

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 11

Session of  
1989

INTRODUCED BY LLOYD, RITTER, GRUITZA, VROON, FOX, GEIST, COHEN,  
WILLIAMS, MICHLOVIC, D. W. SNYDER, MELIO, KUKOVICH, WOZNIAK,  
THOMAS, DeLUCA, BELFANTI, MOEHLMANN, TIGUE, LINTON, RAYMOND,  
BOYES, NOYE, PRESTON, YANDRISEVITS, CAWLEY, STUBAN, DISTLER,  
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GIGLIOTTI, HALUSKA, VEON, CORRIGAN, SCHULER, STABACK,  
KOSINSKI, E. Z. TAYLOR, DEMPSEY, KAISER, BORTNER,  
CAPPABIANCA, FLICK, BELARDI AND ROBBINS, JANUARY 18, 1989

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
FEBRUARY 8, 1989

## 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," regulating time shares, continuing education and  
5 disclosures; and further providing for exclusions AND FOR  
6 PROHIBITED ACTS. <—

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

9 Section 1. The definition of "time share" in section 201 of  
10 the act of February 19, 1980 (P.L.15, No.9), known as the Real  
11 Estate Licensing and Registration Act, amended March 29, 1984  
12 (P.L.162, No.32), is amended 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:

1       \* \* \*

2       "Time share." The right, however evidenced or documented, to  
3 use [or occupy a dwelling unit held in fee simple or by lease]  
4 and occupy one or more units on a periodic basis according to an  
5 arrangement allocating use and occupancy rights of that unit or  
6 those units between other similar users. As used in this  
7 definition, the term "unit" is a building or portion thereof  
8 permanently affixed to real property and designated for separate  
9 occupancy or a campground or portion thereof designated for  
10 separate occupancy.

11       Section 2. Section 304(6) of the act, amended March 29, 1984  
12 (P.L.162, No.32), is amended to read:

13       Section 304. Exclusions.

14       Except as otherwise provided in this act, the provisions of  
15 this act shall not apply to the following:

16       \* \* \*

17       (6) The elected officer, director or employee of any  
18 banking institution or trust company operating under Federal  
19 or State banking laws [where only the real estate] when  
20 acting on behalf of the banking institution or trust company  
21 [is involved]. The Secretary of Banking may, by regulation,  
22 establish professional standards applicable to an elected  
23 officer, director or employee when the real estate is not  
24 involved in a loan transaction with the banking institution  
25 or trust company.

26       Section 3. The act is amended by adding a section to read:  
27 Section 404.1. Continuing education.

28       (a) The commission shall adopt, promulgate and enforce rules  
29 and regulations consistent with the provisions of this act  
30 establishing requirements of continuing education to be met by

1 individuals licensed as real estate brokers and real estate  
2 salespersons under this act as a condition for renewal of their  
3 licenses. The commission may waive all or part of the continuing  
4 education requirement for a salesperson or broker who shows  
5 evidence, to the commission's satisfaction, that he was unable  
6 to complete the requirement due to illness, emergency or  
7 hardship. Such regulations shall include any fees necessary for  
8 the commission to carry out its responsibilities under this  
9 section.

10 (b) Beginning with the license period designated by  
11 regulation, each person licensed pursuant to this act shall be  
12 required to obtain 14 hours of mandatory continuing education  
13 during each two-year license period. A licensed broker or  
14 salesperson who wishes to activate a license which has been  
15 placed on inactive status shall be required to document no more  
16 than 14 hours of continuing education. Upon renewal of the  
17 license, the commission shall waive all or part of the 14 hours,  
18 on a prorated basis, if one year or less remains before the next  
19 renewal at the time such license is activated.

20 (c) All courses, materials, locations and instructors shall  
21 be approved by the commission. No credit shall be given for any  
22 course in office management.

23 (d) The commission shall initiate the promulgation of  
24 regulations to carry out the provisions of this section within  
25 six months of the effective date of this section.

26 Section 4. Sections 604(A)(18), 606, 607 and 608, AMENDED OR <—  
27 added March 29, 1984 (P.L.162, No.32), are amended to read:

28 SECTION 604. PROHIBITED ACTS. <—

29 (A) THE COMMISSION MAY UPON ITS OWN MOTION, AND SHALL  
30 PROMPTLY UPON THE VERIFIED COMPLAINT IN WRITING OF ANY PERSON

1 SETTING FORTH A COMPLAINT UNDER THIS SECTION, ASCERTAIN THE  
2 FACTS AND, IF WARRANTED, HOLD A HEARING FOR THE SUSPENSION OR  
3 REVOCATION OF A LICENSE OR REGISTRATION CERTIFICATE OR FOR THE  
4 IMPOSITION OF FINES NOT EXCEEDING \$1,000, OR BOTH. THE  
5 COMMISSION SHALL HAVE POWER TO REFUSE A LICENSE OR REGISTRATION  
6 CERTIFICATE FOR CAUSE OR TO SUSPEND OR REVOKE A LICENSE OR  
7 REGISTRATION CERTIFICATE OR TO LEVY FINES UP TO \$1,000, OR BOTH,  
8 WHERE THE SAID LICENSE HAS BEEN OBTAINED BY FALSE  
9 REPRESENTATION, OR BY FRAUDULENT ACT OR CONDUCT, OR WHERE A  
10 LICENSEE OR REGISTRANT, IN PERFORMING OR ATTEMPTING TO PERFORM  
11 ANY OF THE ACTS MENTIONED HEREIN, IS FOUND GUILTY OF:

12 \* \* \*

13 (18) SOLICITING, SELLING OR OFFERING FOR SALE REAL  
14 PROPERTY BY OFFERING FREE LOTS, OR CONDUCTING LOTTERIES OR  
15 CONTESTS OR OFFERING PRIZES FOR THE PURPOSE OF INFLUENCING BY  
16 DECEPTIVE CONDUCT ANY PURCHASER OR PROSPECTIVE PURCHASER OF  
17 REAL PROPERTY. THE COMMISSION SHALL PROMULGATE NECESSARY  
18 RULES AND REGULATIONS TO PROVIDE STANDARDS FOR NONDECEPTION  
19 CONDUCT UNDER THIS PARAGRAPH.

20 (I) ANY OFFERING BY MAIL OR BY TELEPHONE OF ANY  
21 PRIZE, GIFT, AWARD OR BONUS IN RELATION TO THE OFFERING  
22 OF SALE OF REAL PROPERTY, INCLUDING TIME SHARING, SHALL  
23 BE ACCOMPANIED BY A STATEMENT OF THE FAIR MARKET VALUE,  
24 NOT SUGGESTED RETAIL PRICE, OF ALL PRIZES OFFERED, PLUS A  
25 STATEMENT OF THE ODDS OF RECEIVING ANY SUCH PRIZE. IF THE  
26 OFFERING IS BY MAIL THE STATEMENT OF VALUE AND ODDS SHALL  
27 BE PRINTED IN THE SAME SIZE TYPE AS THE PRIZE DESCRIPTION  
28 AND SHALL APPEAR IMMEDIATELY ADJACENT TO SAID  
29 DESCRIPTION.

30 (II) IF A PRIZE IS TO BE AWARDED AS A REBATE, COUPON

1 OR DISCOUNT CERTIFICATE, A STATEMENT OF THAT FACT SHALL  
2 BE INCLUDED IN THE SAME PARAGRAPH AS THE PRIZE  
3 DESCRIPTION. AN OFFERING BY MAIL SHALL INCLUDE A  
4 STATEMENT IMMEDIATELY FOLLOWING THE PRIZE DESCRIPTION OF  
5 ANY FEES AND THE MAXIMUM AMOUNT OF EACH WHICH THE  
6 PRIZEWINNER MUST PAY IN ORDER TO RECEIVE THE PRIZE. SUCH  
7 FEES SHALL INCLUDE, BUT NOT BE LIMITED TO, DEALER  
8 PREPARATION, SHIPPING, HANDLING, REDEMPTION AND SHIPPING  
9 INSURANCE. EACH FEE ASSOCIATED WITH A PRIZE, AND THE ODDS  
10 OF RECEIVING THE PRIZE, SHALL APPEAR IMMEDIATELY BELOW  
11 ANY PHOTOGRAPH OF THE PRIZE WHICH APPEARS ON ANY OFFERING  
12 BY MAIL.

13 (III) AN OFFERING BY MAIL SHALL BE WRITTEN IN A  
14 CLEAR AND COHERENT MANNER, USING COMMON USAGES OF WORDS  
15 AND TERMS. A CONCISE DESCRIPTION OF THE REAL PROPERTY OR  
16 INTEREST BEING PROMOTED SHALL APPEAR IN ANY OFFERING AND  
17 SHALL INCLUDE A STATEMENT THAT THE INTEREST IS A TIME  
18 SHARE, WHERE APPLICABLE. IF THE PROSPECTIVE PRIZEWINNER  
19 MUST PERSONALLY VISIT AND INSPECT THE REAL PROPERTY OR  
20 INTEREST BEING PROMOTED AND LISTEN TO A SALES  
21 PRESENTATION IN ORDER TO WIN A PRIZE, THE OFFERING SHALL  
22 INCLUDE A STATEMENT OF THAT FACT. AN OFFERING MAY INCLUDE  
23 INSTRUCTIONS FOR A RECIPIENT TO CONTACT A CERTAIN  
24 TELEPHONE NUMBER WITHIN A SPECIFIED TIME PERIOD OR BY A  
25 SPECIFIED DATE, IF THE OFFEROR IDENTIFIES THE BUSINESS  
26 ENTITY AND ITS RELATIONSHIP TO THE OFFEROR AND COMPLIES  
27 WITH THIS PARAGRAPH.

28 (IV) SUBSTITUTIONS OF PRIZES HAVING EQUAL OR GREATER  
29 FAIR MARKET VALUE MAY BE MADE IF THE OFFEROR COMPLIES  
30 WITH THIS PARAGRAPH.

