

REAL ESTATE LICENSING AND REGISTRATION ACT - OMNIBUS AMENDMENT

Act of Jun. 22, 2000, P.L. 371, No. 47

CL. 63

Session of 2000

No. 2000-47

HB 2220

AN ACT

Amending the act of February 19, 1980 (P.L.15, No.9), entitled "An act establishing the State Real Estate Commission and providing for the licensing of real estate brokers and salesmen," further providing for relationships between brokers and consumers of real estate services, for disclosure at initial interviews, for duties of licensee generally and for application for recovery from the real estate recovery fund.

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

Section 1. Sections 606, 606.1(b) and 608 of the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, amended or added November 25, 1998 (P.L.908, No.112), are amended to read:

Section 606. Relationships between brokers and consumers of real estate services.

A broker may act in a real estate transaction, subject to the provisions of this act, as a seller/landlord agent, buyer/tenant agent, as a dual agent for seller/landlord and buyer/tenant or as a transaction licensee. Licensees employed by a broker shall bear the same relationship to the consumer as the broker, except that a broker , **including one** serving as a dual agent , may designate a licensee to act exclusively as agent of [the] **a particular** seller/landlord and **may** designate another licensee to act exclusively as agent of [the] **a particular** buyer/tenant.

Section 606.1. Duties of licensee generally.

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(b) (1) A licensee may not perform a service for a consumer of real estate services for a fee, commission or other valuable consideration paid by or on behalf of the consumer unless the nature of the service and the fee to be charged are set forth in a written agreement between the broker and the consumer that is signed by the consumer. **This paragraph shall not prohibit a licensee from performing services before such an agreement is signed, but the licensee is not entitled to recover a fee, commission or other valuable consideration in the absence of such a signed agreement.**

(2) Notwithstanding [clause] **paragraph (1)**, an open listing agreement **or a nonexclusive agreement for a licensee to act as a buyer/tenant agent** may be oral if the seller **or buyer** is provided with a written memorandum stating the terms of the agreement.

(3) Nothing in this subsection shall require a transaction licensee or subagent who is cooperating with the listing broker to obtain a written agreement from the seller.

(4) A subagent or transaction licensee who is cooperating with the listing broker for a fee paid by the listing broker or seller shall provide the buyer, prior to performing any services, with a written disclosure statement signed by the buyer, describing the nature of the services to be performed by the subagent or transaction licensee and containing the information required by section 608. **If the buyer refuses to sign the statement, the licensee shall note the refusal on the statement and retain it for six months.**

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Section 608. Information to be given at initial interview.

[The] **(a) Except as set forth in subsections (b), (c), (d) and (e), the** commission shall establish rules or regulations which shall set forth the manner and method of disclosure of information to the prospective buyer/tenant or seller/landlord during the initial interview. For the purposes of this section, the initial interview is the first contact between a licensee and a consumer of real estate-related services where a substantive discussion about real estate needs occurs. Such disclosure shall be provided on a form adopted by the commission by regulation and shall include, but shall not be limited to:

(1) A disclosure of the relationships in which the broker may engage with the consumer. The disclosure shall describe the duties that the broker owes in each relationship provided for in this act.

(2) A statement informing sellers and buyers of their option to have an agency relationship with a broker, that an agency relationship is not to be presumed and that it will exist only as set forth in a written agreement between the broker and consumer of real estate service acknowledged by the consumer.

(3) A statement that a real estate consumer has the right to enter into a negotiated agreement with the broker limiting the activities or practices that the broker will provide for on behalf of the consumer and that the fee and services to be provided are to be determined by negotiations between the consumer and the broker.

(4) A statement identifying any possibility that the broker may provide services to another consumer who may be party to the transaction and, if so, an explanation of the duties the broker may owe the other party and whether the broker may accept a fee for those services.

(5) A statement identifying any possibility that the broker may designate one or more licensees affiliated with the broker to represent the separate interest of the parties to the transaction.

(6) A statement of the broker's policies regarding cooperation with other brokers, including the sharing of fees.

(7) A statement that a buyer's broker may be paid a fee that is a percentage of the purchase price and the buyer's broker, even if compensated by the listing broker, will

represent the interests of the buyer.

(8) A statement that the duration of the broker's employment and the broker's fees are negotiable.

(9) The purpose of the Real Estate Recovery Fund and the telephone number of the commission at which further information about the fund may be obtained.

(10) A statement that the duration of the listing agreement or contract and the broker's commission are negotiable.

(11) A statement that any sales agreement must contain the zoning classification of a property except in cases where the property (or each parcel thereof, if subdividable) is zoned solely or primarily to permit single-family dwellings.

