
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 324

Session of
1985

INTRODUCED BY MURPHY, LEVIN, AFFLERBACH, GODSHALL, HALUSKA,
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PISTELLA, PRATT, MERRY, PRESTON, KASUNIC AND OLASZ,
FEBRUARY 13, 1985

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE,
FEBRUARY 13, 1985

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, escrow
5 accounts, for the regulation of promotional land sales and
6 for certain disclosures.

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

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

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

16 * * *

17 "Promotional real estate transactions." This term shall only

1 apply to real estate transactions regulated by section 605 that
2 use any of the following methods of advertising or marketing:

3 (1) promotional materials to be disseminated to the
4 public in connection with the sale of real estate;

5 (2) radio, television or print advertisements;

6 (3) offers of travel, accommodations, meals or
7 entertainment at no cost or reduced cost or any other items
8 of any value;

9 (4) direct mail solicitation;

10 (5) advertising by testimonials or endorsements;

11 (6) scripts or standardized narrative for use in making
12 solicitations by telephone or any other method of
13 telecommunications; or

14 (7) any effort to sell through the use of meetings,
15 receptions or other gatherings, whether public or private,
16 for the purpose of selling real estate.

17 * * *

18 Section 2. Sections 305, 404, 604(a)(25) and 605 of the act,
19 amended March 29, 1984 (P.L.162, No.32), are amended to read:

20 Section 305. Civil penalty.

21 (a) In addition to any other civil remedy or criminal
22 penalty provided for in this act, the commission, by a vote of
23 the majority of the maximum number of the authorized membership
24 of the commission as provided by law, or by a vote of the
25 majority of the duly qualified and confirmed membership or a
26 minimum of five members, whichever is greater, may levy a civil
27 penalty of up to \$1,000 on any current licensee or registrant
28 who violates any provision of this act or on any person who
29 practices real estate without being properly licensed or
30 registered to do so under this act.

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

5 Section 404. Power to promulgate regulations.

6 **(a)** The commission shall have the power to promulgate rules
7 or regulations in order to administer and effectuate the
8 purposes of this act. All existing rules or regulations shall
9 remain in full force and effect until modified by the
10 commission.

11 **(b)** In addition to the requirements set forth in section
12 604(5), the commission shall adopt regulations which require all
13 licensees and builder-owners to establish escrow accounts,
14 protecting buyers and potential buyers, which are subject to
15 review and enforcement by the commission.

16 Section 604. Prohibited acts.

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

30 * * *

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

2 * * *

3 Section 605. Promotional land sales; approval.

4 (a) Any person who proposes to engage in promotional real
5 estate transactions [of a promotional nature] in this
6 Commonwealth for a property located inside or outside of this
7 Commonwealth, shall first register with the commission for its
8 approval before so doing, and shall comply with such
9 restrictions and conditions pertaining thereto as the commission
10 may impose by rule or regulation. [Registration shall not be
11 required for property located within or outside of this
12 Commonwealth which is subject to a statutory exemption under the
13 Federal Interstate Land Sales Full Disclosure Act (Public Law
14 90-448, 82 Stat. 590, 15 U.S.C. § 1702).]

15 (b) [As used in this section the term "promotional real
16 estate" means an interest in property as defined in this act
17 which is a part of a common promotional plan undertaken by a
18 single developer or group of developers acting together to offer
19 interests in real estate for sale or lease through advertising
20 by mail, newspaper or periodical, by radio, television,
21 telephone or other electronic means which is contiguous, known,
22 designated or advertised as a common unit or by a common name:
23 Provided, however, That the term shall not mean real estate
24 interest involving less than 50 lots or shares, cemetery lots
25 and land involving less than 25 acres.] The phrase "promotional
26 real estate transactions" applies to the following:

27 (1) Time shares as defined in section 201.

28 (2) Real estate which is part of a common promotional
29 plan undertaken by a single developer or group of developers
30 acting to offer interests in real estate for sale or lease

1 which is contiguous, known, designated or advertised as a
2 common unit or by a common name.

