



1 liability partnership, limited partnership OR limited liability <—  
2 company, business trust, association or other entity that: <—  
3 (1) is incorporated or otherwise organized under the  
4 laws of this Commonwealth or another jurisdiction;  
5 (2) does not hold a license under this act;  
6 ~~(3) is beneficially owned only by licensees who are all~~ <—  
7 ~~affiliated with the same broker; and~~  
8 ~~(4) (3) does not hold itself out to the public as~~ <—  
9 ~~providing real estate services OR REAL ESTATE-RELATED~~ <—  
10 ~~SERVICES; AND~~  
11 (4) IS SOLELY OWNED BY LICENSEES WHO ARE ALL AFFILIATED  
12 WITH THE SAME BROKER.

13 IN CASE OF THE DEATH OF AN OWNER OF A QUALIFIED ASSOCIATION,  
14 OWNERSHIP MAY CONTINUE THROUGH THE LICENSEES' ESTATE FOR A  
15 PERIOD NOT TO EXCEED 18 MONTHS.

16 \* \* \*

17 Section 2. Section 604(a)(5) of the act, amended June 29,  
18 1990 (P.L.246, No.58), is amended, subsection (a) is amended by  
19 adding paragraphs and the section is amended by adding a  
20 subsection to read:

21 Section 604. Prohibited acts.

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

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

5 \* \* \*

6 [(5) Failure to comply with the following requirements:

7 (i) all deposits or other moneys accepted by every  
8 person, holding a real estate broker license under the  
9 provisions of this act, shall be retained by such real  
10 estate broker pending consummation or termination of the  
11 transaction involved, and shall be accounted for in the  
12 full amount thereof at the time of the consummation or  
13 termination;

14 (ii) every salesperson and associate broker promptly  
15 on receipt by him of a deposit or other moneys on any  
16 transaction in which he is engaged on behalf of his  
17 broker-employer, shall pay over the deposit to the  
18 broker;

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

21 (iv) every broker shall immediately deposit such  
22 moneys, of whatever kind or nature, belonging to others,  
23 in a separate custodial or trust fund account maintained  
24 by the broker with some bank or recognized depository  
25 until the transaction involved is consummated or  
26 terminated, at which time the broker shall account for  
27 the full amount received. Under no circumstances shall a  
28 broker permit any advance payment of funds belonging to  
29 others to be deposited in the broker's business or  
30 personal account, or to be commingled with any funds he

1 may have on deposit;

2 (v) every broker shall keep records of all funds  
3 deposited therein, which records shall indicate clearly  
4 the date and from whom he received money, the date  
5 deposited, the dates of withdrawals, and other pertinent  
6 information concerning the transaction, and shall show  
7 clearly for whose account the money is deposited and to  
8 whom the money belongs. All such records and funds shall  
9 be subject to inspection by the commission. Such separate  
10 custodial or trust fund account shall designate the  
11 broker, as trustee, and such account must provide for  
12 withdrawal of funds without previous notice. All such  
13 records shall be available to the commission, or its  
14 representatives, immediately after proper demand or after  
15 written notice given, or upon written notice given to the  
16 depository;

17 (vi) a broker is not required to hold in escrow  
18 rents that he receives for property management for a  
19 lessor. A broker shall deposit rents received into a  
20 rental management account that is separate from the  
21 broker's escrow account and general business accounts; or

22 (vii) a broker shall be permitted to deposit moneys  
23 into his escrow account to cover service charges to this  
24 account assessed by the banking institution.]

25 (5.1) Failing to comply with any of the requirements of  
26 section 608.5.

27 \* \* \*

28 (31) Owning an interest in a qualified association that  
29 does any of the following:

30 (i) Participates in any of the prohibited acts under

1           this subsection.

2           (ii) ~~Is not beneficially owned only~~ SOLELY OWNED by     <—  
3           licensees who are all affiliated with the same broker.

4           (iii) Holds itself out to the public as providing  
5           real estate services OR REAL ESTATE-RELATED SERVICES.     <—

6           \* \* \*

7           (c) Notwithstanding any other provision of this act, it is  
8           not unlawful for a broker to pay a commission OR COMPENSATION to     <—  
9           a qualified association or for an associate broker or  
10           salesperson to receive A COMMISSION OR compensation for the     <—  
11           provision of REAL ESTATE SERVICES OR real estate-related     <—  
12           services from a qualified association in which the associate  
13           broker or salesperson owns an interest.

14           Section 3. Section 606.1(a)(5) of the act, added November  
15           25, 1998 (P.L.908, No.112), is amended AND THE SUBSECTION IS     <—  
16           AMENDED BY ADDING A PARAGRAPH to read:

17           Section 606.1. Duties of licensee generally.

18           (a) Regardless of whether a licensee is acting within the  
19           scope of an agency relationship with a consumer, a licensee owes  
20           to all consumers to whom the licensee renders real estate  
21           services the following duties which may not be waived:

22           \* \* \*

23           (5) to account in a timely manner for all money and  
24           property received from or on behalf of any consumer to a  
25           transaction consistent with the provisions of section  
26           [604(a)(5)] 608.5;

27           \* \* \*

28           (14) A LICENSEE MUST REPORT TO THE COMMISSION WITHIN 30     <—  
29           DAYS OF FORMING OR JOINING A QUALIFIED ASSOCIATION ALL OF THE  
30           FOLLOWING:

1           (I) NAME OF THE QUALIFIED ASSOCIATION.

