

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1448 Session of
1983

INTRODUCED BY MURPHY, IRVIS, MANDERINO, LLOYD, McMONAGLE,
OLIVER, LINTON, SEVENTY, MRKONIC, RIEGER, McINTYRE,
MICHLOVIC, VAN HORNE, CLARK AND TRUMAN, SEPTEMBER 19, 1983

AS REPORTED FROM COMMITTEE ON PROFESSIONAL LICENSURE, HOUSE OF
REPRESENTATIVES, AS AMENDED, SEPTEMBER 27, 1983

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," adding and amending definitions; creating,
5 empowering and governing a commission; eliminating
6 confidentiality requirements; changing hours of study and
7 specifying areas of study for applicants; eliminating fee
8 requirements; imposing reporting duties on the Pennsylvania
9 Human Relations Commission; adding a prohibition; broadening
10 the scope of regulation of promotional sales and requiring
11 public accounting for promotional sales; requiring
12 contractual disclosures; regulating reinstatement of revoked
13 licenses; changing limits of liability and increasing
14 assessments for the recovery fund; making editorial changes;
15 and making repeals.

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

18 Section 1. Section 201 of the act of February 19, 1980
19 (P.L.15, No.9), known as the Real Estate Licensing and
20 Registration Act, amended March 7, 1982 (P.L.158, No.50), is
21 amended to read:

22 Section 201. Definitions.

23 The following words and phrases when used in this act shall

1 have, unless the context clearly indicates otherwise, the
2 meanings given to them in this section:

3 "Associate broker." A broker employed by another broker.

4 "Broker." Any person who, for another and for a fee,
5 commission or other valuable consideration:

6 (1) negotiates with or aids any person in locating or
7 obtaining for purchase [or], lease or acquisition of interest
8 in any real estate;

9 (2) negotiates the listing, sale, purchase, exchange,
10 lease, time share and similarly designated interests,
11 financing or option for any real estate;

12 (3) manages or appraises any real estate;

13 (4) represents himself as a real estate consultant,
14 counsellor, house finder;

15 (5) undertakes to promote the sale, exchange, purchase
16 or rental of real estate: Provided, however, That this
17 provision shall not include any person whose main business is
18 that of advertising, promotion or public relations; or

19 (6) attempts to perform any of the above acts.

20 ["Broker of record." A sole proprietor or principal
21 individual broker of a licensed corporation, partnership or
22 association or other entity, foreign or domestic.]

23 "Builder-owner salesperson." Any person who is a full-time
24 employee of a builder-owner of single and multifamily dwellings
25 located within the Commonwealth and as such employee shall be
26 authorized and empowered to list for sale, sell or offer for
27 sale, or to negotiate the sale or exchange of real estate, or to
28 lease or rent, or offer to lease, rent or place for rent, any
29 real estate owned by his builder-owner employer, or collect or
30 offer, or attempt to collect, rent for the use of real estate

1 owned by his builder-owner employer, for and on behalf of such
2 builder-owner employer. The term does not include any person
3 employed by an owner of real estate for the purpose of managing
4 or maintaining multifamily residential property: Provided,
5 however, That such person is not authorized or empowered by such
6 owner to enter into leases on behalf of the owner, to negotiate
7 terms or conditions of occupancy with current or prospective
8 tenants, or to hold money belonging to tenants other than on
9 behalf of the owner. The term "negotiate," as used in this
10 definition does not mean the transmission of information between
11 the owner and current or prospective tenants, such as rental
12 amounts, building rules and regulations or leasing
13 determinations, so long as the owner retains the authority to
14 make all such decisions.

15 "Cemetery." A place for the disposal or burial of deceased
16 human beings, by cremation or in a grave, mausoleum, vault,
17 columbarium or other receptacle, but the term does not include a
18 private family cemetery.

19 "Cemetery company." Any person who offers or sells to the
20 public the ownership, or the right to use, any cemetery lot.

21 "Commission." The State Real Estate Commission.

22 "Commissioner." Commissioner of Professional and
23 Occupational Affairs.

24 "Department." The Department of State acting through the
25 Commissioner of Professional and Occupational Affairs.

26 "Employ, employed, employee, employment." The use of the
27 words employ, employed, employee or employment in this act shall
28 apply to the relationship of independent contractor as well as
29 to the relationship of employment, except as applied to builder-
30 owner salespersons.

1 "Limited broker." Any person[, partnership, association or
2 corporation] engaging in or carrying on the business or act in
3 the capacity of a broker within the Commonwealth exclusively
4 within the limited field or branch of business which applies to
5 cemetery lots, plots and mausoleum spaces or openings.

6 "Limited salesperson." Any person employed by a broker or
7 limited broker to perform duties as defined herein under
8 "limited broker". No person employed by a broker to perform
9 duties other than those activities as defined herein under
10 "limited broker" shall be required to be licensed as a limited
11 salesperson.

12 "Person." Any individual, corporation, partnership,
13 association or other entity foreign or domestic.

14 "Real estate." Any interest or estate in land, whether
15 corporeal, incorporeal, freehold or nonfreehold, whether the
16 land is situated in this Commonwealth or elsewhere including
17 leasehold interests and time share and similarly designated
18 interests.

19 "Rental listing referral agent." Any person who owns or
20 manages a business which collects rental information for the
21 purpose of referring prospective tenants to rental units or
22 locations of such units. The term "rental listing referral
23 agent" shall not include any employee or official of any public
24 housing authority created pursuant to State or Federal law.

