation of wrongful conduct.

(h) A consumer of real estate services shall not be liable for the acts of a licensee unless the licensee is acting pursuant to the express direction of the consumer or the licensee is acting based upon a representation of the consumer reasonably relied upon by the licensee. A licensee shall not be liable for acts of a consumer of real estate services unless the consumer is acting at the express direction of the licensee or the consumer is acting as a result of a representation by a licensee reasonably relied on by the consumer.

(i) Unless otherwise agreed, a licensee owes no duty to conduct an independent inspection of the property and owes no duty to independently verify the accuracy or completeness of any representation made by a consumer to a transaction reasonably believed by the licensee to be accurate and reliable.

(j) Nothing in this section shall be construed to relieve a licensee of any duty imposed by another provision of this act.

Section 606.2. Duties of seller's agent.

In addition to the duties generally required of a licensee as set forth in section 606.1, the duties of the broker acting as an agent for the seller include the following:

(1) to be loyal to the seller by taking action that is consistent with the seller's interest in a transaction; and

(2) to make a continuous and good faith effort to find a buyer for the property, except that a seller's broker is not obligated to seek additional offers to purchase the property while the property is subject to an existing agreement for sale.

Section 606.3. Duties of buyer's broker.

In addition to the duties generally required of a licensee as set forth in section 606.1, the duties of the broker acting as an agent of the buyer include the following:

(1) to be loyal to the buyer by taking action that is

consistent with the buyer's interest in a transaction;

(2) to make a continuous and good faith effort to find a property for the buyer, except that a buyer's broker is not obligated to seek additional properties for purchase while the buyer is subject to an existing contract for sale; and

(3) to disclose to the listing broker, at first contact, that the broker has been engaged as a buyer's agent. In the absence of a listing broker, this disclosure shall be made to the seller.

Section 606.4. Duties of dual agent.

(a) A licensee may act as a dual agent only with the written consent of both parties to the transaction following the disclosures given at the initial interview required by section 608. The consent must include a statement of the terms of compensation.

(b) In addition to the duties generally required of a licensee as set forth in section 606.1, the duties of a dual agent include the following:

(1) to take no action that is adverse or detrimental to either party's interest in a transaction;

(2) unless otherwise agreed to in writing, to make a continuous and good faith effort to find a buyer for the property, except that a dual agent is not obligated to seek additional offers to purchase the property while it is subject to an existing contract for sale; and

(3) unless otherwise agreed to in writing, to make a continuous and good faith effort to find a property for the buyer, except that a dual agent is not obligated to seek additional properties to purchase while the buyer is a party to an existing contract to purchase.

(c) A dual agent may show alternative properties not owned by the seller to prospective buyers and may list competing properties for sale without breaching any duty to the seller. A dual agent may show properties in which the buyer is interested to other prospective buyers without breaching any duty to the buyer.

Section 606.5. Duties of designated agent.

(a) (1) In an agency relationship with a principal, the broker may, with the written consent of the principal, designate one or more licensees employed by the broker to serve as the designated agent of the principal to the exclusion of all other licensees employed by the same broker. A broker who represents both the seller/landlord and the buyer/tenant in the same transaction is a dual agent. Dual agency is permitted only as provided in section 606.4.

(2) A broker designating licensees to act as designated agents shall take reasonable care to protect any confidential information disclosed by a principal to his or her designated agent.

(3) A broker has the responsibility to direct and supervise the business activities of designated agents and thereby owes duties to both the seller/landlord and the buyer/tenant as a dual agent.

(b) In addition to the duties generally required of a licensee as set forth in section 606.1, where principals to a

transaction are represented by designated agents employed by the same broker, the duties of a designated agent include the following:

- (1) to be loyal to the principal with whom the agent is working by taking action that is consistent with that principal's interest in the transaction;

- (2) to make a continuous and good faith effort to find a buyer for a principal who is a seller or to find a property for a principal who is a buyer. A designated agent is not, however, obligated to seek additional offers for a seller principal while the property is subject to an existing contract for sale or, with regard to a principal buyer, to seek additional properties to purchase while the buyer is a party to an existing contract for purchase; and

- (3) to disclose to the principal prior to writing or presenting an offer to purchase that the other party to the transaction is also represented by a licensee employed with the same broker. The disclosure shall confirm that the broker is a dual agent in the transaction.

