

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 324

Session of
1985

INTRODUCED BY MURPHY, LEVIN, AFFLERBACH, GODSHALL, HALUSKA,
SEVENTY, MORRIS, NOYE, LLOYD, TRELLO, VAN HORNE,
E. Z. TAYLOR, COHEN, D. W. SNYDER, ITKIN, HERMAN, FLICK,
FARGO, CIVERA, DAWIDA, COLAFELLA, SEMMEL, LINTON, BELARDI,
PISTELLA, PRATT, MERRY, PRESTON, KASUNIC AND OLASZ,
FEBRUARY 12, 1985

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 25, 1985

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," further providing for civil penalties, escrow
5 accounts, for the regulation of promotional land sales and
6 for certain disclosures.

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

9 Section 1. Section 201 of the act of February 19, 1980
10 (P.L.15, No.9), known as the Real Estate Licensing and
11 Registration Act, is amended by adding a definition to read:
12 Section 201. Definitions.

13 The following words and phrases when used in this act shall
14 have, unless the context clearly indicates otherwise, the
15 meanings given to them in this section:

16 * * *

17 "Promotional real estate transactions." This term shall only

1 apply to real estate transactions regulated by section 605 that
2 use any of the following methods of advertising or marketing:

3 (1) promotional materials to be disseminated to the
4 public in connection with the sale of real estate;

5 (2) radio, television or print advertisements;

6 (3) offers of travel, accommodations, meals or
7 entertainment at no cost or reduced cost or any other items
8 of any value;

9 (4) direct mail solicitation;

10 (5) advertising by testimonials or endorsements;

11 (6) scripts or standardized narrative for use in making
12 solicitations by telephone or any other method of
13 telecommunications; or

14 (7) any effort to sell through the use of meetings,
15 receptions or other gatherings, whether public or private,
16 for the purpose of selling real estate.

17 * * *

18 Section 2. Sections 305 AND 404, ~~604(a)(25) and 605~~ of the <—
19 act, amended March 29, 1984 (P.L.162, No.32), are amended to
20 read:

21 Section 305. Civil penalty.

22 (a) In addition to any other civil remedy or criminal
23 penalty provided for in this act, the commission, by a vote of
24 the majority of the maximum number of the authorized membership
25 of the commission as provided by law, or by a vote of the
26 majority of the duly qualified and confirmed membership or a
27 minimum of five members, whichever is greater, may levy a civil
28 penalty of up to \$1,000 on any current licensee or registrant
29 who violates any provision of this act or on any person who
30 practices real estate without being properly licensed or

1 registered to do so under this act.

2 (b) The commission shall levy this penalty only after
3 affording the accused party the opportunity for a hearing, as
4 provided in Title 2 of the Pennsylvania Consolidated Statutes
5 (relating to administrative law and procedure).

6 Section 404. Power to promulgate regulations.

7 (a) The commission shall have the power to promulgate rules
8 or regulations in order to administer and effectuate the
9 purposes of this act. All existing rules or regulations shall
10 remain in full force and effect until modified by the
11 commission.

12 (b) In addition to the requirements set forth in section
13 604(a)(5), the commission shall adopt regulations which require
14 builder-owners EMPLOYING BUILDER-OWNER SALESPERSONS to establish <—
15 escrow accounts, protecting buyers and potential buyers, which
16 are subject to review and enforcement by the commission.

17 SECTION 3. SECTION 604(A)(18) AND (25) OF THE ACT, AMENDED <—
18 MARCH 29, 1984 (P.L.162, NO.32), ARE AMENDED AND THE SECTION IS
19 AMENDED BY ADDING A PARAGRAPH TO READ:

20 Section 604. Prohibited acts.

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

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

4 * * *

5 (18) SOLICITING, SELLING OR OFFERING FOR SALE REAL <—
6 PROPERTY BY OFFERING FREE LOTS, OR CONDUCTING LOTTERIES OR
7 CONTESTS OR OFFERING PRIZES FOR THE PURPOSE OF INFLUENCING BY
8 DECEPTIVE CONDUCT ANY PURCHASER OR PROSPECTIVE PURCHASER OF
9 REAL PROPERTY. THE COMMISSION SHALL PROMULGATE NECESSARY
10 RULES AND REGULATIONS TO PROVIDE STANDARDS FOR NONDECEPTION
11 CONDUCT UNDER THIS PARAGRAPH. [ANY OFFERING BY MAIL OR BY
12 TELEPHONE OF ANY PRIZE IN RELATION TO THE OFFERING OF SALE OF
13 REAL PROPERTY, INCLUDING TIME SHARING, SHALL BE ACCOMPANIED
14 BY A STATEMENT OF THE FAIR MARKET VALUE, NOT SUGGESTED RETAIL
15 PRICE, OF ALL PRIZES OFFERED, PLUS A STATEMENT OF THE ODDS OF
16 RECEIVING ANY SUCH PRIZE. IF THE OFFERING IS BY MAIL THE
17 STATEMENT OF VALUE AND ODDS SHALL BE PRINTED IN THE SAME SIZE
18 TYPE AS THE PRIZE DESCRIPTION AND SHALL APPEAR IMMEDIATELY
19 ADJACENT TO SAID DESCRIPTION.]

