

No. 1984-32

AN ACT

HB 1448

Amending the act of February 19, 1980 (P.L.15, No.9), entitled "An act establishing the State Real Estate Commission and providing for the licensing of real estate brokers and salesmen," adding and amending definitions; creating, empowering and governing a commission; eliminating confidentiality requirements; changing hours of study and specifying areas of study for applicants; eliminating fee requirements; imposing reporting duties on the Pennsylvania Human Relations Commission; adding a prohibition; broadening the scope of regulation of promotional sales and requiring public accounting for promotional sales; requiring contractual disclosures; regulating reinstatement of revoked licenses; changing limits of liability and increasing assessments for the recovery fund; requiring statements as to the fair market value and odds of receiving any prize in relation to certain offerings of real property; making editorial changes; and making repeals.

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

Section 1. Section 201 of the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, amended March 7, 1982 (P.L.158, No.50), is amended to read:

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 **or acquisition of interest in** any real estate;
- (2) negotiates the listing, sale, purchase, exchange, lease, **time share and similarly designated interests**, 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. *The term does not include any person employed by an owner of real estate for the purpose of managing or maintaining multifamily residential property: Provided, however, That such person is not authorized or empowered by such owner to enter into leases on behalf of the owner, to negotiate terms or conditions of occupancy with current or prospective tenants, or to hold money belonging to tenants other than on behalf of the owner. The term "negotiate," as used in this definition does not mean the transmission of information between the owner and current or prospective tenants, such as rental amounts, building rules and regulations or leasing determinations, so long as the owner retains the authority to make all such decisions.*

"Cemetery." A place for the disposal or burial of deceased human beings, by cremation or in a grave, mausoleum, vault, columbarium or other receptacle, but the term does not include a private family cemetery.

"Cemetery company." Any person who offers or sells to the public the ownership, or the right to use, any cemetery lot.

"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 and time share and similarly designated* interests. *A sale of a mobile home shall be deemed to be a transfer of an interest in real estate if accompanied by the assignment of the lease or sale of the land on which the mobile home is situated.*

“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] who conducts classes in real estate subjects[,] but [which] is not a college [or], university or institute of higher learning duly accredited by the Middle States Association of Colleges and Secondary Schools or equivalent accreditation.

“Time share.” *The right, however evidenced, to use or occupy a dwelling unit held in fee simple or by lease according to an arrangement allocating use and occupancy rights between other similar users.*

Section 2. The act is amended by adding a section to read:

Section 202. State Real Estate Commission.

(a) *The State Real Estate Commission is hereby created and shall consist of the Commissioner of Professional and Occupational Affairs; the Director of the Bureau of Consumer Protection, or his designee; three members who shall be persons representing the public at large; five other persons, each of whom shall at the time of his appointment be a licensed and qualified real estate broker under the existing law of this Commonwealth, and shall have been engaged in the real estate business in this Commonwealth for a period of not less than ten years immediately prior to his appointment; and one other person who shall have been licensed as a real estate broker, or limited real estate broker, for a period of at least five years and shall have been engaged in selling cemetery lots for at least ten years immediately prior to his appointment. Each of said members of the commission shall be appointed by the Governor.*

(b) *The term of office of each of said members shall be five years from his appointment, or until his successor has been appointed and qualified but not longer than six months beyond the five-year period. In the event that any of said members shall die or resign during his term of office, his successor shall be appointed in the same way and with the same qualifications as above set forth and shall hold office for the unexpired term.*

(c) *Six members of the commission shall constitute a quorum. The commission shall elect a secretary from among its members. A commission member who fails to attend three consecutive meetings shall forfeit his seat unless the Commissioner of Professional and Occupational Affairs, upon written request from the member, finds that the member should be excused from a meeting because of illness or the death of a family member.*

(d) Each member of the commission other than the Commissioner of Professional and Occupational Affairs shall receive reimbursement for reasonable expenses in accordance with Commonwealth regulations and per diem compensation at the rate of \$60 per day for the time actually devoted to the business of the commission.