25 "Salesperson." Any person employed by a licensed real estate
26 broker to list for sale, sell or offer for sale, to buy or offer
27 to buy or to negotiate the purchase or sale or exchange of real
28 estate or to negotiate a loan on real estate or to lease or rent
29 or offer to lease, rent or place for rent any real estate or
30 collect or offer or attempt to collect rent for the use of real

1 estate for or in behalf of such real estate broker. No person
2 employed by a broker to perform duties other than those
3 activities as defined herein under "broker" shall be required to
4 be licensed as a salesperson.

5 "School." Any person[, corporation, partnership, association
6 or other entity, foreign or domestic, which] who conducts
7 classes in real estate subjects[,] but [which] is not a college
8 [or], university or institute of higher learning duly accredited
9 by the Middle States Association of Colleges and Secondary
10 Schools or equivalent accreditation.

11 "Time share." The right, however evidenced, to use or occupy
12 a dwelling unit held in fee simple or by lease according to an
13 arrangement allocating use and occupancy rights between other
14 similar users.

15 Section 2. The act is amended by adding a section to read:
16 Section 202. State Real Estate Commission.

17 (a) The State Real Estate Commission is hereby created and
18 shall consist of the Commissioner of Professional and
19 Occupational Affairs, ~~who shall be a participating but nonvoting~~ <—
20 ~~member~~; the Director of the Bureau of Consumer Protection, or
21 his designee, ~~two~~; THREE members who shall be persons <—
22 representing the public-at-large; five other persons, each of
23 whom shall at the time of his appointment be a licensed and
24 qualified real estate broker under the existing law of this
25 Commonwealth, and shall have been engaged in the real estate
26 business in this Commonwealth for a period of not less than ten
27 years immediately prior to his appointment; and one other person
28 who shall have been licensed as a real estate broker, or limited
29 real estate broker, for a period of at least five years and
30 shall have been engaged in selling cemetery lots for at least

ten years immediately prior to his appointment. Each of said members of the commission shall be appointed by the Governor.

(b) The term of office of each of said members shall be five years from his appointment, or until his successor has been appointed and qualified but not longer than six months beyond the five-year period. In the event that any of said members shall die or resign during his term of office his successor shall be appointed in the same way and with the same qualifications as above set forth and shall hold office for the unexpired term.

(c) ~~Four~~ SIX members of the commission shall constitute a quorum. The commission shall elect a secretary from among its members. A commission member who fails to attend three consecutive meetings shall forfeit his seat unless the Commissioner of Professional and Occupational Affairs, upon written request from the member, finds that the member should be excused from a meeting because of illness or the death of a family member.

(d) Each member of the commission other than the Commissioner of Professional and Occupational Affairs shall receive actual traveling expenses and per diem compensation at the rate of \$60 per day for the time actually devoted to the business of the commission.

(e) In addition to regularly scheduled meetings of the commission, there shall be at least one public meeting each year in Pittsburgh, one public meeting each year in Philadelphia and one public meeting each year in Harrisburg. The purpose of these special meetings shall be to solicit from members of the public suggestions, comments and objections about real estate practice in this Commonwealth.

1 Section 3. Sections 301, 303 and 304 of the act, amended
2 March 7, 1982 (P.L.158, No.50), are amended to read:

3 Section 301. Unlawful to conduct business without license or
4 registration certificate.

5 [From and after the effective date of this act, it] It shall
6 be unlawful for any person, directly or indirectly, to engage in
7 or conduct, or to advertise or hold himself out as engaging in
8 or conducting the business, or acting in the capacity of a
9 broker or salesperson, limited broker, limited salesperson,
10 builder-owner salesperson, rental listing referral agent or
11 cemetery company within this Commonwealth without first being
12 licensed or registered [as such] as provided in this act, unless
13 he is exempted from obtaining a license or registration
14 certificate under the provisions of section 304.

15 Section 303. Criminal penalties.

16 Any person who shall[, after the effective date of this act,]
17 engage in or carry on the business, or act in the capacity of a
18 broker, salesperson, limited broker, limited salesperson,
19 builder-owner salesperson, rental listing referral agent or
20 cemetery company, within this Commonwealth, without a license or
21 registration certificate, or shall carry on or continue business
22 after the suspension or revocation of any such license or
23 registration certificate issued to him, or shall employ any
24 person as a salesperson or limited salesperson to whom a license
25 has not been issued, or whose license or registration
26 certificate as such shall have been revoked or suspended, shall
27 be guilty of a summary offense and upon conviction thereof for a
28 first offense shall be sentenced to pay a fine not exceeding
29 \$500 or suffer imprisonment, not exceeding three months, or both
30 and for a second or subsequent offense shall be guilty of a

1 felony of the third degree and upon conviction thereof, shall be
2 sentenced to pay a fine of not less than \$2,000 but not more
3 than \$5,000 or to imprisonment for not less than one year but
4 not more than two years, or both.

