

No. 1980-9

AN ACT

SB 507

Establishing the State Real Estate Commission and providing for the licensing of real estate brokers and salesmen.

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

**CHAPTER 1
GENERAL PROVISIONS**

Section 101. Short title.

This act shall be known and may be cited as the "Real Estate Licensing Act."

**CHAPTER 2
DEFINITIONS**

Section 201. Definitions.

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

“Associate broker.” A broker employed by another broker.

“Broker.” Any person who, for another and for a fee, commission or other valuable consideration:

- (1) negotiates with or aids any person in locating or obtaining for purchase or lease any real estate;
- (2) negotiates the listing, sale, purchase, exchange, lease, financing or option for any real estate;
- (3) manages or appraises any real estate;
- (4) represents himself as a real estate consultant, counsellor, house finder;
- (5) undertakes to promote the sale, exchange, purchase or rental of real estate: Provided, however, That this provision shall not include any person whose main business is that of advertising, promotion or public relations; or
- (6) attempts to perform any of the above acts.

“Broker of record.” A sole proprietor or principal individual broker of a licensed corporation, partnership or association or other entity, foreign or domestic.

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

“Commission.” The State Real Estate Commission.

“Commissioner.” Commissioner of Professional and Occupational Affairs.

“Department.” The Department of State acting through the Commissioner of Professional and Occupational Affairs.

“Employ, employed, employee, employment.” The use of the words employ, employed, employee or employment in this act shall apply to the relationship of independent contractor as well as to the relationship of employment, except as applied to builder-owner salespersons.

“Limited broker.” Any person, partnership, association or corporation engaging in or carrying on the business or act in the capacity of a broker within the Commonwealth exclusively within the limited field or branch of business which applies to cemetery lots, plots and mausoleum spaces or openings.

“Limited salesperson.” Any person employed by a broker or limited broker to perform duties as defined herein under “limited broker”. No person employed by a broker to perform duties other than those activities as defined herein under “limited broker” shall be required to be licensed as a limited salesperson.

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

"Real estate." Any interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold, whether the land is situated in this Commonwealth or elsewhere including leasehold interests.

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

"Salesperson." Any person employed by a licensed real estate broker to list for sale, sell or offer for sale, to buy or offer to buy or to negotiate the purchase or sale or exchange of real estate or to negotiate a loan on real estate or to lease or rent or offer to lease, rent or place for rent any real estate or collect or offer or attempt to collect rent for the use of real estate for or in behalf of such real estate broker. No person employed by a broker to perform duties other than those activities as defined herein under "broker" shall be required to be licensed as a salesperson.

"School." Any person, corporation, partnership, association or other entity, foreign or domestic, which conducts classes in real estate subjects, but which is not a college or university duly accredited by the Middle States Association of Colleges and Secondary Schools or equivalent accreditation.

CHAPTER 3

APPLICATION OF THE ACT AND PENALTIES

Section 301. Unlawful to conduct business without license.

From and after the effective date of this act, it shall be unlawful for any person, directly or indirectly, to engage in or conduct, or to advertise or hold himself out as engaging in or conducting the business, or acting in the capacity of a broker or salesperson, limited broker, limited salesperson, builder-owner salesperson, or rental listing referral agent within this Commonwealth without first being licensed as such as provided in this act, unless he is exempted from obtaining a license under the provisions of section 304.

Section 302. Civil suits.

No action or suit shall be instituted, nor recovery be had, in any court of this Commonwealth by any person for compensation for any act done or service rendered, the doing or rendering of which is prohibited under the provisions of this act by a person other than a licensed broker, salesperson, limited broker, limited salesperson, builder-owner salesperson or rental listing referral agent, unless such person was duly licensed and registered hereunder as broker or salesperson at the time of offering to perform any such act or service or

procuring any promise or contract for the payment of compensation for any such contemplated act or service.

Section 303. Criminal penalties.

Any person who shall, after the effective date of this act, engage in or carry on the business, or act in the capacity of a broker, salesperson, limited broker, limited salesperson, builder-owner salesperson or rental listing referral agent, within this Commonwealth, without a license, or shall carry on or continue business after the suspension or revocation of any such license issued to him, or shall employ any person as a salesperson or limited salesperson to whom a license has not been issued, or whose license as such shall have been revoked or suspended, shall be guilty of a summary offense and upon conviction thereof for a first offense shall be sentenced to pay a fine not exceeding \$500 or suffer imprisonment, not exceeding three months, or both and for a second or subsequent offense shall be guilty of a felony of the third degree and upon conviction thereof, shall be sentenced to pay a fine of not less than \$2,000 but not more than \$5,000 or to imprisonment for not less than one year but not more than two years, or both.