Section 606.6. Duties of transaction licensee.

In addition to the duties generally required of a licensee as set forth in section 606.1, the duties of a transaction licensee include the following:

- (1) to advise the consumer to be assisted that the licensee is not acting as an agent or advocate of the consumer and should not be provided with confidential information; and

- (2) to provide limited confidentiality.

A licensee shall not disclose information that the seller will accept a price less than the asking price or listed price, that the buyer will pay a price greater than the price submitted in a written offer or that a seller or buyer will agree to financing terms other than those offered.

Section 6. Sections 607 and 608 of the act, amended July 1, 1990 (P.L.304, No.69), are amended to read:

[Section 607. Broker's disclosure to buyer.

In any sales agreement or sales contract, a broker shall make the following disclosures to any prospective buyer of real property:

- (1) A statement that the broker is the agent of the seller or that the broker is the agent of the buyer.

- (2) A statement describing the purpose of the Real Estate Recovery Fund established under section 801 and the telephone number of the commission at which the purchaser can receive further information about the fund.

- (3) A statement of the zoning classification of the property except in cases where the property (or each parcel thereof, if subdividable) is zoned solely or primarily to permit single-family dwellings. Failure to comply with this requirement shall render the sales agreement or sales contract voidable at the option of the buyer, and, if voided, any deposits tendered by the buyer shall be returned to the buyer without any requirement for any court action.

- (4) A statement that access to a public road may require issuance of a highway occupancy permit from the Department of

Transportation.]

Section 608. Information to be given at initial interview.

The commission shall establish rules or regulations which shall set forth the manner and method of disclosure of information to the prospective [buyer or seller] **buyer/tenant or seller/landlord** during the initial interview. **For the purposes of this section, the initial interview is the first contact between a licensee and a consumer of real estate-related services where a substantive discussion about real estate needs occurs.** Such disclosure **shall be provided on a form adopted by the commission by regulation and** shall include, but shall not be limited to:

(1) [A statement that the broker is the agent of the seller or that the broker is the agent of the buyer.] **A disclosure of the relationships in which the broker may engage with the consumer. The disclosure shall describe the duties that the broker owes in each relationship provided for in this act.**

(2) **A statement informing sellers and buyers of their option to have an agency relationship with a broker, that an agency relationship is not to be presumed and that it will exist only as set forth in a written agreement between the broker and consumer of real estate service acknowledged by the consumer.**

(3) **A statement that a real estate consumer has the right to enter into a negotiated agreement with the broker limiting the activities or practices that the broker will provide for on behalf of the consumer and that the fee and services to be provided are to be determined by negotiations between the consumer and the broker.**

(4) **A statement identifying any possibility that the broker may provide services to another consumer who may be party to the transaction and, if so, an explanation of the duties the broker may owe the other party and whether the broker may accept a fee for those services.**

(5) **A statement identifying any possibility that the broker may designate one or more licensees affiliated with the broker to represent the separate interest of the parties to the transaction.**

(6) **A statement of the broker's policies regarding cooperation with other brokers, including the sharing of fees.**

(7) **A statement that a buyer's broker may be paid a fee that is a percentage of the purchase price and the buyer's broker, even if compensated by the listing broker, will represent the interests of the buyer.**

(8) **A statement that the duration of the broker's employment and the broker's fees are negotiable.**

[(2)] (9) **The purpose of the Real Estate Recovery Fund and the telephone number of the commission at which further information about the fund may be obtained.**

[(3)] (10) **A statement that the duration of the listing agreement or contract and the broker's commission are negotiable.**

[(4)] (11) **A statement that any sales agreement must**

contain the zoning classification of a property except in cases where the property (or each parcel thereof, if subdividable) is zoned solely or primarily to permit single-family dwellings.