5 Section 304. Exclusions.

6 [The provisions of this act shall not apply to an owner of
7 real estate with respect to property owned or leased by such
8 owner, provided that in the case of a partnership or
9 corporation, this exclusion shall not extend to more than five
10 of its partners or officers, respectively, but to no other
11 partnership or corporation personnel or employee, except the
12 employees of a public utility acting in the ordinary course of
13 utility related business under the provisions of Title 66 of the
14 Pennsylvania Consolidated Statutes (relating to public
15 utilities), with respect to negotiating the purchase, sale or
16 lease of property, nor shall this act apply to officers or
17 employees of a partnership or corporation whose principal
18 business is the discovery, extraction, distribution or
19 transmission of energy or mineral resources, provided that the
20 purchase, sale or lease of real estate is a common and necessary
21 transaction in the conduct of such principal business; nor shall
22 this act be construed to include in any way the services
23 rendered by an attorney in fact under a duly executed and
24 recorded power of attorney from the owner or lessor (provided
25 such power of attorney is not utilized to circumvent the intent
26 of this act); nor by an attorney at law, nor shall it be held to
27 include a person acting as receiver, trustee in bankruptcy,
28 administrator, executor, trustee or guardian while acting under
29 a court order or under the authority of a will or of a trust
30 instrument, nor shall this act apply to the duly elected officer

1 of any banking institution or trust company operating under
2 Federal or State banking laws where real estate of the banking
3 institution or trust company only is involved, nor shall they be
4 held to include any officer or employee of a cemetery company
5 who, as incidental to his principal duties and without
6 remuneration therefor, shows lots in such company's cemetery to
7 persons for their use as a family burial lot, and who accepts
8 deposits on such lots for the representatives of the cemetery
9 company, legally authorized to sell the same, nor shall it apply
10 to cemetery companies and cemeteries owned or controlled by a
11 bona fide church or religious congregation or fraternal
12 organization or by any association created by a bona fide church
13 or religious organization or by a fraternal organization, nor
14 shall it be held to include any properly licensed auctioneer,
15 under statutes of this State, while performing authorized duties
16 at any bona fide auction.] Except as otherwise provided in this
17 act, the provisions of this act shall not apply to the
18 following:

19 (1) An owner of real estate with respect to property
20 owned or leased by such owner. In the case of a partnership
21 or corporation, this exclusion shall not extend to more than
22 five of its partners or officers, respectively nor to other
23 partnership or corporation personnel or employees.

24 (2) The employees of a public utility acting in the
25 ordinary course of utility related business under the
26 provisions of Title 66 of the Pennsylvania Consolidated
27 Statutes (relating to public utilities), with respect to
28 negotiating the purchase, sale or lease of property.

29 (3) The officers or employees of a partnership or
30 corporation whose principal business is the discovery,

1 extraction, distribution or transmission of energy or mineral
2 resources, provided that the purchase, sale or lease of real
3 estate is a common and necessary transaction in the conduct
4 of such principal business.

5 (4) The services rendered by an attorney in fact under
6 an executed and recorded power of attorney from the owner or
7 lessor (provided such power of attorney is not utilized to
8 circumvent the intent of this act) or by an attorney at law.

9 (5) A person acting as trustee in bankruptcy,
10 administrator, executor, trustee or guardian while acting
11 under a court order or under the authority of a will or of a
12 trust instrument.

13 (6) The elected officer of any banking institution or
14 trust company operating under Federal or State banking laws
15 where only the real estate of the banking institution or
16 trust company is involved.

17 (7) Any officer or employee of a cemetery company who,
18 as incidental to his principal duties and without
19 remuneration therefor, shows lots in such company's cemetery
20 to persons for their use as a family burial lot and who
21 accepts deposits on such lots for the representatives of the
22 cemetery company legally authorized to sell the same.

23 (8) Cemetery companies and cemeteries owned or
24 controlled by a bona fide church or religious congregation or
25 fraternal organization or by any association created by a
26 bona fide church or religious organization or by a fraternal
27 organization.

28 (9) An auctioneer licensed under the act of September
29 29, 1961 (P.L.1745, No.709), known as "The Auctioneers'
30 License Act," while performing authorized duties at any bona

1 fide auction.

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

3 Section 305. Civil penalty.

4 In addition to any other civil remedy or criminal penalty
5 provided for in this act, the commission may levy a civil
6 penalty of up to \$1,000 on any person who engages in the
7 practice of real estate without being properly licensed to do so
8 under this act. The board shall levy this penalty only after
9 affording the accused party the opportunity for a hearing, as
10 provided in Title 2 of the Pennsylvania Consolidated Statutes
11 (relating to administrative law and procedure).

12 Section 5. Section 401 of the act, amended March 7, 1982
13 (P.L.158, No.50), is amended to read:

14 Section 401. Duty to issue licenses and registration
15 certificates.

16 It shall be the duty of the department to issue licenses and
17 registration certificates to [individuals, copartnerships and
18 corporations,] any person who shall comply with the provisions
19 of this act. However, the department shall not issue any license
20 under this act to an individual, partnership, limited
21 partnership, copartnership, corporation or other similar entity
22 which participates directly or indirectly through corporate
23 affiliates or subsidiaries in 12 or more real estate
24 transactions in any calendar year in a capacity which involves
25 the lending of money or the extension or granting of credit for
26 the purchase of real property whereby the repayment obligation
27 is evidenced by a security document and secured by a lien upon
28 such real property, or which is a parent, subsidiary, affiliate
29 or franchise of such an entity.

30 Section 6. Section 404 of the act, repealed in part June 25,

1 1982 (P.L.633, No.181), is amended to read:

2 Section 404. Power to promulgate regulations.

3 [(a)] The commission shall have the power to promulgate
4 rules or regulations in order to administer and effectuate the
5 purposes of this act. All existing rules or regulations [adopted
6 pursuant to the act of May 1, 1929 (P.L.1216, No.427), known as
7 the "Real Estate Brokers License Act of one thousand nine
8 hundred and twenty-nine,"] shall remain in full force and effect
9 until modified by the commission.