2           (II) NAMES OF THE OWNERS OF THE QUALIFIED  
3           ASSOCIATION.

4           (III) THE JURISDICTION WHERE THE QUALIFIED  
5           ASSOCIATION IS REGISTERED.

6           (IV) DATE THE QUALIFIED ASSOCIATION WAS REGISTERED.

7           (V) CHANGES IN OWNERSHIP OF THE QUALIFIED  
8           ASSOCIATION.

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

10 Section 608.5. Handling of deposits and other escrows.

11           (a) All deposits or other escrows accepted by a broker must  
12 be retained by the broker pending:

13           (1) consummation of the transaction involved;

14           (2) termination prior to consummation of the transaction  
15 involved where there is either:

16           (i) no dispute as to entitlement to the deposit or  
17 other escrows; or

18           (ii) a prior agreement in writing or electronic form  
19 as to disposition of the deposit or other escrows in the  
20 event of a dispute regarding entitlement to the deposit  
21 or other escrows;

22           (3) receipt by the broker of instructions in writing or  
23 electronic form, signed by all of the parties to the  
24 transaction at any time after the broker's receipt of the  
25 deposit or other escrows, directing the broker to release  
26 some or all of the deposit or other escrows; or

27           (4) an order of a court of competent jurisdiction  
28 specifying disposition of the deposit or other escrows  
29 becoming final and not subject to appeal.

30           (b) Deposits and other escrows must be accounted for in the

1 full amount thereof at the time of consummation, termination or  
2 release as provided in subsection (a). If less than the full  
3 amount held pursuant to subsection (a) is released, notice must  
4 be given in writing or electronic form to all the parties to the  
5 transaction of the amounts released, the persons to whom  
6 distribution is made and the amounts that continue to be held  
7 pursuant to subsection (a).

8 (c) Every associate broker or salesperson shall, as soon as <—  
9 reasonably practicable PROMPTLY following receipt of a deposit <—  
10 or other escrow, pay over the funds to the broker employing the  
11 associate broker or salesperson.

12 (d) A broker shall not commingle deposits or other escrows  
13 or property of another person with the broker's own funds or  
14 property.

15 (e) A broker must deposit moneys and property, of whatever  
16 kind or nature, belonging to others, in a separate custodial or  
17 trust fund account maintained by the broker with a bank or  
18 recognized depository by the end of the business day following  
19 their receipt by the broker. The moneys and property must be  
20 held by the broker until they are paid or released as provided  
21 in subsection (a), at which time the broker shall account for  
22 the full amount received. Under no circumstances shall a broker  
23 permit any advance payment of funds belonging to others to be  
24 deposited in the broker's business or personal account or to be  
25 commingled with any funds the broker may have on deposit.

26 (f) If a deposit in connection with an offer to buy or lease  
27 real estate is in the form of a check and the buyer and seller  
28 or lessee and lessor consent in writing or electronic form, the  
29 broker may hold the check and not deposit it as otherwise  
30 required by this section pending acceptance of the offer. If the

1 offer is not accepted, the broker shall promptly return the  
2 check uncashed to the buyer or lessee. If the offer is accepted,  
3 the broker shall deposit the check into a custodial or trust  
4 fund account by the close of business on the business day  
5 following acceptance of the offer.

6 (g) A broker must keep records of all funds deposited in a  
7 custodial or trust fund account, which records indicate clearly  
8 the date and from whom the broker received the funds, the date  
9 deposited, the dates of withdrawals and other pertinent  
10 information concerning the transaction, and must show clearly  
11 for whose account the money is deposited and to whom the money  
12 belongs. All such records and funds shall be subject to  
13 inspection by the commission, and must be available to the  
14 commission, or its representatives, immediately after proper  
15 demand or after notice in writing or electronic form given to  
16 the broker or depository. Each separate custodial or trust fund  
17 account must designate the broker as trustee, and the account  
18 must provide for withdrawal of funds without previous notice.

19 (h) A broker is not required to hold in escrow rents that  
20 the broker receives for property management for a lessor.

21 (i) A broker must deposit rents received into a rental  
22 management account that is separate from the broker's escrow  
23 account and general business accounts.

24 (j) A broker is permitted to deposit moneys into an escrow  
25 account to cover service charges to the account assessed by the  
26 banking institution.

27 (k) This section does not preclude the parties to a  
28 transaction from agreeing in writing or electronic form to have  
29 deposits or other escrows held by a person other than

30 ~~(1) the brokers who represent the parties; or~~

<—

1           ~~(2) an associate broker or salesperson.~~ THE BROKERS WHO     ←  
2           REPRESENT THE PARTIES. THIS SUBSECTION SHALL NOT BE CONSTRUED  
3           TO ALLOW AN ASSOCIATE BROKER, SALESPERSON OR QUALIFIED  
4           ASSOCIATION TO HOLD DEPOSITS OR OTHER ESCROWS.  
5           Section 5. This act shall take effect in 60 days.