

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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KOSINSKI, E. Z. TAYLOR, DEMPSEY, KAISER, BORTNER,
CAPPABIANCA, FLICK, BELARDI AND ROBBINS, JANUARY 18, 1989

SENATOR BELL, CONSUMER PROTECTION AND PROFESSIONAL LICENSURE, IN
SENATE, AS AMENDED, MARCH 20, 1990

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 THE APPLICATION OF THE ACT <—
5 TO PERSONS EMPLOYED BY AN OWNER OF REAL ESTATE FOR THE
6 PURPOSE OF MANAGING OR MAINTAINING MULTIFAMILY RESIDENTIAL
7 PROPERTY; regulating time shares, ~~continuing education~~ <—
8 CAMPGROUND MEMBERSHIPS and disclosures; and further providing <—
9 ~~for exclusions and~~ for prohibited acts. <—

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

12 Section 1. The ~~definition of~~ DEFINITIONS OF "BUILDER-OWNER <—
13 SALESPERSON" AND "time share" in section 201 of the act of
14 February 19, 1980 (P.L.15, No.9), known as the Real Estate
15 Licensing and Registration Act, amended March 29, 1984 (P.L.162,
16 No.32), ~~is~~ ARE amended AND THE SECTION IS AMENDED BY ADDING A <—
17 DEFINITION to read:

1 Section 201. Definitions.

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

5 * * *

6 "BUILDER-OWNER SALESPERSON." ANY PERSON WHO IS A FULL-TIME <—
7 EMPLOYEE OF A BUILDER-OWNER OF SINGLE AND MULTIFAMILY DWELLINGS
8 LOCATED WITHIN THE COMMONWEALTH AND AS SUCH EMPLOYEE SHALL BE
9 AUTHORIZED AND EMPOWERED TO LIST FOR SALE, SELL OR OFFER FOR
10 SALE, OR TO NEGOTIATE THE SALE OR EXCHANGE OF REAL ESTATE, OR TO
11 LEASE OR RENT, OR OFFER TO LEASE, RENT OR PLACE FOR RENT, ANY
12 REAL ESTATE OWNED BY HIS BUILDER-OWNER EMPLOYER, OR COLLECT OR
13 OFFER, OR ATTEMPT TO COLLECT, RENT FOR THE USE OF REAL ESTATE
14 OWNED BY HIS BUILDER-OWNER EMPLOYER, FOR AND ON BEHALF OF SUCH
15 BUILDER-OWNER EMPLOYER. [THE TERM DOES NOT INCLUDE ANY PERSON
16 EMPLOYED BY AN OWNER OF REAL ESTATE FOR THE PURPOSE OF MANAGING
17 OR MAINTAINING MULTIFAMILY RESIDENTIAL PROPERTY: PROVIDED,
18 HOWEVER, THAT SUCH PERSON IS NOT AUTHORIZED OR EMPOWERED BY SUCH
19 OWNER TO ENTER INTO LEASES ON BEHALF OF THE OWNER, TO NEGOTIATE
20 TERMS OR CONDITIONS OF OCCUPANCY WITH CURRENT OR PROSPECTIVE
21 TENANTS, OR TO HOLD MONEY BELONGING TO TENANTS OTHER THAN ON
22 BEHALF OF THE OWNER. THE TERM "NEGOTIATE," AS USED IN THIS
23 DEFINITION DOES NOT MEAN THE TRANSMISSION OF INFORMATION BETWEEN
24 THE OWNER AND CURRENT OR PROSPECTIVE TENANTS, SUCH AS RENTAL
25 AMOUNTS, BUILDING RULES AND REGULATIONS OR LEASING
26 DETERMINATIONS, SO LONG AS THE OWNER RETAINS THE AUTHORITY TO
27 MAKE ALL SUCH DECISIONS.]

28 "CAMPGROUND MEMBERSHIP." AN INTEREST, OTHER THAN IN FEE
29 SIMPLE OR BY LEASE, WHICH GIVES THE PURCHASER THE RIGHT TO USE A
30 UNIT OF REAL PROPERTY FOR THE PURPOSE OF LOCATING A RECREATIONAL

1 VEHICLE, TRAILER, TENT, TENT TRAILER, PICKUP CAMPER OR OTHER
2 SIMILAR DEVICE ON A PERIODIC BASIS PURSUANT TO A MEMBERSHIP
3 CONTRACT ALLOCATING USE AND OCCUPANCY RIGHTS BETWEEN OTHER
4 SIMILAR USERS.