10 Section 7. Section 405 of the act is repealed.

11 Section 8. The act is amended by adding sections to read:

12 Section 407. Fees.

13 All fees required under this act shall be fixed by the
14 department, after consultation with the commission in accordance <—
15 with existing law., BY REGULATION AND SHALL BE SUBJECT TO REVIEW <—
16 IN ACCORDANCE WITH THE ACT OF JUNE 25, 1982 (P.L.633, NO.181),
17 KNOWN AS THE "REGULATORY REVIEW ACT." IF THE PROJECTED REVENUES
18 TO BE GENERATED BY FEES, FINES AND CIVIL PENALTIES IMPOSED IN
19 ACCORDANCE WITH THE PROVISIONS OF THIS ACT WILL NOT BE
20 SUFFICIENT TO MATCH PROJECTED EXPENDITURES OVER A TWO-YEAR
21 PERIOD, THE DEPARTMENT, AFTER CONSULTATION WITH THE COMMISSION,
22 SHALL INCREASE THOSE FEES BY REGULATION, SUBJECT TO REVIEW IN
23 ACCORDANCE WITH THE "REGULATORY REVIEW ACT," SUCH THAT THE
24 PROJECTED REVENUES WILL MEET OR EXCEED PROJECTED EXPENDITURES,
25 INCLUDING REPAYMENT TO THE PROFESSIONAL LICENSURE AUGMENTATION
26 ACCOUNT OF ANY MONEYS USED TO FINANCE THE OPERATION OF THE
27 COMMISSION UNTIL SUFFICIENT REVENUES HAVE BEEN RECEIVED TO MEET
28 EXPENDITURES.

29 Section 408. Reports to legislative committees.

30 (a) The commission shall submit annually a report to the

1 Professional Licensure Committee of the House of Representatives
2 and to the Consumer Protection and Professional Licensure
3 Committee of the Senate a description of the types of complaints
4 received, status of cases, board action which has been taken and
5 the length of time from the initial complaint to final board
6 resolution.

7 (b) The commission shall also submit annually to the House
8 of Representatives and the Senate Appropriation Committees, 15
9 days after the Governor has submitted his budget to the General
10 Assembly, an estimate of the financial requirements of the
11 commission for its administrative, investigative, legal and
12 miscellaneous expenses.

13 Section 9. Sections 501, 511, 512, 521 and 532 of the act
14 are amended to read:

15 Section 501. Reputation; inactive licensee; revoked license.

16 (a) Licenses shall be granted only to and renewed only for
17 persons who bear a good reputation for honesty, trustworthiness,
18 integrity and competence to transact the business of broker,
19 salesperson, limited broker, limited salesperson, builder-owner
20 salesperson or rental listing referral agent, in such manner as
21 to safeguard the interest of the public, and only after
22 satisfactory proof of such qualifications has been presented to
23 the commission as it shall by regulation require.

24 (b) Any person who remains inactive for a period of five
25 years without renewing his license shall, prior to having a
26 license reissued to him, submit to and pass [an] the examination
27 pertinent to the license for which the person is reapplying.

28 (c) Unless ordered to do so by a court, the commission shall
29 not reinstate the license, within five years of the date of
30 revocation, of any person whose license has been revoked under

1 this act. Any person whose license has been revoked may reapply
2 for a license at the end of the five-year period but must meet
3 all of the licensing qualifications of this act for the license
4 applied for, to include the examination requirement.

5 Section 511. Qualifications for license.

6 The applicant for a broker's license, shall as a condition
7 precedent to obtaining a license, take the broker's license
8 examination and score a passing grade. Prior to taking the
9 examination:

10 (1) The applicant shall be at least 21 years of age.

11 (2) The applicant shall be a high school graduate or
12 shall produce proof satisfactory to the commission of an
13 education equivalent thereto.

14 (3) The applicant shall have completed [16 semester
15 credit hours of 15] 240 hours [each] in real estate
16 instruction in areas of study prescribed by the rules of the
17 commission, which rules shall require instruction in the
18 areas of fair housing and professional ethics.

19 (4) The applicant shall have been engaged [full time] as
20 a [sales person] licensed real estate salesperson for at
21 least three years or possess educational or experience
22 qualifications which the commission deems to be the
23 equivalent thereof.

24 Section 512. Application for license.

25 (a) An application for a license as real estate broker shall
26 be made in writing, to the department, upon a form provided for
27 the purpose by the department and shall contain such information
28 as to the applicant as the commission shall require.

29 [(b) The application shall be accompanied by two photographs
30 of the applicant or in the case of a copartnership, association

1 or corporation of the applicant members or officers thereof.

2 (c)] (b) The application shall state the place of business
3 for which such license is desired.

4 [(d)] (c) The application shall be received by the
5 commission within three years of the date upon which the
6 applicant took the examination.

7 Section 521. Qualifications for license.

8 Each applicant shall as a condition precedent to obtaining a
9 license, take the salesperson license examination and score a
10 passing grade. Prior to taking the examination:

11 (1) The applicant shall be at least 18 years of age.

12 (2) The applicant shall have completed [four semester
13 credit hours of 15] 60 hours [each] in real estate
14 instruction in areas of study prescribed by the rules of the
15 commission, which rules shall require instruction in the
16 areas of fair housing and professional ethics.

17 Section 532. Application for license.

18 (a) An application for a license as a limited broker shall
19 be made, in writing, to the department, upon a form provided for
20 the purpose by the department and shall contain such information
21 as to the applicant, as the commission shall require.

