

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, FOLMER AND REGOLA, MAY 4, 2007

AS AMENDED ON SECOND CONSIDERATION, JUNE 11, 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

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 participates in any of the prohibited acts set forth in this subsection or that violates the requirements of paragraph (3) or (4) under the definition of "qualified association" in section 201. DOES ANY OF THE FOLLOWING:

(I) PARTICIPATES IN ANY OF THE PROHIBITED ACTS UNDER THIS SUBSECTION.

(II) IS NOT BENEFICIALLY OWNED ONLY BY LICENSEES WHO ARE ALL AFFILIATED WITH THE SAME BROKER.

(III) HOLDS ITSELF OUT TO THE PUBLIC AS PROVIDING

1 REAL ESTATE SERVICES.

2 * * *

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

9 Section 3. Section 606.1(a)(5) of the act, added November
10 25, 1998 (P.L.908, No.112), is amended to read:

11 Section 606.1. Duties of licensee generally.

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

16 * * *

17 (5) to account in a timely manner for all money and
18 property received from or on behalf of any consumer to a
19 transaction consistent with the provisions of section
20 [604(a)(5)] 608.5;

21 * * *

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

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

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

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

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

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

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

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

21 (c) Every associate broker or salesperson shall, as soon as
22 reasonably practicable following receipt of a deposit or other
23 escrow, pay over the funds to the broker employing the associate
24 broker or salesperson.

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

28 (e) A broker must deposit moneys and property, of whatever
29 kind or nature, belonging to others, in a separate custodial or
30 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

1 must provide for withdrawal of funds without previous notice.

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

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

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

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

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

14 (2) an associate broker or salesperson.

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