20 * * *

21 (25) Violating section 605, 606 or 607.

22 * * *

23 (26) IN THE CASE OF A CEMETERY COMPANY REGISTRANT, <—
24 ASSESSMENT OF A FEE, WHETHER ONE-TIME, PERIODIC OR OTHERWISE,
25 FOR THE PURPOSE OF MAINTENANCE, CARE OR UPKEEP OF A CEMETERY
26 LOT WITHOUT INFORMING THE PURCHASER OF THE LOT, IN WRITING,
27 PRIOR TO PURCHASE THAT SUCH A FEE WOULD BE ASSESSED. A
28 VIOLATION OF THIS PARAGRAPH CONSTITUTES "UNFAIR METHODS OF
29 COMPETITION" AND "UNFAIR OR DECEPTIVE ACTS OR PRACTICES"
30 WITHIN THE MEANING OF SECTION 2(4) OF THE ACT OF DECEMBER 17,

1 1968 (P.L.1224, NO.387), KNOWN AS THE "UNFAIR TRADE PRACTICES
2 AND CONSUMER PROTECTION LAW."

3 * * *

4 SECTION 4. SECTION 605 OF THE ACT, AMENDED MARCH 29, 1984
5 (P.L.162, NO.32), IS AMENDED TO READ:

6 Section 605. Promotional land sales; approval.

7 (a) Any person who proposes to engage in promotional real
8 estate transactions [of a promotional nature] in this
9 Commonwealth for a property located inside or outside of this
10 Commonwealth, shall first register with the commission for its
11 approval before so doing, and shall comply with such
12 restrictions and conditions pertaining thereto as the commission
13 may impose by rule or regulation. [Registration shall not be
14 required for property located within or outside of this
15 Commonwealth which is subject to a statutory exemption under the
16 Federal Interstate Land Sales Full Disclosure Act (Public Law
17 90-448, 82 Stat. 590, 15 U.S.C. § 1702).]

18 (b) [As used in this section the term "promotional real
19 estate" means an interest in property as defined in this act
20 which is a part of a common promotional plan undertaken by a
21 single developer or group of developers acting together to offer
22 interests in real estate for sale or lease through advertising
23 by mail, newspaper or periodical, by radio, television,
24 telephone or other electronic means which is contiguous, known,
25 designated or advertised as a common unit or by a common name:
26 Provided, however, That the term shall not mean real estate
27 interest involving less than 50 lots or shares, cemetery lots
28 and land involving less than 25 acres.] The phrase "promotional
29 real estate transactions" applies to the following:

30 (1) Time shares as defined in section 201.

1 (2) Real estate which is part of a common promotional
2 plan undertaken by a single developer or group of developers
3 acting to offer interests in real estate for sale or lease
4 which is contiguous, known, designated or advertised as a
5 common unit or by a common name.

6 (c) A person [may] shall apply to the commission for
7 registration of promotional land sales by filing a [statement of
8 record] registration form and meeting the requirements of this
9 section. Each registration shall be renewed annually. In lieu of
10 registration or renewal, the commission [shall] may accept
11 registrations, property reports or similar disclosure documents
12 filed in other states or with the Federal Government[: Provided,
13 That the] ~~that the commission has determined to be of the same~~ <—
14 ~~or similar substantive nature as a registration form required by~~
15 ~~the commission.~~ The commission may require other information it
16 deems pertinent. The commission may suspend or revoke the
17 registration on its own motion or when the Federal Government or
18 a registering state suspends or revokes [a regulation] the
19 registration. The commission [shall] may, by rule and
20 regulation, cooperate with similar jurisdictions in other states
21 to establish uniform filing procedures and forms, public
22 offering statements and similar forms. The commission shall
23 charge [an application fee] such application and registration
24 fees as determined by regulation to cover costs [associated with
25 processing applications for registrations and renewals].