22 (b) The applicant shall have completed [four semester credit
23 hours of 15] 60 hours [each] in real estate instruction in areas
24 of study prescribed by the rules of the commission, which rules
25 shall require instruction in the area of professional ethics.

26 (c) The application shall be received by the commission
27 within three years of the date upon which the applicant took the
28 examination.

29 Section 10. Section 571 of the act, added March 7, 1982
30 (P.L.158, No.50), is amended to read:

1 Section 571. Application and fee for registration certificate.

2 [(a)] An application for a registration certificate for a
3 cemetery company to operate a cemetery shall be made, in writing
4 to the department, upon a form provided for the purpose by the
5 department, and shall contain such information as to the
6 applicant as the commission shall require.

7 [(b) (1) The fee for application and initial biennial
8 registration as a cemetery company shall be \$25 which shall
9 be paid at the time of application and which shall be
10 nonrefundable.

11 (2) The biennial fee for the renewal of a cemetery
12 company registration certificate shall be \$25.

13 (3) The fees established in this subsection shall be
14 subject to the act of July 1, 1978 (P.L.700, No.124), known
15 as the "Bureau of Professional and Occupational Affairs Fee
16 Act," in the same manner as other fees of the commission.]

17 Section 11. Sections 601, 602 and 603 of the act are amended
18 to read:

19 Section 601. Duty of brokers and limited brokers to maintain
20 office.

21 (a) Each resident licensed broker (which term in this
22 section shall include limited broker) shall maintain a fixed
23 office within this Commonwealth. The original license of a
24 broker and of each licensee employed by such broker shall be
25 prominently displayed in an office of the broker. The address of
26 the office shall be designated on the current [renewal form]
27 license. In case of removal of a broker's office from the
28 designated location, all licensees registered at that location
29 shall make application to the commission before such removal or
30 within ten days thereafter, designating the new location of the

1 office, and shall pay the required fees, whereupon the
2 commission shall issue a [renewal form] current license at the
3 new location for the unexpired period, if the new location
4 complies with the terms of this act. Each licensed broker shall
5 maintain a sign on the outside of his office indicating the
6 proper licensed brokerage name.

7 (b) If the applicant for a broker's license intends to
8 maintain more than one place of business within the
9 Commonwealth, he shall apply for and obtain an additional
10 license in his name at each [branch] office. Every such
11 application shall state the location of such [branch] office.
12 Effective 24 months after the effective date of this act, each
13 [branch] office shall be under the direction and supervision of
14 a manager who is either the broker [of record] or an associate
15 broker: Provided, however, That such broker [of record] or an
16 associate broker may direct and supervise more than one [branch]
17 office.

18 Section 602. Nonresident licensees.

19 [(a) A nonresident of this Commonwealth may be licensed as a
20 broker or a salesperson, upon complying with all provisions and
21 conditions as promulgated by the commission.

22 (b) In connection with the application of a nonresident of
23 this Commonwealth for a license as broker or salesperson, the
24 commission may accept, in lieu of the recommendations and
25 statements otherwise required to accompany the application for
26 such licensure, the license as broker or salesperson issued to
27 such applicant by the proper authority of the state of his
28 licensure. In such case the licensee need not maintain a place
29 of business within this Commonwealth. It is hereby expressly
30 stipulated, that the provisions of this subsection shall apply

1 to licensed brokers and salespersons of those states under the
2 laws of which similar recognition and courtesies are extended to
3 licensed brokers and salespersons of this Commonwealth.] Any
4 nonresident of this Commonwealth who meets the equivalent
5 experience requirements and other standards and qualifications,
6 as the commission shall by rule provide, shall qualify for a
7 license under this act.

8 Section 603. Employment of associate brokers, salesperson.

9 No associate broker or salesperson (which term in this
10 section shall include limited salesperson) shall be employed by
11 any other broker than is designated upon the [renewal form]
12 current license issued to said associate broker or said
13 salesperson. Whenever a licensed salesperson or associate broker
14 desires to change his employment from one licensed broker to
15 another, he shall notify the commission in writing [at least] no
16 later than ten days [prior to] after the intended date of
17 change, pay the required fee, and return his current [renewal]
18 license. The commission, shall, upon receipt of acknowledgment
19 from the new broker[,] of the change of employment [forthwith]
20 issue a new [renewal form and pocket card, but in] license. In
21 the interim at such time as the change in affiliation of the
22 salesperson or associate broker occurs, he shall maintain a copy
23 of the notification sent to the [commissioner] commission as his
24 temporary license pending receipt of his [renewal form] new
25 current license. It shall be the duty of the applicant to notify
26 the commission if a new [renewal form] license or other
27 pertinent communication is not received from the commission
28 within 30 days.

29 Section 12. Section 604 of the act, amended March 7, 1982
30 (P.L.158, No.50), is amended to read:

1 Section 604. Prohibited acts.

2 (A) The commission may upon its own motion, and shall <—
3 promptly upon the verified complaint in writing of any person
4 setting forth a complaint under this section, ascertain the
5 facts and, if warranted, hold a hearing for the suspension or
6 revocation of a license or registration certificate or for the
7 imposition of fines not exceeding [\$500] \$1,000. The commission
8 shall have power to refuse a license or registration certificate
9 for cause or to suspend or revoke a license or registration
10 certificate or to levy fines up to [\$500] \$1,000 where the said
11 license has been obtained by false representation, or by
12 fraudulent act or conduct, or where a licensee or registrant, in
13 performing or attempting to perform any of the acts mentioned
14 herein, is found guilty of:

15 (1) Making any substantial misrepresentation.