(e) In addition to regularly scheduled meetings of the commission, there shall be at least one public meeting each year in Pittsburgh, one public meeting each year in Philadelphia and one public meeting each year in Harrisburg. At least 15 days prior to the holding of any public meeting pursuant to this subsection, the commission shall give public notice of the meeting in a newspaper of general circulation in each of the areas where the public meeting is to be held. The purpose of these special meetings shall be to solicit from members of the public, suggestions, comments and objections about real estate practice in this Commonwealth.

Section 3. Sections 301, 303 and 304 of the act, amended March 7, 1982 (P.L.158, No.50), are amended to read:

Section 301. Unlawful to conduct business without license or registration certificate.

[From and after the effective date of this act, it] 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, rental listing referral agent or cemetery company within this Commonwealth without first being licensed or registered **[as such]** as provided in this act, unless he is exempted from obtaining a license or registration certificate under the provisions of section 304.

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, rental listing referral agent or cemetery company, within this Commonwealth, without a license or registration certificate, or shall carry on or continue business after the suspension or revocation of any such license or registration certificate 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 or registration certificate 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 apply to officers or employees of a partnership or corporation whose principal business is the discovery, extraction, distribution or transmission of energy or mineral resources, provided that the purchase, sale or lease of real estate is a common and necessary transaction in the conduct of such principal business; 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 apply to cemetery companies and cemeteries owned or controlled by a bona fide church or religious congregation or fraternal organization or by any association created by a bona fide church or religious organization or by a fraternal organization, 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.] *Except as otherwise provided in this act, the provisions of this act shall not apply to the following:*

(1) An owner of real estate with respect to property owned or leased by such owner. In the case of a partnership or corporation, this exclusion shall not extend to more than five of its partners or officers, respectively, nor to other partnership or corporation personnel or employees.

(2) 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.

(3) The officers or employees of a partnership or corporation whose principal business is the discovery, extraction, distribution or transmission of energy or mineral resources, provided that the purchase, sale or lease of real estate is a common and necessary transaction in the conduct of such principal business.

(4) The services rendered by an attorney-in-fact under an 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) or by an attorney at law.

(5) *A person acting as 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.*

(6) *The elected officer of any banking institution or trust company operating under Federal or State banking laws where only the real estate of the banking institution or trust company is involved.*

(7) *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.*

(8) *Cemetery companies and cemeteries owned or controlled by a bona fide church or religious congregation or fraternal organization or by any association created by a bona fide church or religious organization or by a fraternal organization.*

(9) *An auctioneer licensed under the act of September 29, 1961 (P.L.1745, No.708), known as "The Auctioneers' License Act," while performing authorized duties at any bona fide auction.*

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

Section 305. Civil penalty.

In addition to any other civil remedy or criminal penalty provided for in this act, the commission, by a vote of the majority of the maximum number of the authorized membership of the commission as provided by law, or by a vote of the majority of the duly qualified and confirmed membership or a minimum of five members, whichever is greater, may levy a civil penalty of up to \$1,000 on any current licensee who violates any provision of this act or on any person who practices real estate without being properly licensed to do so under this act. The commission shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

Section 5. Section 401 of the act, amended March 7, 1982 (P.L.158, No.50), is amended to read:

Section 401. Duty to issue licenses and registration certificates.

It shall be the duty of the department to issue licenses and registration certificates to **[individuals, copartnerships and corporations,]** *any person* who shall comply with the provisions of this act.

Section 6. Section 404 of the act, repealed in part June 25, 1982 (P.L.633, No.181), is amended to read:

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.

Section 7. Section 405 of the act is repealed.

Section 8. The act is amended by adding sections to read:

Section 407. Fees.

(a) *All fees required under this act shall be fixed by the commission, by regulation and shall be subject to review in accordance with the act of June 25, 1982 (P.L. 633, No. 181), known as the "Regulatory Review Act." If the projected revenues to be generated by fees, fines and civil penalties imposed in accordance with the provisions of this act are not sufficient to match expenditures over a two-year period, the commission shall increase those fees by regulation, subject to review in accordance with the "Regulatory Review Act," such that the projected revenues will meet or exceed projected expenditures.*

(b) *If the Bureau of Professional and Occupational Affairs determines that the fees established by the commission are inadequate to meet the minimum enforcement efforts required, then the bureau, after consultation with the commission, shall increase the fees by regulation, subject to review in accordance with the "Regulatory Review Act," so that adequate revenue is raised to meet the required enforcement effort.*

Section 408. Reports to legislative committees.