3 (c) A person [may] shall apply to the commission for
4 registration of promotional land sales by filing a [statement of
5 record] registration form and meeting the requirements of this
6 section. Each registration shall be renewed annually. In lieu of
7 registration or renewal, the commission [shall] may accept
8 registrations, property reports or similar disclosure documents
9 filed in other states or with the Federal Government[: Provided,
10 That the] that the commission has determined to be of the same
11 or similar substantive nature as a registration form required by
12 the commission. The commission may require other information it
13 deems pertinent. The commission may suspend or revoke the
14 registration on its own motion or when the Federal Government or
15 a registering state suspends or revokes [a regulation] the
16 registration. The commission [shall] may, by rule and
17 regulation, cooperate with similar jurisdictions in other states
18 to establish uniform filing procedures and forms, public
19 offering statements and similar forms. The commission shall
20 charge [an application fee] such application and registration
21 fees as determined by regulation to cover costs [associated with
22 processing applications for registrations and renewals].

23 (d) [Unless prior approval has been granted by the
24 commission or the promotional plan is currently registered with
25 the Department of Housing and Urban Development pursuant to the
26 Federal Interstate Land Sales Full Disclosure Act or pursuant to
27 State law, the statement of record] The registration form shall
28 contain the information and be accompanied by documents
29 specified as follows:

30 (1) The name and address of each person having an

1 interest in the property to be covered by the [statement of
2 record] registration and the extent of such interest[, except
3 that in]. In the case of a corporation the statement shall
4 list all officers and all holders of 10% or more of the
5 subscribed or issued stock of the corporations.

6 (2) A legal description of, and a statement of the total
7 area included in the property and a statement of the
8 topography thereof, together with a map showing the division
9 proposed and the dimensions of the property to be covered by
10 the statement of record and their relation to existing
11 streets and roads.

12 (3) A statement of the condition of the title to the
13 land comprising the property including all encumbrances,
14 mortgages, judgments, liens or unpaid taxes and deed
15 restrictions and covenants applicable thereto.

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

19 (5) A statement of the present condition of access to
20 the property, the existence of any unusual conditions
21 relating to safety which are known to the developer,
22 completed improvements including, but not limited to,
23 streets, sidewalks, sewage disposal facilities and other
24 public utilities, the proximity in miles of the subdivision
25 to nearby municipalities and the nature of any improvements
26 to be installed by the developer and his estimated schedule
27 for completion.

28 (6) A statement of any encumbrance, a statement of the
29 consequences for the purchaser of a failure by the person or
30 persons bound to fulfill obligations under any instrument or

1 instruments creating such encumbrance and the steps, if any,
2 taken to protect the purchaser in such eventuality.

3 (7) A copy of the articles of incorporation with all
4 amendments thereto, if the developer is a corporation, copies
5 of all instruments by which a deed of trust is created or
6 declared, if the developer is a trust, copies of articles of
7 partnership or association and all other papers pertaining to
8 its organization if the developer is a partnership,
9 unincorporated association, joint stock company or other form
10 of organization and if the purported holder of legal title is
11 a person other than the developer, copies of the above
12 documents for such person.

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

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

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

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

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

1 information concerning the offering.

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

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

10 (f) If it appears to the commission that the [statement of
11 record] registration form or any amendment thereto, is on its
12 face incomplete or inaccurate in any material respect, the
13 commission shall so advise the developer within a reasonable
14 time after the filing of the statement or amendment. Failure of
15 the developer to provide the information requested by the
16 commission within 90 days shall result in an automatic denial of
17 an application or a suspension of registration.

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

29 (1) suspend or revoke any registration;

30 (2) refer the complaint to the Consumer Protection

Bureau of the Office of Attorney General; or

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

(h) Upon rejection of an application or amendment, the applicant may within 20 days after such notice request a hearing before the commission. Prior to, and in conjunction with such hearing, the commission, or its designee, shall have access to and may demand the production of any books and papers of, and may examine, the developer, any agents or any other person in respect of any matter relevant to the application. If the developer or any agents fail to cooperate or obstruct or refuse to permit the making of an investigation, such conduct shall be grounds for the denial of the application.

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

(j) The provisions of this section shall not apply to:

(1) Cemetery lots.

(2) A residential plan as defined by the commission.

No filing shall be required by the commission to verify the exemptions granted by this subsection.

Section 3. The act is amended by adding sections to read:

Section 605.1. Establishment of the fund.

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

Section 605.2. Funding of the fund.