Section 304. Exclusions.

The provisions of this act shall not apply to an owner of real estate with respect to property owned or leased by such owner, provided that in the case of a partnership or corporation, this exclusion shall not extend to more than five of its partners or officers, respectively, but to no other partnership or corporation personnel or employee, except the employees of a public utility acting in the ordinary course of utility related business under the provisions of Title 66 of the Pennsylvania Consolidated Statutes (relating to public utilities), with respect to negotiating the purchase, sale or lease of property nor shall this act be construed to include in any way the services rendered by an attorney in fact under a duly executed and recorded power of attorney from the owner or lessor (provided such power of attorney is not utilized to circumvent the intent of this act); nor by an attorney at law, nor shall it be held to include a person acting as receiver, trustee in bankruptcy, administrator, executor, trustee or guardian while acting under a court order or under the authority of a will or of a trust instrument, nor shall this act apply to the duly elected officer of any banking institution or trust company operating under Federal or State banking laws where real estate of the banking institution or trust company only is involved, nor shall they be held to include any officer or employee of a cemetery company who, as incidental to his principal duties and without remuneration therefor, shows lots in such company's cemetery to persons for their use as a family burial lot, and who accepts deposits on such lots for the representatives of the cemetery company, legally authorized to sell the same, nor shall it be held to include any properly licensed auctioneer, under statutes of this State, while performing authorized duties at any bona fide auction.

CHAPTER 4
POWERS AND DUTIES OF THE
STATE REAL ESTATE COMMISSION - GENERAL

Section 401. Duty to issue licenses.

It shall be the duty of the department to issue licenses to individuals, copartnerships and corporations, who shall comply with the provisions of this act.

Section 402. Approval of schools.

Any school which shall offer or conduct any course or courses of study in real estate shall first obtain approval from, and thereafter abide by the rules and regulations of the commission covering such schools.

Section 403. Authority to examine applicants.

The commission is empowered to prescribe the subjects to be tested. The department shall arrange for the services of professional testing services to write and administer examinations on behalf of the commission in accordance with commission guidance and approval.

Section 404. Power to promulgate regulations.

(a) The commission shall have the power to promulgate rules or regulations in order to administer and effectuate the purposes of this act. All existing rules or regulations adopted pursuant to the act of May 1, 1929 (P.L.1216, No.427), known as the "Real Estate Brokers License Act of one thousand nine hundred and twenty-nine," shall remain in full force and effect until modified by the commission. The proposed rules and regulations shall be submitted to the Secretary of the Senate and the Chief Clerk of the House of Representatives who shall cause the rules or regulations to be printed and distributed among all members of both chambers in the same manner as a reorganization plan. If both bodies fail to act within 60 days of receipt of such rules or regulations, or within ten legislative days after receipt, whichever shall last occur, rules or regulations adopted by the commission shall be promulgated pursuant to the provisions of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law and 45 Pa.C.S. Part II (relating to publication and effectiveness of Commonwealth documents).

(b) If either chamber disapproves any rule or regulation, such information shall be certified by the Speaker of the House of Representatives or President pro tempore of the Senate to the commission, any such rule or regulation shall not be promulgated as a final rule or regulation.

Section 405. Duty to keep records confidential.

Neither the Commissioner of Professional and Occupational Affairs, any member of the commission, nor any deputy, secretary, representative, clerk or other employee of the Commonwealth, shall directly or indirectly, willfully, exhibit, publish, divulge, or make known to any person or persons any record, report, statement, letter,

or any other matter, fact or thing except in accordance with the laws of this Commonwealth dealing with the public's right to access to Commonwealth proceedings and records. A person violating the provisions of this section shall be guilty of a misdemeanor and sentenced to pay a fine not exceeding \$1,000: Provided, however, That the provisions of this section shall not apply to any ruling or decision of the commission, with the record relative thereto, and upon which the same was founded, which ruling or decision shall have been duly made and entered under and in accordance with the provisions of this act, after investigation and hearing as hereinafter provided. All such records shall, immediately upon the entry of such ruling or decision, become public records of the department, subject to inspection by any person interested.

Section 406. Administration and enforcement.

The commission shall have the power and its duty shall be to administer and enforce the laws of the Commonwealth relating to those activities involving real estate for which licensing is required under this act and to instruct and require its agents to bring prosecutions for unauthorized and unlawful practice.