26 (d) [Unless prior approval has been granted by the
27 commission or the promotional plan is currently registered with
28 the Department of Housing and Urban Development pursuant to the
29 Federal Interstate Land Sales Full Disclosure Act or pursuant to
30 State law, the statement of record] The registration form shall

1 contain the information and be accompanied by documents
2 specified as follows:

3 (1) The name and address of each person having an
4 interest in the property to be covered by the [statement of
5 record] registration and the extent of such interest[, except
6 that in]. In the case of a corporation the statement shall
7 list all officers and all holders of 10% or more of the
8 subscribed or issued stock of the corporations.

9 (2) A legal description of, and a statement of the total
10 area included in the property and a statement of the
11 topography thereof, together with a map showing the division
12 proposed and the dimensions of the property to be covered by
13 the [statement of record] REGISTRATION and their relation to <—
14 existing streets and roads.

15 (3) A statement of the condition of the title to the
16 land comprising the property including all encumbrances,
17 mortgages, judgments, liens or unpaid taxes and deed
18 restrictions and covenants applicable thereto.

19 (4) A statement of the general terms and conditions,
20 including the range of selling prices or rents at which it is
21 proposed to dispense of the property.

22 (5) A statement of the present condition of access to
23 the property, the existence of any unusual conditions
24 relating to safety which are known to the developer,
25 completed improvements including, but not limited to,
26 streets, sidewalks, sewage disposal facilities and other
27 public utilities, the proximity in miles of the subdivision
28 to nearby municipalities and the nature of any improvements
29 to be installed by the developer and his estimated schedule
30 for completion.

1 (6) A statement of any encumbrance, a statement of the
2 consequences for the purchaser of a failure by the person or
3 persons bound to fulfill obligations under any instrument or
4 instruments creating such encumbrance and the steps, if any,
5 taken to protect the purchaser in such eventuality.

6 (7) A copy of the articles of incorporation with all
7 amendments thereto, if the developer is a corporation, copies
8 of all instruments by which a deed of trust is created or
9 declared, if the developer is a trust, copies of articles of
10 partnership or association and all other papers pertaining to
11 its organization if the developer is a partnership,
12 unincorporated association, joint stock company or other form
13 of organization and if the purported holder of legal title is
14 a person other than the developer, copies of the above
15 documents for such person.

16 (8) Copies of the deed or other instrument establishing
17 title to the property in the developer or other person and
18 copies of any instrument creating a lien or encumbrance upon
19 the title of the developer or other person or copies of the
20 opinion or opinions of counsel in respect to the title to the
21 subdivision in the developer or other person or copies of the
22 title insurance policy guaranteeing such title.

23 (9) Copies of all forms of conveyance to be used in
24 selling or leasing lots to purchasers.

25 (10) Copies of instruments creating easements or other
26 restrictions.

27 (11) Certified financial statements of the developer or
28 an uncertified financial statement if a certified statement
29 is not available as may be required by the commission.

30 (12) Such other information and such other documents and

1 certifications as the commission may require as being
2 reasonably necessary or appropriate to assure that
3 prospective purchasers have access to truthful and accurate
4 information concerning the offering.

5 (13) Consent to submit to the jurisdiction of the
6 Commonwealth Court with respect to any action arising under
7 this section.

8 (e) If at any time subsequent to the date of filing of a
9 [statement of record] registration form with the commission, a
10 change shall occur affecting any material facts required to be
11 contained in the statement, the developer shall promptly file an
12 amendment thereto.

13 (f) If it appears to the commission that the [statement of
14 record] registration form or any amendment thereto, is on its
15 face incomplete or inaccurate in any material respect, the
16 commission shall so advise the developer within a reasonable
17 time after the filing of the statement or amendment. Failure of
18 the developer to provide the information requested by the
19 commission within 90 days shall result in an automatic denial of
20 an application or a suspension of registration.

21 (g) If it appears to the commission that a [statement of
22 record] registration form includes any untrue statement of
23 material facts or omits to state any material fact required to
24 be stated therein or necessary to make the statements therein
25 not misleading, the commission may reject such application. The
26 commission shall make an investigation of all consumer
27 complaints concerning real estate promotions in the absence of a
28 reciprocal agreement to handle onsite inspections. Under no
29 circumstances shall a member or an employee of the commission
30 perform an onsite inspection. If the commission determines that

1 a violation of this section has occurred, the commission may:

- 2 (1) suspend or revoke any registration;
- 3 (2) refer the complaint to the Consumer Protection
4 Bureau of the Office of Attorney General; or
- 5 (3) seek an injunction or temporary restraining order to
6 prohibit the complained of activity in the Commonwealth
7 Court.

