

REAL ESTATE LICENSING AND REGISTRATION ACT - PROHIBITED ACTS
AND DUTIES OF LICENSEE GENERALLY AND FOR HANDLING OF DEPOSITS
AND OTHER ESCROWS

Act of Jul. 6, 2009, P.L. 58, No. 14

Cl. 63

Session of 2009
No. 2009-14

SB 241

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," defining "qualified association"; further providing for prohibited acts and for duties of licensee generally; and providing for handling of deposits and other escrows.

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

Section 1. Section 201 of the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, is amended by adding a definition 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:

* * *

" Qualified association. " A corporation, limited liability partnership, limited partnership or limited liability company that:

- (1) is incorporated or otherwise organized under the laws of this Commonwealth or another jurisdiction;**
- (2) does not hold a license under this act;**
- (3) does not hold itself out to the public as providing real estate services or real estate-related services; and**
- (4) is solely owned by licensees who are all affiliated with the same broker.**

In case of the death of an owner of a qualified association, ownership may continue through the licensees' estate for a period not to exceed 18 months.

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Section 2. Section 604(a)(5) of the act, amended June 29, 1990 (P.L.246, No.58), is amended, subsection (a) is amended by adding paragraphs and the section is amended by adding a subsection 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:

* * *

[(5) Failure to comply with the following requirements:

(i) all deposits or other moneys accepted by every person, holding a real estate broker license under the provisions of this act, shall be retained by such real estate broker pending consummation or termination of the transaction involved, and shall be accounted for in the full amount thereof at the time of the consummation or termination;

(ii) every salesperson and associate broker promptly on receipt by him of a deposit or other moneys on any transaction in which he is engaged on behalf of his broker-employer, shall pay over the deposit to the broker;

(iii) a broker shall not commingle the money or other property of his principal with his own;

(iv) every broker shall immediately deposit such moneys, of whatever kind or nature, belonging to others, in a separate custodial or trust fund account maintained by the broker with some bank or recognized depository until the transaction involved is consummated or terminated, at which time the broker shall account for the full amount received. Under no circumstances shall a broker permit any advance payment of funds belonging to others to be deposited in the broker's business or personal account, or to be commingled with any funds he may have on deposit;

(v) every broker shall keep records of all funds deposited therein, which records shall indicate clearly the date and from whom he received money, the date deposited, the dates of withdrawals, and other pertinent information concerning the transaction, and shall show clearly for whose account the money is deposited and to whom the money belongs. All such records and funds shall be subject to inspection by the commission. Such separate custodial or trust fund account shall designate the broker, as trustee, and such account must provide for withdrawal of funds without previous notice. All such records shall be available to the commission, or its representatives, immediately after proper demand or after written notice given, or upon written notice given to the depository;

(vi) a broker is not required to hold in escrow rents that he receives for property management for a lessor. A broker shall deposit rents received into a rental management account that is separate from the broker's escrow account and general business accounts; or

(vii) a broker shall be permitted to deposit moneys into his escrow account to cover service charges to this account assessed by the banking institution.]

(5.1) Failing to comply with any of the requirements of section 608.5.

* * *

(31) Owning an interest in a qualified association that does any of the following:

(i) Participates in any of the prohibited acts under this subsection.

(ii) Is not solely owned by licensees who are all affiliated with the same broker.

(iii) Holds itself out to the public as providing real estate services or real estate-related services .

* * *

(c) Notwithstanding any other provision of this act, it is not unlawful for a broker to pay a commission or compensation to a qualified association or for an associate broker or salesperson to receive a commission or compensation for the provision of real estate services or real estate-related services from a qualified association in which the associate broker or salesperson owns an interest.

Section 3. Section 606.1(a)(5) of the act, added November 25, 1998 (P.L.908, No.112), is amended and the subsection is amended by adding a paragraph 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:

* * *

(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)] 608.5;

* * *

(14) A licensee must report to the commission within 30 days of forming or joining a qualified association all of the following:

- (i) Name of the qualified association.
- (ii) Names of the owners of the qualified association.
- (iii) The jurisdiction where the qualified association is registered.
- (iv) Date the qualified association was registered.
- (v) Changes in ownership of the qualified association.

Section 4. The act is amended by adding a section to read:
Section 608.5. Handling of deposits and other escrows.

(a) All deposits or other escrows accepted by a broker must be retained by the broker pending:

- (1) consummation of the transaction involved;
- (2) termination prior to consummation of the transaction involved where there is either:

(i) no dispute as to entitlement to the deposit or other escrows; or

(ii) a prior agreement in writing or electronic form as to disposition of the deposit or other escrows in the event of a dispute regarding entitlement to the deposit or other escrows;

(3) receipt by the broker of instructions in writing or electronic form, signed by all of the parties to the transaction at any time after the broker's receipt of the deposit or other escrows, directing the broker to release some or all of the deposit or other escrows; or

(4) an order of a court of competent jurisdiction specifying disposition of the deposit or other escrows becoming final and not subject to appeal.

(b) Deposits and other escrows must be accounted for in the full amount thereof at the time of consummation, termination or release as provided in subsection (a). If less than the full amount held pursuant to subsection (a) is released, notice must be given in writing or electronic form to all the parties to the transaction of the amounts released, the persons to whom

distribution is made and the amounts that continue to be held pursuant to subsection (a).

(c) Every associate broker or salesperson shall, promptly following receipt of a deposit or other escrow, pay over the funds to the broker employing the associate broker or salesperson.

(d) A broker shall not commingle deposits or other escrows or property of another person with the broker's own funds or property.

(e) A broker must deposit moneys and property of whatever kind or nature, belonging to others, in a separate custodial or trust fund account maintained by the broker with a bank or recognized depository by the end of the business day following their receipt by the broker. The moneys and property must be held by the broker until they are paid or released as provided in subsection (a), at which time the broker shall account for the full amount received. Under no circumstances shall a broker permit any advance payment of funds belonging to others to be deposited in the broker's business or personal account or to be commingled with any funds the broker may have on deposit.

(f) If a deposit in connection with an offer to buy or lease real estate is in the form of a check and the buyer and seller or lessee and lessor consent in writing or electronic form, the broker may hold the check and not deposit it as otherwise required by this section pending acceptance of the offer. If the offer is not accepted, the broker shall promptly return the check uncashed to the buyer or lessee. If the offer is accepted, the broker shall deposit the check into a custodial or trust fund account by the close of business on the business day following acceptance of the offer.

(g) A broker must keep records of all funds deposited in a custodial or trust fund account, which records indicate clearly the date and from whom the broker received the funds, the date deposited, the dates of withdrawals and other pertinent information concerning the transaction, and must show clearly for whose account the money is deposited and to whom the money belongs. All such records and funds shall be subject to inspection by the commission and must be available to the commission or its representatives immediately after proper demand or after notice in writing or electronic form given to the broker or depository. Each separate custodial or trust fund account must designate the broker as trustee and the account must provide for withdrawal of funds without previous notice.

(h) A broker is not required to hold in escrow rents that the broker receives for property management for a lessor.

(i) A broker must deposit rents received into a rental management account that is separate from the broker's escrow account and general business accounts.

(j) A broker is permitted to deposit moneys into an escrow account to cover service charges to the account assessed by the banking institution.

(k) This section does not preclude the parties to a transaction from agreeing in writing or electronic form to have deposits or other escrows held by a person other than the brokers who represent the parties. This subsection shall not be construed to allow an associate broker, salesperson or qualified association to hold deposits or other escrows.

Section 5. This act shall take effect in 60 days.

EDWARD G. RENDELL