5 * * *

6 "Time share." The right, however evidenced or documented, to
7 use for occupy [a dwelling unit held in fee simple or by lease] <—
8 ~~and occupy~~ one or more units on a periodic basis according to an <—
9 arrangement allocating use and occupancy rights of that unit or
10 those units between other similar users. As used in this
11 definition, the term "unit" is a building or portion thereof
12 permanently affixed to real property and designated for separate
13 occupancy or a campground or portion thereof designated for
14 separate occupancy. THE PHRASE "TIME SHARE" DOES NOT INCLUDE <—
15 CAMPGROUND MEMBERSHIP.

16 Section 2. Section ~~304(6)~~ 304 of the act, amended March 29, <—
17 1984 (P.L.162, No.32), is amended to read:
18 Section 304. Exclusions.

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

21 * * * <—

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

1 (1) AN OWNER OF REAL ESTATE WITH RESPECT TO PROPERTY <—
2 OWNED OR LEASED BY SUCH OWNER. IN THE CASE OF A PARTNERSHIP
3 OR CORPORATION, THIS EXCLUSION SHALL NOT EXTEND TO MORE THAN
4 FIVE OF ITS PARTNERS OR OFFICERS, RESPECTIVELY, NOR TO OTHER
5 PARTNERSHIP OR CORPORATION PERSONNEL OR EMPLOYEES.

6 (2) THE EMPLOYEES OF A PUBLIC UTILITY ACTING IN THE
7 ORDINARY COURSE OF UTILITY-RELATED BUSINESS UNDER THE
8 PROVISIONS OF TITLE 66 OF THE PENNSYLVANIA CONSOLIDATED
9 STATUTES (RELATING TO PUBLIC UTILITIES), WITH RESPECT TO
10 NEGOTIATING THE PURCHASE, SALE OR LEASE OF PROPERTY.

11 (3) THE OFFICERS OR EMPLOYEES OF A PARTNERSHIP OR
12 CORPORATION WHOSE PRINCIPAL BUSINESS IS THE DISCOVERY,
13 EXTRACTION, DISTRIBUTION OR TRANSMISSION OF ENERGY OR MINERAL
14 RESOURCES, PROVIDED THAT THE PURCHASE, SALE OR LEASE OF REAL
15 ESTATE IS A COMMON AND NECESSARY TRANSACTION IN THE CONDUCT
16 OF SUCH PRINCIPAL BUSINESS.

17 (4) THE SERVICES RENDERED BY AN ATTORNEY-IN-FACT UNDER
18 AN EXECUTED AND RECORDED POWER OF ATTORNEY FROM THE OWNER OR
19 LESSOR (PROVIDED SUCH POWER OF ATTORNEY IS NOT UTILIZED TO
20 CIRCUMVENT THE INTENT OF THIS ACT) OR BY AN ATTORNEY AT LAW.

21 (5) A PERSON ACTING AS TRUSTEE IN BANKRUPTCY,
22 ADMINISTRATOR, EXECUTOR, TRUSTEE OR GUARDIAN WHILE ACTING
23 UNDER A COURT ORDER OR UNDER THE AUTHORITY OF A WILL OR OF A
24 TRUST INSTRUMENT.

25 (6) THE ELECTED OFFICER OF ANY BANKING INSTITUTION OR
26 TRUST COMPANY OPERATING UNDER FEDERAL OR STATE BANKING LAWS
27 WHERE ONLY THE REAL ESTATE OF THE BANKING INSTITUTION OR
28 TRUST COMPANY IS INVOLVED.

29 (7) ANY OFFICER OR EMPLOYEE OF A CEMETERY COMPANY WHO,
30 AS INCIDENTAL TO HIS PRINCIPAL DUTIES AND WITHOUT

1 REMUNERATION THEREFOR, SHOWS LOTS IN SUCH COMPANY'S CEMETERY
2 TO PERSONS FOR THEIR USE AS A FAMILY BURIAL LOT AND WHO
3 ACCEPTS DEPOSITS ON SUCH LOTS FOR THE REPRESENTATIVES OF THE
4 CEMETERY COMPANY LEGALLY AUTHORIZED TO SELL THE SAME.