8 (h) Upon rejection of an application or amendment, the
9 applicant may within 20 days after such notice request a hearing
10 before the commission. Prior to, and in conjunction with such
11 hearing, the commission, or its designee, shall have access to
12 and may demand the production of any books and papers of, and
13 may examine, the developer, any agents or any other person in
14 respect of any matter relevant to the application. If the
15 developer or any agents fail to cooperate or obstruct or refuse
16 to permit the making of an investigation, such conduct shall be
17 grounds for the denial of the application.

18 (i) Any person violating the provisions of this section
19 shall be subject to all criminal and civil penalties imposed by
20 this act.

21 (J) NO REGISTRANT, LICENSEE OR ANY OTHER PERSON SHALL ENGAGE <—
22 IN ANY TRANSACTION INVOLVING PROMOTIONAL REAL ESTATE IN THIS
23 COMMONWEALTH FOR A PROPERTY WITHIN OR OUTSIDE THIS COMMONWEALTH
24 OR MAKE ANY SOLICITATION, SALE OR OFFER IN CONNECTION THEREWITH
25 BY OFFERING FREE LOTS OR CONDUCTING LOTTERIES OR CONTESTS OR
26 OFFERING PRIZES FOR THE PURPOSE OF INFLUENCING BY DECEPTIVE
27 CONDUCT ANY PURCHASER OR PROSPECTIVE PURCHASER OF PROMOTIONAL
28 REAL ESTATE. ANY OFFERING BY MAIL OR BY TELEPHONE OF ANY PRIZE
29 IN RELATION TO ANY SOLICITATION, OFFERING OR SALE INVOLVING
30 PROMOTIONAL REAL ESTATE MADE BY ANY REGISTRANT, LICENSEE OR

1 OTHER PERSON SHALL BE ACCOMPANIED BY A STATEMENT OF THE FAIR
2 MARKET VALUE, NOT SUGGESTED RETAIL PRICE, OF ALL PRIZES OFFERED,
3 PLUS A STATEMENT OF THE ODDS OF RECEIVING ANY SUCH PRIZE. IF THE
4 OFFERING IS BY MAIL, THE STATEMENT OF VALUE SHALL BE PRINTED IN
5 THE SAME SIZE TYPE AS THE PRIZE DESCRIPTION AND SHALL APPEAR
6 IMMEDIATELY ADJACENT TO THE ACTUAL PRIZE DESCRIPTION.

7 ~~(j)~~ (K) The provisions of this section shall not apply to: <—

8 (1) Cemetery lots.

9 (2) A residential plan as defined by the commission.

10 No filing shall be required by the commission to verify the
11 exemptions granted by this subsection.

12 Section 3 5. The act is amended by adding sections to read: <—

13 Section 605.1. Establishment of the fund.

14 There is hereby established the Promotional Land Sales Fund
15 for the purposes hereinafter set forth in this act.

16 Section 605.2. Funding of the fund.

17 (a) The commission shall, by regulation, allocate a portion
18 of the registration fees charged pursuant to section 605 to the
19 Promotional Land Sales Fund. All said fees shall be paid into
20 the State Treasury and credited to the Promotional Land Sales
21 Fund and said deposits shall be used solely for the purposes for
22 which the fund is established. The fund shall be invested and
23 interest and dividends shall accrue to the fund.

24 (b) When any aggrieved person obtains a final judgment in
25 any court of competent jurisdiction against any person
26 registered with the commission pursuant to section 605, upon
27 grounds of fraud, misrepresentation or deceit with reference to
28 any transaction for which registration is required and which
29 cause of action occurred on or after the effective date of this
30 amendatory act, the aggrieved person may, upon termination of

all proceedings, including reviews and appeals, file an application in the court in which the judgment was entered for an order directing payment out of the Promotional Land Sales Fund of the amount unpaid upon the judgment.

(c) The aggrieved person shall be required to show:

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

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

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

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

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

(e) When there is an order of the court to make payment or a claim is otherwise to be levied against the fund, such amount shall be paid to the claimant in accordance with the limitations contained in this section. Notwithstanding any other provisions of this section, the liability of that portion of the fund allocated for the purpose of this act shall not exceed \$20,000 for any one claim and shall not exceed \$100,000 per registrant. If the \$100,000 liability of the Promotional Land Sales Fund as provided herein is insufficient to pay in full claims adjudicated valid of all aggrieved persons against any one registrant, such \$100,000 shall be distributed among them in

1 such ratio that the respective claims of the aggrieved
2 applicants bear to the aggregate of such claims held valid. If,
3 at any time, the money deposited in the Promotional Land Sales
4 Fund is insufficient to satisfy any duly authorized claim or
5 portion thereof, the commission shall, when sufficient money has
6 been deposited in the fund, satisfy such unpaid claims or
7 portions thereof in the order that such claims or portions
8 thereof were originally filed, plus accumulated interest at the
9 rate of 6% a year.