16 (2) Making any false promise of a character likely to
17 influence, persuade or induce any person to enter into any
18 contract or agreement when he could not or did not intend to
19 keep such promise.

20 (3) Pursuing a continued and flagrant course of
21 misrepresentation or making of false promises through
22 salesperson, associate broker, other persons, or any medium
23 of advertising, or otherwise.

24 (4) Any misleading or untruthful advertising, or using
25 any other trade name or insignia or membership in any real
26 estate association or organization, of which the licensee is
27 not a member.

28 (5) Failure to comply with the following requirements:

29 (i) all deposits or other moneys accepted by every
30 person, holding a real estate broker license under the

1 provisions of this act, shall be retained by such real
2 estate broker pending consummation or termination of the
3 transaction involved, and shall be accounted for in the
4 full amount thereof at the time of the consummation or
5 termination;

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

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

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

24 (v) every broker shall keep records of all funds
25 deposited therein, which records shall indicate clearly
26 the date and from whom he received money, the date
27 deposited, the dates of withdrawals, and other pertinent
28 information concerning the transaction, and shall show
29 clearly for whose account the money is deposited and to
30 whom the money belongs. All such records and funds shall

1 be subject to inspection by the commission. Such separate
2 custodial or trust fund account shall designate the
3 broker, as trustee, and such account must provide for
4 withdrawal of funds without previous notice. All such
5 records shall be available to the commission, or its
6 representatives, immediately after proper demand or after
7 written notice given, or upon written notice given to the
8 depository.

9 (6) Failing to preserve for three years following its
10 consummation records relating to any real estate transaction.

11 (7) Acting for more than one party in a transaction
12 without the knowledge and consent in writing of all parties
13 for whom he acts.

14 (8) Placing a "for sale" or "for rent" sign on any
15 property without the written consent of the owner, or his
16 authorized agent.

17 (9) Failing to voluntarily furnish a copy of any
18 listing, sale, lease, or other contract relevant to a real
19 estate transaction to all signatories thereof at the time of
20 execution.

21 (10) Failing to specify a definite termination date that
22 is not subject to prior notice, in any listing contract.

23 (11) Inducing any party to a contract, sale or lease to
24 break such contract for the purpose of substitution in lieu
25 thereof of a new contract, where such substitution is
26 motivated by the personal gain of the licensee.

27 (12) Accepting a commission or any valuable
28 consideration by a salesperson or associate broker for the
29 performance of any acts specified in this act, from any
30 person, except the licensed real estate broker with whom he

1 is affiliated.

2 (13) Failing to disclose to an owner in writing his
3 intention or true position if he directly or indirectly
4 through a third party, purchased for himself or acquires or
5 intends to acquire any interest in or any option to purchase
6 property which has been listed with his office to sell or
7 lease.

8 (14) Being convicted in a court of competent
9 jurisdiction [of] in this or any other state, or Federal
10 court, of {forgery, embezzlement, obtaining money under false <—
11 pretenses, bribery, larceny, extortion, conspiracy to
12 defraud, or any similar offense or offenses,} ~~a felony of the~~ <—
13 ~~third degree~~ OR ANY FELONY or pleading guilty or nolo <—
14 contendere to {any such offense or offenses} ~~a felony of the~~ <—
15 ~~third degree~~.

16 (15) Violating any rule or regulation promulgated by the
17 commission in the interest of the public and consistent with
18 the provisions of this act.

19 (16) In the case of a broker licensee, failing to
20 exercise adequate supervision over the activities of his
21 licensed salespersons or associate brokers within the scope
22 of this act.

23 (17) Failing, within a reasonable time as defined by the
24 commission, to provide information requested by the
25 commission as the result of a formal or informal complaint to
26 the commission, which would indicate a violation of this act.

27 (18) Soliciting, selling or offering for sale real
28 property by offering free lots, or conducting lotteries or
29 contests or offering prizes for the purpose of influencing by
30 deceptive conduct any purchaser or prospective purchaser of

1 real property. The commission shall promulgate necessary
2 rules and regulations to provide standards for nondeception
3 conduct under this paragraph.

4 (19) Paying or accepting, giving or charging any
5 undisclosed commission, rebate, compensation or profit or
6 expenditures for a principal, or in violation of this act.

7 (20) Any conduct in a real estate transaction which
8 demonstrates bad faith, dishonesty, untrustworthiness, or
9 incompetency.

10 (21) Performing any act for which an appropriate real
11 estate license is required and is not currently in effect.

12 (22) Violating any provision of the act of October 27,
13 1955 (P.L.744, No.222), known as the "Pennsylvania Human
14 Relations Act," or any order or consent decree of the
15 Pennsylvania Human Relations Commission issued pursuant to
16 such act if such order or consent decree resulted from a
17 complaint of discrimination in the area of activities
18 authorized by virtue of this act.

19 (i) Such activities include but are not limited to:

20 [(i)] (A) Accepting listings on the understanding
21 that illegal discrimination in the sale or rental of
22 housing is to be practiced due to race, color, religious
23 creed, sex, ancestry, national origin, physical handicap,
24 disability or use of a guide dog because of blindness of
25 user of a prospective lessee or purchaser.

26 [(ii)] (B) Giving false information for purposes of
27 discrimination in the rental or sale of housing due to
28 race, color, religious creed, sex, ancestry, national
29 origin, physical handicap, disability or use of a guide
30 dog because of blindness of user of a prospective lessee

1 or purchaser.