5 (8) CEMETERY COMPANIES AND CEMETERIES OWNED OR
6 CONTROLLED BY A BONA FIDE CHURCH OR RELIGIOUS CONGREGATION OR
7 FRATERNAL ORGANIZATION OR BY ANY ASSOCIATION CREATED BY A
8 BONA FIDE CHURCH OR RELIGIOUS ORGANIZATION OR BY A FRATERNAL
9 ORGANIZATION.

10 (9) AN AUCTIONEER LICENSED UNDER THE ACT OF SEPTEMBER
11 29, 1961 (P.L.1745, NO.708), KNOWN AS "THE AUCTIONEERS'
12 LICENSE ACT," WHILE PERFORMING AUTHORIZED DUTIES AT ANY BONA
13 FIDE AUCTION.

14 (10) ANY PERSON EMPLOYED BY AN OWNER OF REAL ESTATE FOR
15 THE PURPOSE OF MANAGING OR MAINTAINING MULTIFAMILY
16 RESIDENTIAL PROPERTY: PROVIDED, HOWEVER, THAT SUCH PERSON IS
17 NOT AUTHORIZED OR EMPOWERED BY SUCH OWNER TO ENTER INTO
18 LEASES ON BEHALF OF THE OWNER, TO NEGOTIATE TERMS OR
19 CONDITIONS OF OCCUPANCY WITH CURRENT OR PROSPECTIVE TENANTS,
20 OR TO HOLD MONEY BELONGING TO TENANTS OTHER THAN ON BEHALF OF
21 THE OWNER. SO LONG AS THE OWNER RETAINS THE AUTHORITY TO MAKE
22 ALL SUCH DECISIONS, THE EMPLOYEES MAY SHOW APARTMENTS, AND
23 PROVIDE INFORMATION ON RENTAL AMOUNTS, BUILDING RULES AND
24 REGULATIONS AND LEASING DETERMINATIONS.

25 ~~Section 3. The act is amended by adding a section to read:~~ <—

26 ~~Section 404.1. Continuing education.~~

27 ~~(a) The commission shall adopt, promulgate and enforce rules~~
28 ~~and regulations consistent with the provisions of this act~~
29 ~~establishing requirements of continuing education to be met by~~
30 ~~individuals licensed as real estate brokers and real estate~~

~~salespersons under this act as a condition for renewal of their licenses. The commission may waive all or part of the continuing education requirement for a salesperson or broker who shows evidence, to the commission's satisfaction, that he was unable to complete the requirement due to illness, emergency or hardship. Such regulations shall include any fees necessary for the commission to carry out its responsibilities under this section.~~

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

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

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

~~Section 4. Sections 604(a)(18), 606, 607 and 608, amended or added March 29, 1984 (P.L.162, No.32), are amended to read:~~

~~SECTION 3. SECTION 604(A) OF THE ACT IS AMENDED BY ADDING A PARAGRAPH TO READ:~~

~~Section 604. Prohibited acts.~~

~~(a) The commission may upon its own motion, and shall~~

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

13 * * *

14 ~~(18) Soliciting, selling or offering for sale real~~ <—
15 ~~property by offering free lots, or conducting lotteries or~~
16 ~~contests or offering prizes for the purpose of influencing by~~
17 ~~deceptive conduct any purchaser or prospective purchaser of~~
18 ~~real property. The commission shall promulgate necessary~~
19 ~~rules and regulations to provide standards for nondeception~~
20 ~~conduct under this paragraph.~~

21 ~~(i) Any offering by mail or by telephone of any~~
22 ~~prize, gift, award or bonus in relation to the offering~~
23 ~~of sale of real property, including time sharing, shall~~
24 ~~be accompanied by a statement of the fair market value,~~
25 ~~not suggested retail price, of all prizes offered, plus a~~
26 ~~statement of the odds of receiving any such prize. If the~~
27 ~~offering is by mail the statement of value and odds shall~~
28 ~~be printed in the same size type as the prize description~~
29 ~~and shall appear immediately adjacent to said~~
30 ~~description.~~