10 (f) Upon petition of the commission, the court may require
11 all claimants and prospective claimants against one licensee or
12 registrant to be joined in one action, to the end that the
13 respective rights of all such claimants to the Promotional Land
14 Sales Fund may be equitably adjudicated and settled.

15 (g) Should the commission pay from the Promotional Land
16 Sales Fund any amount in settlement of a claim as provided for
17 in this act against a registrant, the registration of that
18 person shall automatically suspend upon the effective date of
19 the payment thereof by the commission. No such registrant shall
20 be granted reinstatement until he has repaid in full, plus
21 interest at the rate of 10% a year, the amount paid from the
22 Promotional Land Sales Fund.

23 (h) No person or claimant shall recover from the Promotional
24 Land Sales Fund if such person or claimant has been paid a claim
25 against the same licensee or registrant under the Real Estate
26 Recovery Fund.

27 Section 4 6. ~~Section 607~~ SECTIONS 606, 607 AND 608 of the <—
28 act, added March 29, 1984 (P.L.162, No.32), ~~is~~ ARE amended to <—
29 read:

30 SECTION 606. BROKER'S DISCLOSURE TO SELLER. <—

1 IN ANY LISTING AGREEMENT OR CONTRACT OF AGENCY, THE BROKER
2 SHALL MAKE THE FOLLOWING DISCLOSURES TO ANY SELLER OF REAL
3 PROPERTY:

4 (1) A STATEMENT THAT THE BROKER'S COMMISSION AND THE
5 TIME PERIOD OF THE LISTING [ARE NEGOTIABLE] HAVE BEEN
6 DETERMINED AS A RESULT OF NEGOTIATIONS BETWEEN THE BROKER AND
7 THE SELLER.

8 (2) A STATEMENT DESCRIBING THE PURPOSE OF THE REAL
9 ESTATE RECOVERY FUND ESTABLISHED UNDER SECTION 801 AND THE
10 TELEPHONE NUMBER OF THE COMMISSION AT WHICH THE SELLER CAN
11 RECEIVE FURTHER INFORMATION ABOUT THE FUND.

12 Section 607. Broker's disclosure to buyer.

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

16 (1) A statement [that the broker is the agent of the
17 seller, not the buyer] as to whom the broker represents.

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

22 (3) A statement of the zoning classification of the
23 property except for single-family dwellings. [Failure of any
24 sales agreement or sales contract to contain a statement of
25 the zoning classification of the property shall render the
26 sales agreement or sales contract null and void and] ~~An~~ <—
27 ~~agreement of sale which does not conform to the requests of~~
28 ~~this paragraph shall not be enforceable by the seller against~~
29 ~~the buyer. Any term of an agreement of sale purporting to~~
30 ~~waive the rights of the buyer to the disclosures required by~~

~~this paragraph shall be void. In the event of cancellation of
the agreement of sale by the buyer,~~ any deposits tendered by
the buyer shall be returned to the buyer without any
requirement for any court action.] <—

SECTION 608. INFORMATION TO BE GIVEN AT INITIAL INTERVIEW. <—

THE COMMISSION SHALL ESTABLISH RULES OR REGULATIONS WHICH
SHALL SET FORTH THE MANNER AND METHOD OF DISCLOSURE OF
INFORMATION TO THE PROSPECTIVE BUYER OR SELLER DURING THE
INITIAL INTERVIEW. SUCH DISCLOSURE SHALL INCLUDE, BUT SHALL NOT
BE LIMITED TO:

(1) A STATEMENT [THAT THE BROKER IS THE AGENT OF THE
SELLER] AS TO WHOM THE BROKER REPRESENTS.

(2) 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.

(3) A STATEMENT THAT THE DURATION OF THE LISTING
AGREEMENT OR CONTRACT AND THE BROKER'S COMMISSION ARE
NEGOTIABLE.

(4) A STATEMENT THAT ANY SALES AGREEMENT EXCEPT FOR A
SINGLE-FAMILY DWELLING MUST CONTAIN THE ZONING CLASSIFICATION
OF A PROPERTY.

Section ~~5~~ 7. Section 803 of the act is amended by adding a <—
subsection to read:

Section 803. Application for recovery from fund.

* * *

(h) No person or claimant shall recover from the Real Estate
Recovery Fund if such person or claimant has been paid a claim
against the same licensee or registrant under the Promotional
Land Sales Fund.

Section ~~6~~ 8. This act shall take effect immediately. <—