1           (V) AS USED IN THIS PARAGRAPH, THE TERM "PRIZE"  
2           INCLUDES, BUT IS NOT LIMITED TO, MONEY, PERSONAL  
3           PROPERTY, VACATIONS, TRAVEL CERTIFICATES, MOTOR VEHICLES  
4           AND APPLIANCES.

5           \* \* \*

6 Section 606. Broker's disclosure to seller.

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

10           (1) A statement that the broker's commission and the  
11 time period of the listing [are negotiable] have been  
12 determined as a result of negotiations between the broker and  
13 the seller.

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

18 Section 607. Broker's disclosure to buyer.

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

22           (1) A statement that the broker is the agent of the  
23 seller[, not the buyer] or that the broker is the agent of  
24 the buyer.

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

29           (3) A statement of the zoning classification of the  
30 property [except for single-family dwellings. Failure of any

1 sales agreement or sales contract to contain a statement of  
2 the zoning classification of the property] except in cases  
3 where the property (or each parcel thereof, if subdividable)  
4 is zoned solely or primarily to permit single-family  
5 dwelling. Failure to comply with this requirement shall  
6 render the sales agreement or sales contract [null and void  
7 and] voidable at the option of the buyer; and, if voided, any  
8 deposits tendered by the buyer shall be returned to the buyer  
9 without any requirement for any court action.

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

11 The commission shall establish rules or regulations which  
12 shall set forth the manner and method of disclosure of  
13 information to the prospective buyer or seller during the  
14 initial interview. Such disclosure shall include, but shall not  
15 be limited to:

16 (1) A statement that the broker is the agent of the  
17 seller or that the broker is the agent of the buyer.

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

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

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

28 Section 5. The act is amended by adding sections to read:

29 Section 608.1. Limited broker's disclosure.

30 A limited broker shall, prior to the signing of a sales

agreement or sales contract, provide a prospective purchaser or seller with a statement describing the purpose of the Real Estate Recovery Fund established under section 801. The statement shall include the telephone number of the commission at which the prospective purchaser or seller can receive further information about the fund. The commission shall establish rules and regulations setting forth the manner and method of disclosure by limited brokers.

Section 609. Right to cancel purchase of time share.

(a) A purchaser shall have the right to cancel the purchase of a time share until midnight of the seventh day following the date on which the purchaser executed the purchase contract.

(b) The right of cancellation shall be set forth conspicuously in boldface type of at least ten point in size immediately above the signature of the purchaser on the purchase contract in substantially the following form:

"You, the purchaser, may cancel this purchase at any time prior to midnight of the seventh day following the date of this transaction. If you desire to cancel, you are required to notify the seller, in writing, at (address). Such notice shall be given by certified return receipt mail or by any other bona fide means of delivery which provides you with a receipt. Such notice shall be effective upon being postmarked by the United States Postal Service or upon deposit of the notice with any bona fide means of delivery which provides you with a receipt."

This clause is to be separately initialed by the purchaser.

Copies of all documents which place an obligation upon a purchaser shall be given to the purchaser upon execution by the



1 purchaser.

2 (c) Notice of cancellation shall be given by certified  
3 return receipt mail or by any other bona fide means of delivery,  
4 provided that the purchaser obtains a receipt. A notice of  
5 cancellation given by a bona fide means of delivery shall be  
6 effective on the date postmarked or on the date of deposit of  
7 the notice with any bona fide means of delivery.

8 (d) Within ten business days after the receipt of a notice  
9 of cancellation, all payments made under the purchase contract  
10 shall be refunded to the purchaser and any documents executed by  
11 the purchaser, in connection with the purchase contract, shall  
12 be returned to him. In the event of a cancellation pursuant to  
13 this section, any promotional prizes, gifts and premiums issued  
14 to the purchaser by the seller shall remain the property of the  
15 purchaser.

16 (e) The right of cancellation shall not be waivable by any  
17 purchaser.

18 (f) A purchaser who exercises the right of cancellation  
19 shall not be liable for any damages as a result of the exercise  
20 of that right.

21 (g) In addition to constituting a violation of this act, a  
22 violation of this section by any individual, corporation,  
23 partnership, association or other entity shall also be deemed a  
24 violation of the act of December 17, 1968 (P.L.1224, No.387),  
25 known as the "Unfair Trade Practices and Consumer Protection  
26 Law." The Attorney General is authorized to enforce this  
27 section. Any actions brought by the Attorney General to enforce  
28 this section shall be in addition to any actions which the  
29 commission may bring under this act.

30 (h) The right of the purchaser to bring an action to enforce

1 this section shall be independent of any rights of action which  
2 this section confers on the Attorney General and the commission.

3 (i) Nothing in this act shall affect any rights conferred  
4 upon the purchaser by 68 Pa.C.S. Pt. II Subpt. B (relating to  
5 condominiums).

6 (j) This act shall be applicable to time shares which are  
7 located within this Commonwealth and to time shares which are  
8 located outside this Commonwealth but for which the purchase  
9 contract was executed by the purchaser within this Commonwealth.

10 Section 6. This act shall take effect in 60 days.