CHAPTER 5 QUALIFICATIONS AND APPLICATIONS FOR LICENSES

SUBCHAPTER A GENERAL

Section 501. Reputation; inactive licensee.

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

(b) Any person who remains inactive for a period of five years without renewing his license shall, prior to having a license reissued to him, submit to and pass an examination.

SUBCHAPTER B BROKER'S LICENSE

Section 511. Qualifications for license.

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

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

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

(3) The applicant shall have completed 16 semester credit hours of 15 hours each in real estate instruction in areas of study prescribed by the rules of the commission.

(4) The applicant shall have been engaged full time as a sales person for at least three years or possess educational or experience qualifications which the commission deems to be the equivalent thereof.

Section 512. Application for license.

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

(b) The application shall be accompanied by two photographs of the applicant or in the case of a copartnership, association or corporation of the applicant members or officers thereof.

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

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

Section 513. Corporations, partnerships and associations.

If the applicant for a broker's license is a corporation, partnership or association, then the provisions of sections 511 and 512 shall apply to the individual designated as broker of record. The employees of said corporation, partnership or association actually engaging in or intending to engage in the real estate business shall meet the provisions of sections 521 and 522.

**SUBCHAPTER C
SALESPERSON'S LICENSE**

Section 521. Qualifications for license.

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

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

(2) The applicant shall have completed four semester credit hours of 15 hours each in real estate instruction in areas of study prescribed by the rules of the commission.

Section 522. Application for license.

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

(b) The applicant shall submit a sworn statement by the broker with whom he desires to be affiliated certifying that the broker will actively supervise and train the applicant.

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

SUBCHAPTER D LIMITED BROKER'S LICENSE

Section 531. Qualifications for license.

Each applicant for a limited broker's license shall as a condition to obtaining a license take the limited broker's license examination and score a passing grade. Prior to taking the examination:

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

(2) The applicant shall have been engaged full time as a salesperson or limited salesperson for at least three years or possess educational or experience qualifications which the commission deems to be the equivalent thereof.

Section 532. Application for license.

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

(b) The applicant shall have completed four semester credit hours of 15 hours each in real estate instruction in areas of study prescribed by the rules of the commission.

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

Section 533. Corporations, partnerships, associations or other entities.

If the applicant for a limited broker's license is a corporation, partnership, association, or other entity, foreign or domestic, then the provisions of sections 531 and 532 shall apply to the individual designated as broker of record, as well as those members actually engaging in or intending to engage in the real estate business.

SUBCHAPTER E LIMITED SALESPERSON'S LICENSE

Section 541. Qualifications for license.

The applicant for a limited salesperson's license shall be at least 18 years of age.

Section 542. Application for license.

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

(b) The applicant for a license shall submit a sworn affidavit by the broker or limited broker with whom he desires to be affiliated

certifying that the broker will actively supervise and train the applicant and certifying the truth and accuracy of the certification of the applicant.

SUBCHAPTER F BUILDER-OWNER SALESPERSON'S LICENSE

Section 551. Qualifications for license.

Each applicant for a builder-owner salesperson's license, shall as a condition precedent to obtaining a license, take the standard real estate salesperson's license examination and score a passing grade. Prior to taking the examination:

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

(2) The applicant shall be employed by a builder-owner possessing those qualifications as contained in section 501.

Section 552. Application for license.

(a) An application for a license as a builder-owner salesperson shall be made, in writing to the department, upon a form provided for the purpose by the department, and shall contain such information as to the applicant as the commission shall require.

(b) The applicant shall submit a sworn statement by the builder-owner by whom he is employed certifying to such employment.

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

SUBCHAPTER G RENTAL LISTING REFERRAL AGENT'S LICENSE

Section 561. Qualifications for license.

The qualification for licensure as a rental listing referral agent shall be the same as those set forth in sections 521 and 522 except that the applicant need not be affiliated with a broker.

CHAPTER 6 DUTIES OF LICENSEES

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

(a) Each resident licensed broker (which term in this section shall include limited broker) shall maintain a fixed office within this Commonwealth. The original license of a broker and of each licensee employed by such broker shall be prominently displayed in an office of the broker. The address of the office shall be designated on the current renewal form. In case of removal of a broker's office from the designated location, all licensees registered at that location shall make application to the commission before such removal or within ten days thereafter, designating the new location of the office, and shall pay the required fees, whereupon the commission shall issue a renewal form at the new location for the unexpired period, if the new location

complies with the terms of this act. Each licensed broker shall maintain a sign on the outside of his office indicating the proper licensed brokerage name.