(b) The following apply to leases:

(1) Subsection (a) shall not apply and disclosure shall be in accordance with paragraph (2) if the licensee is providing information on a property or otherwise dealing with a prospective tenant for the purpose of rental only and if the licensee is:

(i) the actual owner/landlord of the real property, including the owner of an equity interest in an actual owner/landlord of the real property;

(ii) the direct employee of the owner/landlord of the real property; or

(iii) leasing the real property pursuant to a property management agreement or an exclusive leasing agreement with the owner/landlord of the real property.

(2) In cases under paragraph (1), the licensee shall provide to the prospective tenant a written statement indicating the capacity in which the licensee is acting. The written statement shall be provided at the time of the initial interview unless a rental application is required by the licensee, in which case the written statement shall be provided at the time the rental application is taken. The written statement shall be provided at the beginning of the rental application and shall be in the following form:

CONSUMER NOTICE

THIS IS NOT A CONTRACT

(licensee) hereby states that with respect to this property, (describe property) ,

I am acting in the following capacity: (check one)

(i) owner/landlord of the property;

(ii) a direct employee of the owner/landlord; or

(iii) an agent of the owner/landlord pursuant to a property management or exclusive leasing agreement.

I acknowledge that I have received this notice:

(consumer) (date)

I certify that I have provided this notice:

(licensee) (date)

(3) The licensee shall provide a copy of the written statement under paragraph (2) to the prospective tenant and shall retain a copy signed by the prospective tenant and the licensee for six months. If the prospective tenant refuses to sign the statement, the licensee shall note the refusal on the form and retain it for six months.

(c) If an initial interview with a consumer in a situation which is not covered by subsection (b) or (e) does not occur in person, the licensee shall orally advise the consumer of the various business relationships that the licensee may have with the consumer and provide an oral disclosure to the consumer as follows:

The Real Estate Law requires that I provide you with a written consumer notice that describes the various business relationship choices that you may have with a real estate licensee. Since we are discussing real estate without you having the benefit of the consumer notice, I have the duty to advise you that any information you give me at this time is not considered to be confidential, and any information you give me will not be considered confidential unless and until you and I enter into a business relationship. At our first meeting I will provide you with a written consumer notice which explains those business relationships and my corresponding duties to you.

(d) If an oral disclosure is given as provided in subsection (c), the written disclosure form required by subsection (a) shall be provided to the consumer not later than the earlier of:

- (1) the first meeting that the licensee has in person with the consumer after the initial interview; or
- (2) the time a property is first shown to the consumer by the licensee or any person working with the licensee.

(e) The following apply to time-share estates:

(1) Subsection (a) shall not apply and disclosure shall be in accordance with paragraph (2) if the licensee is showing a time-share estate as defined in 68 Pa.C.S. § 3403(a) (relating to public offering statement; time-share estates).

(2) In cases under paragraph (1), the licensee shall provide the consumer with a written statement indicating the capacity in which the licensee is acting. The statement shall be provided at the time of the initial interview and shall be in the following form:

CONSUMER NOTICE

THIS IS NOT A CONTRACT

(licensee)_____ hereby states that with respect to this property, (describe property)_____, I am acting in the following capacity: (check one)

- (i) owner of the property;
- (ii) a direct employee of the owner; or
- (iii) an agent of the owner pursuant to a property management or exclusive leasing or selling agreement.

I acknowledge that I have received this notice:

(consumer)_____ (date)_____

I certify that I have provided this notice:

(licensee)_____ (date)_____

(3) The licensee shall provide a copy of the statement under paragraph (2) to the consumer and shall retain a copy signed by the consumer and the licensee for six months. If the prospective tenant refuses to sign the statement, the licensee shall note the refusal on the form and retain it for six months.

Section 2. Section 803(f) of the act, amended March 29, 1984 (P.L.162, No.32), is amended to read:

Section 803. Application for recovery from fund.

* * *

(f) Should the commission pay from the Real Estate Recovery Fund any amount in settlement of a claim as provided for in this act against a licensee[, the] :

(1) **The** license of that person shall automatically suspend upon the effective date of the payment thereof by the commission.

(2) No such licensee shall be granted reinstatement until he has repaid in full plus interest at the rate of 10% a year, the amount paid from the Real Estate Recovery Fund.

(3) **The commission shall have the right to petition the court that entered the judgment against the licensee to enter a judgment under this subsection, and, upon proof of the amount paid by the fund, the court shall enter a judgment against the licensee for that amount in favor of the commission.**

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Section 3. The addition of section 803(f)(3) of the act shall apply only in cases where the final judgment required under section 803(b)(2) is obtained in a proceeding commenced after the effective date of this act.

Section 4. This act shall take effect immediately.

APPROVED--The 22nd day of June, A. D. 2000.

THOMAS J. RIDGE