

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 241 Session of 2009

INTRODUCED BY TOMLINSON, BRUBAKER, WAUGH, M. WHITE, McILHINNEY, SMUCKER, TARTAGLIONE, FOLMER, ROBBINS, BAKER, BROWNE, EARLL, ERICKSON, RAFFERTY, BOSCOLA, O'PAKE, LOGAN, WOZNIAK, COSTA, KASUNIC, STOUT, FONTANA AND WASHINGTON, FEBRUARY 19, 2009

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE, FEBRUARY 19, 2009

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 (P.L.
 11 15, No.9), known as the Real Estate Licensing and Registration
 12 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, limited liability
 19 partnership, limited partnership or limited liability company

1 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) does not hold itself out to the public as providing
6 real estate services or real estate-related services; and

7 (4) is solely owned by licensees who are all affiliated
8 with the same broker.

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

12 * * *

13 Section 2. Section 604(a)(5) of the act, amended June 29,
14 1990 (P.L.246, No.58), is amended, subsection (a) is amended by
15 adding paragraphs and the section is amended by adding a
16 subsection to read:

17 Section 604. Prohibited acts.

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

1 * * *

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

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

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

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

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

28 (v) every broker shall keep records of all funds
29 deposited therein, which records shall indicate clearly
30 the date and from whom he received money, the date

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

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

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

21 (5.1) Failing to comply with any of the requirements of
22 section 608.5.

23 * * *

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

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

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

30 (iii) Holds itself out to the public as providing

1 real estate services or real estate-related services.

2 * * *

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

10 Section 3. Section 606.1(a)(5) of the act, added November
11 25, 1998 (P.L.908, No.112), is amended and the subsection is
12 amended by adding a paragraph to read:

13 Section 606.1. Duties of licensee generally.

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

18 * * *

19 (5) to account in a timely manner for all money and
20 property received from or on behalf of any consumer to a
21 transaction consistent with the provisions of section [604(a)
22 (5)] 608.5;

23 * * *

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

27 (i) Name of the qualified association.

28 (ii) Names of the owners of the qualified
29 association.

30 (iii) The jurisdiction where the qualified

1 association is registered.

2 (iv) Date the qualified association was registered.

3 (v) Changes in ownership of the qualified
4 association.

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

6 Section 608.5. Handling of deposits and other escrows.

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

9 (1) consummation of the transaction involved;

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

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

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

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

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

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

1 transaction of the amounts released, the persons to whom
2 distribution is made and the amounts that continue to be held
3 pursuant to subsection (a).

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

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

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

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

1 following acceptance of the offer.

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

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

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

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

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

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