(a) The commission shall, by regulation, allocate a portion of the registration fees charged pursuant to section 605 to the Promotional Land Sales Fund. All said fees shall be paid into

1 the State Treasury and credited to the Promotional Land Sales
2 Fund and said deposits shall be used solely for the purposes for
3 which the fund is established. The fund shall be invested and
4 interest and dividends shall accrue to the fund.

5 (b) When any aggrieved person obtains a final judgment in
6 any court of competent jurisdiction against any person
7 registered with the commission pursuant to section 605, upon
8 grounds of fraud, misrepresentation or deceit with reference to
9 any transaction for which registration is required and which
10 cause of action occurred on or after the effective date of this
11 amendatory act, the aggrieved person may, upon termination of
12 all proceedings, including reviews and appeals, file an
13 application in the court in which the judgment was entered for
14 an order directing payment out of the Promotional Land Sales
15 Fund of the amount unpaid upon the judgment.

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

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

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

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

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

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

1 (e) When there is an order of the court to make payment or a
2 claim is otherwise to be levied against the fund, such amount
3 shall be paid to the claimant in accordance with the limitations
4 contained in this section. Notwithstanding any other provisions
5 of this section, the liability of that portion of the fund
6 allocated for the purpose of this act shall not exceed \$20,000
7 for any one claim and shall not exceed \$100,000 per registrant.
8 If the \$100,000 liability of the Promotional Land Sales Fund as
9 provided herein is insufficient to pay in full claims
10 adjudicated valid of all aggrieved persons against any one
11 registrant, such \$100,000 shall be distributed among them in
12 such ratio that the respective claims of the aggrieved
13 applicants bear to the aggregate of such claims held valid. If,
14 at any time, the money deposited in the Promotional Land Sales
15 Fund is insufficient to satisfy any duly authorized claim or
16 portion thereof, the commission shall, when sufficient money has
17 been deposited in the fund, satisfy such unpaid claims or
18 portions thereof in the order that such claims or portions
19 thereof were originally filed, plus accumulated interest at the
20 rate of 6% a year.

21 (f) Upon petition of the commission, the court may require
22 all claimants and prospective claimants against one licensee or
23 registrant to be joined in one action, to the end that the
24 respective rights of all such claimants to the Promotional Land
25 Sales Fund may be equitably adjudicated and settled.

26 (g) Should the commission pay from the Promotional Land
27 Sales Fund any amount in settlement of a claim as provided for
28 in this act against a registrant, the registration of that
29 person shall automatically suspend upon the effective date of
30 the payment thereof by the commission. No such registrant shall

1 be granted reinstatement until he has repaid in full, plus
2 interest at the rate of 10% a year, the amount paid from the
3 Promotional Land Sales Fund.

4 (h) No person or claimant shall recover from the Promotional
5 Land Sales Fund if such person or claimant has been paid a claim
6 against the same licensee or registrant under the Real Estate
7 Recovery Fund.

8 Section 4. Section 607 of the act, added March 29, 1984
9 (P.L.162, No.32), is amended to read:

10 Section 607. Broker's disclosure to buyer.

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

14 (1) A statement [that the broker is the agent of the
15 seller, not the buyer] as to whom the broker represents.

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

20 (3) A statement of the zoning classification of the
21 property except for single-family dwellings. [Failure of any
22 sales agreement or sales contract to contain a statement of
23 the zoning classification of the property shall render the
24 sales agreement or sales contract null and void and] An
25 agreement of sale which does not conform to the requests of
26 this paragraph shall not be enforceable by the seller against
27 the buyer. Any term of an agreement of sale purporting to
28 waive the rights of the buyer to the disclosures required by
29 this paragraph shall be void. In the event of cancellation of
30 the agreement of sale by the buyer, any deposits tendered by

1 the buyer shall be returned to the buyer without any
2 requirement for any court action.

3 Section 5. Section 803 of the act is amended by adding a
4 subsection to read:

5 Section 803. Application for recovery from fund.

6 * * *

7 (h) No person or claimant shall recover from the Real Estate
8 Recovery Fund if such person or claimant has been paid a claim
9 against the same licensee or registrant under the Promotional
10 Land Sales Fund.

11 Section 6. This act shall take effect immediately.