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

Section 602. Nonresident licensees.

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

(b) In connection with the application of a nonresident of this Commonwealth for a license as broker or salesperson, the commission may accept, in lieu of the recommendations and statements otherwise required to accompany the application for such licensure, the license as broker or salesperson issued to such applicant by the proper authority of the state of his licensure. In such case the licensee need not maintain a place of business within this Commonwealth. It is hereby expressly stipulated, that the provisions of this subsection shall apply to licensed brokers and salespersons of those states under the laws of which similar recognition and courtesies are extended to licensed brokers and salespersons of this Commonwealth.

Section 603. Employment of associate brokers, salesperson.

No associate broker or salesperson (which term in this section shall include limited salesperson) shall be employed by any other broker than is designated upon the renewal form issued to said associate broker or said salesperson. Whenever a licensed salesperson or associate broker desires to change his employment from one licensed broker to another, he shall notify the commission in writing at least ten days prior to the intended date of change, pay the required fee, and return his current renewal license. The commission, shall, upon receipt of acknowledgement from the new broker, of the change of employment forthwith issue a new renewal form and pocket card, but in the interim at such time as the change in affiliation of the salesperson or associate broker occurs, he shall maintain a copy of the notification sent to the commissioner as his temporary license pending receipt of his renewal form. It shall be the duty of the applicant to notify the commission if a new renewal form or other pertinent communication is not received from the commission within 30 days.

Section 604. Prohibited acts.

The commission may upon its own motion, and shall promptly upon the verified complaint in writing of any person setting forth a complaint under this section, ascertain the facts and, if warranted, hold a hearing for the suspension or revocation of a license or for the imposition of fines not exceeding \$500. The commission shall have power to refuse a license for cause or to suspend or revoke a license or to levy fines up to \$500 where the said license has been obtained by false representation, or by fraudulent act or conduct, or where a licensee, in performing or attempting to perform any of the acts mentioned herein, is found guilty of:

(1) Making any substantial misrepresentation.

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

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

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

(5) Failure to comply with the following requirements:

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

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

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

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

(v) every broker shall keep records of all funds deposited therein, which records shall indicate clearly the date and from

whom he received money, the date deposited, the dates of withdrawals, and other pertinent information concerning the transaction, and shall show clearly for whose account the money is deposited and to whom the money belongs. All such records and funds shall be subject to inspection by the commission. Such separate custodial or trust fund account shall designate the broker, as trustee, and such account must provide for withdrawal of funds without previous notice. All such records shall be available to the commission, or its representatives, immediately after proper demand or after written notice given, or upon written notice given to the depository.

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

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

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

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

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

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

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

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

(14) Being convicted in a court of competent jurisdiction of this or any other state, or Federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar offense or offenses, or pleading guilty or nolo contendere to any such offense or offenses.

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

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

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

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

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

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

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

(22) Violating any provision of the act of October 27, 1955 (P.L.744, No.222), known as the "Pennsylvania Human Relations Act," or any order or consent decree of the Pennsylvania Human Relations Commission issued pursuant to such act if such order or consent decree resulted from a complaint of discrimination in the area of activities authorized by virtue of this act. Such activities include but are not limited to:

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

(ii) Giving false information for purposes of discrimination in the rental or sale of housing due to race, color, religious creed, sex, ancestry, national origin, physical handicap, disability or use of a guide dog because of blindness of user of a prospective lessee or purchaser.

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

Nothing contained in paragraph (22) is intended to preclude the State Real Estate Commission from conducting its own investigation and maintaining its own file on any complaint of discrimination. The intent hereunder is to allow the Pennsylvania Human Relations Commission a reasonable period of time to conduct its own investigations, hold hearings, render its decisions and inform the State Real

Estate Commission of its findings prior to the State Real Estate Commission taking action against any broker, salesperson or sales associate charged with a violation of paragraph (22).

If in the event the Pennsylvania Human Relations Commission does not act on a discrimination complaint within 90 days after it is filed with the Pennsylvania Human Relations Commission then the State Real Estate Commission may proceed with action against such licensee.

The 90-day waiting period delaying State Real Estate Commission action against licensee accused of discrimination applies only in initial complaints against such licensee, second or subsequent complaints may be brought by individuals or the Pennsylvania Human Relations Commission directly to the State Real Estate Commission.