Section 7. The act is amended by adding sections to read:

Section 608.1. Written agreement with broker.

An agreement between a broker and a principal, or any agreement between a broker and a consumer whereby the consumer is or may be committed to pay a fee, commission or other valuable consideration, that is required to be in writing by section 606.1 shall be signed by the consumer and shall identify the services to be provided and the fee to be paid, if any. The agreement shall also contain the following information which shall be disclosed in the manner and method the commission shall establish by regulation:

(1) A statement that the broker's fee and the duration of the contract have been determined as a result of negotiations between the broker and the seller/landlord or buyer/tenant.

(2) A statement describing the nature and extent of the broker's services to be provided to the seller/landlord or buyer/tenant and the fees that will be charged.

(3) A statement identifying any possibility that the broker or any licensee employed by the broker may provide services to more than one consumer in a single transaction and, if so, an explanation of the duties that may be owed the other party and whether the broker may accept a fee for those services.

(4) In an agreement between a broker and seller, a statement of the broker's policies regarding cooperation with subagents and buyer agents, a disclosure that a buyer agent even if compensated by the broker or seller will represent the interests of the buyer and a disclosure of any potential for the broker to act as a disclosed dual agent.

(5) In an agreement between a broker and a buyer, a statement identifying any possibility that the broker's compensation may be based upon a percentage of the purchase price, a disclosure of the broker's policies regarding cooperation with listing brokers willing to pay buyer's brokers, a disclosure that the broker even if compensated by the listing broker or seller will represent the interests of the buyer and disclosure of any potential for the buyer broker to act as a disclosed dual agent.

(6) A statement describing the purpose of the Real Estate Recovery Fund established under section 801 and the telephone number of the commission at which the seller can receive further information about the fund.

(7) A statement regarding any possible conflicts of interest and informing the consumer of the licensee's continuing duty to timely disclose any conflicts of interest.

Section 608.2. Mandatory provisions of sales contract.

In a sales agreement or sales contract, a broker shall disclose the following information which shall be disclosed in the manner and method the commission shall establish by regulation:

(1) A statement identifying the capacity in which the broker is engaged in the transaction and whether the broker or any licensee affiliated with the broker has provided services relating to the subject transaction to any other party to the transaction.

(2) A statement describing the purpose of the Real Estate Recovery Fund established under section 801 and the telephone number of the commission at which the parties to the transaction can receive further information about the fund.

(3) A statement of the zoning classification of the property, except in cases where the property or each parcel of the property, if subdividable, is zoned solely or primarily to permit single-family dwellings. Failure to comply with this requirement shall render the sales agreement or sales contract voidable at the option of the buyer, and, if voided, any deposits tendered by the buyer shall be returned to the buyer without a requirement for court action.

(4) A statement that access to a public road may require issuance of a highway occupancy permit from the Department of Transportation.

Section 608.3. Comparative market analysis disclosure.

A comparative market analysis must contain the following statement printed conspicuously and without change on the first page:

This analysis has not been performed in accordance with the Uniform Standards of Professional Appraisal Practice which require valuers to act as unbiased, disinterested third parties with impartiality, objectivity and independence and without accommodation of personal interest. It is not to be construed as an appraisal and may not be used as such for any purpose.

A comparative market analysis prepared in accordance with this act shall not be deemed to be an appraisal within the scope of the act of July 10, 1990 (P.L.404, No.98), known as the "Real Estate Appraisers Certification Act."

Section 8. Section 608.1 of the act, added June 29, 1990 (P.L.246, No.58), is amended to read:

Section [608.1] **608.4.** Cemetery broker's disclosure.

In any sales agreement or sales contract, a cemetery broker shall be subject to the requirements of section [607(2)]

608.2(2) as it relates to the Real Estate Recovery Fund and the disclosure of information.

Section 9. This act shall take effect in one year.

APPROVED--The 24th day of November, A. D. 1998.

THOMAS J. RIDGE