2 [(iii)] (C) Making distinctions in locations of
3 housing or dates of availability of housing for purposes
4 of discrimination in the rental or sale of such housing
5 due to race, color, religious creed, sex, ancestry,
6 national origin, physical handicap, disability or use of
7 a guide dog because of blindness of user of the
8 prospective lessee or purchaser.

9 (ii) Nothing contained in this paragraph [(22)] is
10 intended to preclude the State Real Estate Commission
11 from conducting its own investigation and maintaining its
12 own file on any complaint of discrimination. The intent
13 hereunder is to allow the Pennsylvania Human Relations
14 Commission a reasonable period of time to conduct its own
15 investigations, hold hearings, render its decisions and
16 inform the State Real Estate Commission of its findings
17 prior to the State Real Estate Commission taking action
18 against any broker, salesperson or sales associate
19 charged with a violation of this paragraph [(22)].

20 (iii) If in the event the Pennsylvania Human
21 Relations Commission does not act on a discrimination
22 complaint within 90 days after it is filed with the
23 Pennsylvania Human Relations Commission then the State
24 Real Estate Commission may proceed with action against
25 such licensee.

26 (iv) The 90-day waiting period delaying State Real
27 Estate Commission action against licensee accused of
28 discrimination applies only in initial complaints against
29 such licensee, second or subsequent complaints may be
30 brought by individuals or the Pennsylvania Human

1 Relations Commission directly to the State Real Estate
2 Commission.

3 (v) The Pennsylvania Human Relations Commission
4 shall notify the State Real Estate Commission of
5 complaints received by the Human Relations Commission
6 against licensees under this act concerning the sale,
7 purchase or lease of real estate in violation of the
8 "Pennsylvania Human Relations Act."

9 (23) In the case of a cemetery company registrant,
10 violating any provisions of Title 9 of the Pennsylvania
11 Consolidated Statutes (relating to burial grounds).

12 (24) In the case of a cemetery company registrant,
13 violating any provisions of the act of August 14, 1963
14 (P.L.1059, No.459), entitled "An act prohibiting future need
15 sales of cemetery merchandise and services, funeral
16 merchandise and services, except under certain conditions;
17 requiring the establishment of and deposit into a merchandise
18 trust fund of certain amount of the proceeds of any such
19 sale; providing for the administration of such trust funds
20 and the payment of money therefrom; conferring powers and
21 imposing duties on orphans' courts, and prescribing
22 penalties."

23 (25) Violating section 606 or 607.

24 (26) Charging or collecting a minimum dollar amount
25 commission.

26 (B) ALL FINES AND CIVIL PENALTIES IMPOSED IN ACCORDANCE WITH <—
27 SECTION 305 AND THIS SECTION SHALL BE PAID INTO THE PROFESSIONAL
28 LICENSURE AUGMENTATION ACCOUNT.

29 Section 13. Section 605 of the act is amended to read:

30 Section 605. [Out-of-state] Promotional land sales; approval.

1 (a) Any person who proposes to engage in [sales] real estate
2 transactions of a promotional nature in this Commonwealth for a
3 property located inside or outside of this Commonwealth, shall
4 first apply to the commission for its approval before so doing,
5 and they and their [salesmen] salespeople shall comply with such
6 rules, regulations, restrictions and conditions pertaining
7 thereto as the commission may impose as well as all those
8 provisions set forth in this act.

9 (b) A commission member may inspect properties on behalf of
10 the commission, if it is determined to be necessary by the
11 commission, after review of Federal, State and commission
12 filings required by law and any other relevant information. The
13 chairman shall assign commission members on a rotating basis to
14 inspect promotional properties. Such assignment shall be made at
15 a public meeting held pursuant to the act of July 19, 1974
16 (P.L.486, No.175), referred to as the Public Agency Open Meeting
17 Law.

18 (c) The commission shall charge an application fee for
19 applicants applying to sell promotional properties. Such fee
20 shall be determined by regulation and shall only reflect the
21 administrative costs associated with processing the
22 applications.

23 (d) If the commission has determined that an onsite
24 inspection is necessary, and upon receipt of the filing fee the
25 commission shall send to the developer an estimate of the
26 anticipated expense of the onsite inspection. After the
27 commission has received payment for these expenses a commission
28 member shall be assigned to perform the onsite inspection.
29 Should the actual cost of the inspection differ from the
30 commission's estimate, the developer shall be so notified and

the commission shall either assess the amount of the deficiency or remit the amount of the overage, upon or to the developer, as the case may be, within 30 days of the onsite inspection.

(e) The commission member who performs the onsite inspection shall not participate in the voting to approve the property.

(f) The commission member who performs the onsite inspection shall be reimbursed in accordance with current Commonwealth reimbursement standards. All financial transactions related to onsite inspections shall be a matter of public record. In no case shall the commission member receive any type of reimbursement directly from the developer.

Section 14. The act is amended by adding sections to read:
Section 606. Broker's disclosure to seller.

In any listing agreement or contract of agency, the broker shall make the following disclosures to any seller of real property:

(1) A statement that the broker's commission and the time period of the listing are negotiable.

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

Section 607. Broker's disclosure to buyer.

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

(1) A statement that the broker is the agent of the seller, not the buyer.

(2) A statement describing the purpose of the Real Estate Recovery Fund established under section 801 and the

1 telephone number of the commission at which the purchaser can
2 receive further information about the fund.

