

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 844 Session of
2007

INTRODUCED BY TOMLINSON, BOSCOLA, STOUT, ERICKSON, TARTAGLIONE,
FONTANA, LOGAN, O'PAKE, PUNT, WAUGH, CORMAN, ROBBINS,
GORDNER, RAFFERTY, GREENLEAF, KASUNIC, BRUBAKER, McILHINNEY,
WOZNIAK, BROWNE AND FOLMER, MAY 4, 2007

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
MAY 4, 2007

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

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

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

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

17 * * *

18 "Qualified association." A corporation, partnership, limited
19 liability partnership, limited partnership, limited liability

1 company, business trust, association or other entity that:

2 (1) is incorporated or otherwise organized under the
3 laws of this Commonwealth or another jurisdiction;

4 (2) does not hold a license under this act;

5 (3) is beneficially owned only by licensees who are all
6 affiliated with the same broker; and

7 (4) does not hold itself out to the public as providing
8 real estate services.

9 * * *

10 Section 2. Section 604(a)(5) of the act, amended June 29,
11 1990 (P.L.246, No.58), is amended, subsection (a) is amended by
12 adding paragraphs and the section is amended by adding a
13 subsection to read:

14 Section 604. Prohibited acts.

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

28 * * *

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

30 (i) all deposits or other moneys accepted by every

1 person, holding a real estate broker license under the
2 provisions of this act, shall be retained by such real
3 estate broker pending consummation or termination of the
4 transaction involved, and shall be accounted for in the
5 full amount thereof at the time of the consummation or
6 termination;

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

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

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

25 (v) every broker shall keep records of all funds
26 deposited therein, which records shall indicate clearly
27 the date and from whom he received money, the date
28 deposited, the dates of withdrawals, and other pertinent
29 information concerning the transaction, and shall show
30 clearly for whose account the money is deposited and to

1 whom the money belongs. All such records and funds shall
2 be subject to inspection by the commission. Such separate
3 custodial or trust fund account shall designate the
4 broker, as trustee, and such account must provide for
5 withdrawal of funds without previous notice. All such
6 records shall be available to the commission, or its
7 representatives, immediately after proper demand or after
8 written notice given, or upon written notice given to the
9 depository;

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

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

18 (5.1) Failing to comply with any of the requirements of
19 section 608.5.

20 * * *

21 (31) Owning an interest in a qualified association that
22 participates in any of the prohibited acts set forth in this
23 subsection or that violates the requirements of paragraph (3)
24 or (4) under the definition of "qualified association" in
25 section 201.

26 * * *

27 (c) Notwithstanding any other provision of this act, it is
28 not unlawful for a broker to pay a commission to a qualified
29 association or for an associate broker or salesperson to receive
30 compensation for the provision of real estate-related services

1 from a qualified association in which the associate broker or
2 salesperson owns an interest.

3 Section 3. Section 606.1(a)(5) of the act, added November
4 25, 1998 (P.L.908, No.112), is amended to read:

5 Section 606.1. Duties of licensee generally.

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

10 * * *

11 (5) to account in a timely manner for all money and
12 property received from or on behalf of any consumer to a
13 transaction consistent with the provisions of section
14 [604(a)(5)] 608.5;

15 * * *

16 Section 4. The act is amended by adding a section to read:

17 Section 608.5. Handling of deposits and other escrows.

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

20 (1) consummation of the transaction involved;

21 (2) termination prior to consummation of the transaction
22 involved where there is either:

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

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

29 (3) receipt by the broker of instructions in writing or
30 electronic form, signed by all of the parties to the

1 transaction at any time after the broker's receipt of the
2 deposit or other escrows, directing the broker to release
3 some or all of the deposit or other escrows; or

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

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

15 (c) Every associate broker or salesperson shall, as soon as
16 reasonably practicable following receipt of a deposit or other
17 escrow, pay over the funds to the broker employing the associate
18 broker or salesperson.

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

22 (e) A broker must deposit moneys and property, of whatever
23 kind or nature, belonging to others, in a separate custodial or
24 trust fund account maintained by the broker with a bank or
25 recognized depository by the end of the business day following
26 their receipt by the broker. The moneys and property must be
27 held by the broker until they are paid or released as provided
28 in subsection (a), at which time the broker shall account for
29 the full amount received. Under no circumstances shall a broker
30 permit any advance payment of funds belonging to others to be

1 deposited in the broker's business or personal account or to be
2 commingled with any funds the broker may have on deposit.

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

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

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

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

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

4 (k) This section does not preclude the parties to a
5 transaction from agreeing in writing or electronic form to have
6 deposits or other escrows held by a person other than:

7 (1) the brokers who represent the parties; or

8 (2) an associate broker or salesperson.

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