Section 605. Out-of-state land sales; approval.

Any person who proposes to engage in sales of a promotional nature in this Commonwealth for a property located outside of this Commonwealth, shall first apply to the commission for its approval before so doing, and they and their salesmen shall comply with such rules, regulations, restrictions and conditions pertaining thereto as the commission may impose as well as all those provisions set forth in this act.

CHAPTER 7 PROCEEDINGS BEFORE THE COMMISSION

Section 701. Hearings held by commission.

(a) The said hearings may be held by the commission or any members thereof, or by any of its duly authorized representatives, or by any other person duly authorized by the commission for such purpose in any particular case.

(b) The commission may adopt the findings in the report or may, with or without additional testimony, either return the matter to the representative for such further consideration as the commission deems necessary or make additional or other findings of fact on the basis of all the legally probative evidence in the record and enter its conclusions of law and order in accordance with the requirements for the issuance of an adjudication under Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

(c) Proceedings before the commission shall be conducted in accordance with Title 1, Part 2 of the Pennsylvania Code.

Section 702. Imputed knowledge, limitations.

No violation of any of the provisions of this act on the part of any salesperson, associate broker, or other employee of any licensed broker, shall be grounds for the revocation or suspension of the license of the employer of such salesperson, associate broker, or employee, unless it shall appear upon the hearings held, that such employer had actual knowledge of such violation. A course of dealing

shown to have been followed by such employee shall constitute prima facie evidence of such knowledge upon the part of his employer.

CHAPTER 8 REAL ESTATE RECOVERY FUND

Section 801. Establishment of the fund.

There is hereby established the Real Estate Recovery Fund for the purposes hereinafter set forth in this act.

Section 802. Funding of the fund.

Each licensee entitled to renew his license on or after February 28, 1980, shall, when so renewing his license pay in addition to the applicable license fee a further fee of \$10, which shall be paid and credited to the Real Estate Recovery Fund, thereafter any person upon receiving his initial real estate license, shall, in addition to all fees, pay into the Real Estate Recovery Fund a sum of \$10. If at the commencement of any biennial renewal period beginning in 1982 and thereafter, the balance of the fund is less than \$300,000, the commission may assess an additional fee, in addition to the renewal fee, against each licensee in an amount not to exceed \$10 which will yield revenues sufficient to bring the balance of the fund to \$500,000. All said fees shall be paid into the State Treasury and credited to the Real Estate Recovery Fund, and said deposits shall be allocated solely for the purposes of the fund as provided in this act. The fund shall be invested and interest/dividends shall accrue to the fund.

Section 803. Application for recovery from fund.

(a) When any aggrieved person obtains a final judgment in any court of competent jurisdiction against any person licensed under this act, upon grounds of fraud, misrepresentation or deceit with reference to any transaction for which a license is required under this act and which cause of action occurred on or after the effective date of this 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 Real Estate Recovery Fund of the amount unpaid upon the judgment.

(b) 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 out 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.

(c) 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.

(d) 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 judgment. If the \$20,000 liability of the Real Estate Recovery Fund as provided herein is insufficient to pay in full claims adjudicated valid of all aggrieved persons against any one licensee, such \$20,000 shall be distributed among them in such ratio that the respective claims of the aggrieved applicants bear to the aggregate of such claims held valid. If, at any time, the money deposited in the Real Estate Recovery Fund is insufficient to satisfy any duly authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the fund, satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of 6% a year.

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

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

CHAPTER 9 REPEALER AND EFFECTIVE DATE

Section 901. Repealer.

The act of May 1, 1929 (P.L.1216, No.427), known as the "Real Estate Brokers License Act of one thousand nine hundred and twenty-nine," is repealed to the following conditions:

(1) All valid licenses issued prior to the effective date of this act under the provisions of said 1929 act shall continue with full force and validity during the period for which issued. For the subsequent license period, and each license period thereafter, the commission shall renew such licenses without requiring any license examination to be taken: Provided, however, That applicants for renewal or holders of such licenses shall be subject to all other provisions of this act.

(2) All proceedings in progress on the effective date shall continue to proceed under the terms of the act under which they were brought.

(3) All offenses alleged to have occurred prior to the effective date of this act shall be processed under the act of May 1, 1929 (P.L.1216, No.427).

Section 902. Effective date.

Section 561 shall take effect September 1, 1980 and the remaining provisions of this act shall take effect immediately.

APPROVED—The 19th day of February, A. D. 1980.

DICK THORNBURGH