~~(ii) If a prize is to be awarded as a rebate, coupon or discount certificate, a statement of that fact shall be included in the same paragraph as the prize description. An offering by mail shall include a statement immediately following the prize description of any fees and the maximum amount of each which the prizewinner must pay in order to receive the prize. Such fees shall include, but not be limited to, dealer preparation, shipping, handling, redemption and shipping insurance. Each fee associated with a prize, and the odds of receiving the prize, shall appear immediately below any photograph of the prize which appears on any offering by mail.~~

~~(iii) An offering by mail shall be written in a clear and coherent manner, using common usages of words and terms. A concise description of the real property or interest being promoted shall appear in any offering and shall include a statement that the interest is a time share, where applicable. If the prospective prizewinner must personally visit and inspect the real property or interest being promoted and listen to a sales presentation in order to win a prize, the offering shall include a statement of that fact. An offering may include instructions for a recipient to contact a certain telephone number within a specified time period or by a specified date, if the offeror identifies the business entity and its relationship to the offeror and complies with this paragraph.~~

~~(iv) Substitutions of prizes having equal or greater fair market value may be made if the offeror complies~~

~~with this paragraph.~~

~~(v) As used in this paragraph, the term "prize" includes, but is not limited to, money, personal property, vacations, travel certificates, motor vehicles and appliances.~~

~~* * *~~

~~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] have been determined as a result of negotiations between the broker and the seller.~~

~~(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] or that the broker is the agent of the buyer.~~

~~(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 purchaser can receive further information about the fund.~~

~~(3) A statement of the zoning classification of the~~

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

11 ~~Section 608. Information to be given at initial interview.~~

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

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

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

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

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

29 ~~(26) VIOLATING SECTION 609.~~

30 ~~Section 5 4. The act is amended by adding sections to read:~~

1 Section 608.1. Limited broker's disclosure.

2 A limited broker shall, prior to the signing of a sales
3 agreement or sales contract, provide a prospective purchaser or
4 seller with a statement describing the purpose of the Real
5 Estate Recovery Fund established under section 801. The
6 statement shall include the telephone number of the commission
7 at which the prospective purchaser or seller can receive further
8 information about the fund. The commission shall establish rules
9 and regulations setting forth the manner and method of
10 disclosure by limited brokers.

11 Section 609. Right to cancel purchase of time share AND

<—

12 CAMPGROUND MEMBERSHIP.

13 (a) A purchaser shall have the right to cancel the purchase
14 of a time share OR A CAMPGROUND MEMBERSHIP until midnight of the
15 ~~seventh~~ FIFTH day following the date on which the purchaser
16 executed the purchase contract.

<—

<—

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

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

<—

1 receipt."

2 This clause is to be separately initialed by the purchaser.

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

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

12 (d) Within ten business days after the receipt of a notice
13 of cancellation, all payments made under the purchase contract
14 shall be refunded to the purchaser and any documents executed by <—
15 the purchaser, in connection with the purchase contract, shall
16 be returned to him. AN ACKNOWLEDGMENT THAT THE CONTRACT IS VOID <—
17 SHALL BE SENT TO THE PURCHASER. In the event of a cancellation
18 pursuant to this section, any promotional prizes, gifts and
19 premiums issued to the purchaser by the seller shall remain the
20 property of the purchaser.

21 (e) The right of cancellation shall not be waivable by any
22 purchaser.

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

26 (g) In addition to constituting a violation of this act, a
27 violation of this section by any individual, corporation,
28 partnership, association or other entity shall also be deemed a
29 violation of the act of December 17, 1968 (P.L.1224, No.387),
30 known as the "Unfair Trade Practices and Consumer Protection

1 Law." The Attorney General is authorized to enforce this
2 section. Any actions brought by the Attorney General to enforce
3 this section shall be in addition to any actions which the
4 commission may bring under this act.

5 (h) The right of the purchaser to bring an action to enforce
6 this section shall be independent of any rights of action which
7 this section confers on the Attorney General and the commission.

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

11 (j) This act shall be applicable to time shares AND <—
12 CAMPGROUND MEMBERSHIPS which are located within this
13 Commonwealth and to time shares AND CAMPGROUND MEMBERSHIPS which <—
14 are located outside this Commonwealth but for which the purchase
15 contract was executed by the purchaser within this Commonwealth.

16 Section ~~6~~ 5. This act shall take effect in 60 days. <—