

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, REGOLA AND BAKER, MAY 4, 2007

AS REPORTED FROM COMMITTEE ON PROFESSIONAL LICENSURE, HOUSE OF
REPRESENTATIVES, AS AMENDED, JANUARY 30, 2008

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 <—

1 liability partnership, limited partnership OR limited liability <—
2 company, business trust, association or other entity that: <—

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

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

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

8 ~~(4) (3) does not hold itself out to the public as~~ <—
9 ~~providing real estate services OR REAL ESTATE-RELATED~~ <—
10 ~~SERVICES; AND~~

11 (4) IS SOLELY OWNED BY LICENSEES WHO ARE ALL AFFILIATED
12 WITH THE SAME BROKER.

13 IN CASE OF THE DEATH OF AN OWNER OF A QUALIFIED ASSOCIATION,
14 OWNERSHIP MAY CONTINUE THROUGH THE LICENSEES' ESTATE FOR A
15 PERIOD NOT TO EXCEED 18 MONTHS.

16 * * *

17 Section 2. Section 604(a)(5) of the act, amended June 29,
18 1990 (P.L.246, No.58), is amended, subsection (a) is amended by
19 adding paragraphs and the section is amended by adding a
20 subsection to read:

21 Section 604. Prohibited acts.

22 (a) The commission may upon its own motion, and shall
23 promptly upon the verified complaint in writing of any person
24 setting forth a complaint under this section, ascertain the
25 facts and, if warranted, hold a hearing for the suspension or
26 revocation of a license or registration certificate or for the
27 imposition of fines not exceeding \$1,000, or both. The
28 commission shall have power to refuse a license or registration
29 certificate for cause or to suspend or revoke a license or
30 registration certificate or to levy fines up to \$1,000, or both,

1 where the said license has been obtained by false
2 representation, or by fraudulent act or conduct, or where a
3 licensee or registrant, in performing or attempting to perform
4 any of the acts mentioned herein, is found guilty of:

5 * * *

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

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

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

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

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

1 may have on deposit;

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

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

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

25 (5.1) Failing to comply with any of the requirements of
26 section 608.5.

27 * * *

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

30 (i) Participates in any of the prohibited acts under

1 this subsection.

2 (ii) ~~Is not beneficially owned only~~ SOLELY OWNED by <—
3 licensees who are all affiliated with the same broker.

4 (iii) Holds itself out to the public as providing
5 real estate services OR REAL ESTATE-RELATED SERVICES. <—

6 * * *

7 (c) Notwithstanding any other provision of this act, it is
8 not unlawful for a broker to pay a commission OR COMPENSATION to <—
9 a qualified association or for an associate broker or
10 salesperson to receive A COMMISSION OR compensation for the <—
11 provision of REAL ESTATE SERVICES OR real estate-related <—
12 services from a qualified association in which the associate
13 broker or salesperson owns an interest.

14 Section 3. Section 606.1(a)(5) of the act, added November
15 25, 1998 (P.L.908, No.112), is amended AND THE SUBSECTION IS <—
16 AMENDED BY ADDING A PARAGRAPH to read:

17 Section 606.1. Duties of licensee generally.

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

22 * * *

23 (5) to account in a timely manner for all money and
24 property received from or on behalf of any consumer to a
25 transaction consistent with the provisions of section
26 [604(a)(5)] 608.5;

27 * * *

28 (14) A LICENSEE MUST REPORT TO THE COMMISSION WITHIN 30 <—
29 DAYS OF FORMING OR JOINING A QUALIFIED ASSOCIATION ALL OF THE
30 FOLLOWING:

1 (I) NAME OF THE QUALIFIED ASSOCIATION.

2 (II) NAMES OF THE OWNERS OF THE QUALIFIED
3 ASSOCIATION.

4 (III) THE JURISDICTION WHERE THE QUALIFIED
5 ASSOCIATION IS REGISTERED.

6 (IV) DATE THE QUALIFIED ASSOCIATION WAS REGISTERED.

7 (V) CHANGES IN OWNERSHIP OF THE QUALIFIED
8 ASSOCIATION.

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

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

13 (1) consummation of the transaction involved;

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

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

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

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

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

30 (b) Deposits and other escrows must be accounted for in the

1 full amount thereof at the time of consummation, termination or
2 release as provided in subsection (a). If less than the full
3 amount held pursuant to subsection (a) is released, notice must
4 be given in writing or electronic form to all the parties to the
5 transaction of the amounts released, the persons to whom
6 distribution is made and the amounts that continue to be held
7 pursuant to subsection (a).

8 (c) Every associate broker or salesperson shall, as soon as <—
9 reasonably practicable PROMPTLY following receipt of a deposit <—
10 or other escrow, pay over the funds to the broker employing the
11 associate broker or salesperson.

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

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

26 (f) If a deposit in connection with an offer to buy or lease
27 real estate is in the form of a check and the buyer and seller
28 or lessee and lessor consent in writing or electronic form, the
29 broker may hold the check and not deposit it as otherwise
30 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

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

<—

1 ~~(2) an associate broker or salesperson.~~ THE BROKERS WHO <—
2 REPRESENT THE PARTIES. THIS SUBSECTION SHALL NOT BE CONSTRUED
3 TO ALLOW AN ASSOCIATE BROKER, SALESPERSON OR QUALIFIED
4 ASSOCIATION TO HOLD DEPOSITS OR OTHER ESCROWS.
5 Section 5. This act shall take effect in 60 days.