3 (3) A statement of the zoning classification of the
4 property together with a description of that classification.

5 Section 608. Information to be given at initial interview.

6 At the initial interview with a prospective buyer or seller
7 the broker or salesperson must provide that person with a
8 pamphlet printed and distributed by the commission, which
9 explains all the following:

10 (1) That the broker is the agent of the seller and not
11 the buyer.

12 (2) The purpose of the Real Estate Recovery Fund and the
13 telephone number of the commission at which more information
14 can be obtained.

15 (3) A statement that both the duration of the listing
16 agreement or contract and the broker's commission are
17 negotiable.

18 (4) That any sales agreement or sales contract must
19 contain the zoning classification of the property and a
20 description of that classification.

21 Section 15. Section 803 of the act, amended March 7, 1982
22 (P.L.158, No.50), is amended to read:

23 Section 803. Application for recovery from fund.

24 (a) When any aggrieved person obtains a final judgment in
25 any court of competent jurisdiction against any person licensed
26 under this act, upon grounds of fraud, misrepresentation or
27 deceit with reference to any transaction for which a license or
28 registration certificate is required under this act (including
29 with respect to cemetery companies any violation of 9 Pa.C.S. §
30 308(b) (relating to accounts of qualified trustee)) and which

1 cause of action occurred on or after the effective date of this
2 act, the aggrieved person may, upon termination of all
3 proceedings, including reviews and appeals, file an application
4 in the court in which the judgment was entered for an order
5 directing payment out of the Real Estate Recovery Fund of the
6 amount unpaid upon the judgment.

7 (b) The aggrieved person shall be required to show:

8 (1) That he is not a spouse of the debtor, or the
9 personal representative of said spouse.

10 (2) That he has obtained a final judgment as set out in
11 this section.

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

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

18 (c) The commission shall have the right to answer actions
19 provided for under this section, and subject to court approval,
20 it may compromise a claim based upon the application of the
21 aggrieved party.

22 (d) When there is an order of the court to make payment or a
23 claim is otherwise to be levied against the fund, such amount
24 shall be paid to the claimant in accordance with the limitations
25 contained in this section. Notwithstanding any other provisions
26 of this section, the liability of that portion of the fund
27 allocated for the purpose of this act shall not exceed \$20,000
28 for any one [judgment] claim and shall not exceed \$100,000 per
29 licensee. If the [\$20,000] \$100,000 liability of the Real Estate
30 Recovery Fund as provided herein is insufficient to pay in full

1 claims adjudicated valid of all aggrieved persons against any
2 one licensee or registrant, such [~~\$20,000~~] \$100,000 shall be
3 distributed among them in such ratio that the respective claims
4 of the aggrieved applicants bear to the aggregate of such claims
5 held valid. If, at any time, the money deposited in the Real
6 Estate Recovery Fund is insufficient to satisfy any duly
7 authorized claim or portion thereof, the commission shall, when
8 sufficient money has been deposited in the fund, satisfy such
9 unpaid claims or portions thereof, in the order that such claims
10 or portions thereof were originally filed, plus accumulated
11 interest at the rate of 6% a year.

12 (e) Upon petition of the commission the court may require
13 all claimants and prospective claimants against one licensee or
14 registrant to be joined in one action, to the end that the
15 respective rights of all such claimants to the Real Estate
16 Recovery Fund may be equitably adjudicated and settled.

17 (f) Should the commission pay from the Real Estate Recovery
18 Fund any amount in settlement of a claim as provided for in this
19 act against a licensee, the license of that person shall
20 automatically suspend upon the effective date of the payment
21 thereof by the commission. No such licensee shall be granted
22 reinstatement until he has repaid in full plus interest at the
23 rate of [~~6%~~] 10% a year, the amount paid from the Real Estate
24 Recovery Fund.

25 (g) Should the commission pay from the Real Estate Recovery
26 Fund any amount in settlement of a claim as provided for in this
27 act against a registrant the registrant shall automatically be
28 denied the right to sell cemetery lots upon the effective date
29 of the payment thereof by the commission. No such registrant
30 shall be granted the right to sell cemetery lots until he has

1 repaid in full plus interest at the rate of [6%] 10% a year, the
2 amount paid from the Real Estate Recovery Fund.

3 Section 16. Persons who are members of the State Real Estate
4 Commission on the effective date of this act shall serve on the
5 State Real Estate Commission as provided for in this amendatory
6 act until their current terms on the State Real Estate
7 Commission would have expired or until their successors are duly
8 appointed and qualified but no longer than six months after the
9 expiration of their terms.

10 Section 17. Any person who holds a valid license issued by
11 the State Real Estate Commission under the act of February 19,
12 1980 (P.L.15, No.9), known as the Real Estate Licensing and
13 Registration Act prior to the effective date of this amendatory
14 act shall, on and after the effective date hereof, be deemed to
15 be licensed by the State Real Estate Commission as provided for
16 in this amendatory act.

17 Section 18. This act, with respect to the State Real Estate
18 Commission, shall constitute the legislation required to
19 reestablish an agency pursuant to the act of December 22, 1981
20 (P.L.508, No.142), known as the Sunset Act.

21 Section 19. (a) Section 453 of the act of April 9, 1929
22 (P.L.177, No.175), known as The Administrative Code of 1929, is
23 repealed.

24 (b) All acts and parts of acts are repealed insofar as they
25 are inconsistent with this act.

26 Section 20. This act shall take effect in 60 days.