(a) *The commission shall submit annually a report to the Professional Licensure Committee of the House of Representatives and to the Consumer Protection and Professional Licensure Committee of the Senate a description of the types of complaints received, status of cases, board action which has been taken and the length of time from the initial complaint to final board resolution.*

(b) *The commission shall also submit annually to the House of Representatives and the Senate Appropriations Committees, 15 days after the Governor has submitted his budget to the General Assembly, a copy of the budget request for the upcoming fiscal year which the commission previously submitted to the department.*

Section 9. Sections 501, 511, 512, 521 and 532 of the act are amended to read:

Section 501. Reputation; inactive licensee; *revoked license.*

(a) Licenses shall be granted only to *and renewed only for* 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] *the examination pertinent to the license for which the person is reapplying.*

(c) *Unless ordered to do so by Commonwealth Court, the commission shall not reinstate the license, within five years of the date of revocation, of any person whose license has been revoked under this act. Any person whose*

license has been revoked may reapply for a license at the end of the five-year period but must meet all of the licensing qualifications of this act for the license applied for, to include the examination requirement.

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] 240 hours [each]** in real estate instruction in areas of study prescribed by the rules of the commission, *which rules shall require instruction in the areas of fair housing and professional ethics.*
- (4) The applicant shall have been engaged **[full time]** as a **[sales person] licensed real estate salesperson** 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) (b) The application shall state the place of business for which such license is desired.

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

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] 60 hours [each]** in real estate instruction in areas of study prescribed by the rules of the commission, *which rules shall require instruction in the areas of fair housing and professional ethics.*

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] 60 hours [each]** in real estate instruction in areas of study prescribed by the rules of the commission, *which rules shall require instruction in the area of professional ethics.*

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

Section 10. Section 571 of the act, added March 7, 1982 (P.L.158, No.50), is amended to read:

Section 571. Application and fee for registration certificate.

[(a)] An application for a registration certificate for a cemetery company to operate a cemetery 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) (1) The fee for application and initial biennial registration as a cemetery company shall be \$25 which shall be paid at the time of application and which shall be nonrefundable.

(2) The biennial fee for the renewal of a cemetery company registration certificate shall be \$25.

(3) The fees established in this subsection shall be subject to the act of July 1, 1978 (P.L.700, No.124), known as the "Bureau of Professional and Occupational Affairs Fee Act," in the same manner as other fees of the commission.]

Section 11. Sections 601, 602 and 603 of the act are amended to read:

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] current** 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] license**. 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] current license** 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.] *Any nonresident of this Commonwealth who meets the equivalent experience requirements and other standards and qualifications, as the commission shall by rule provide, shall qualify for a license under this act.*

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] current license** 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] no later than** ten days **[prior to] after** the intended date of change, pay the required fee, and return his current **[renewal] license**. The commission, shall, upon receipt of acknowledgment from the new broker[,], of the change of employment **[forthwith]** issue a new **[renewal form and pocket card, but in] license**. 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] commission** as his temporary license pending receipt of his **[renewal form] new current license**. It shall be the duty of the applicant to notify the commission if a new **[renewal form] license** or other pertinent communication is not received from the commission within 30 days.

Section 12. Section 604 of the act, amended March 7, 1982 (P.L.158, No.50), is amended to read:

Section 604. Prohibited acts.

(a) 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 registration certificate or for the imposition of fines not exceeding **[\$500] \$1,000, or both**. The commission shall have power to refuse a license or registration certificate for cause or to suspend or revoke a license or registration certificate or to levy fines up to **[\$500] \$1,000, or both**, where the said license has been obtained by false representation, or by fraudulent act or conduct, or where a licensee or registrant, 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] in 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 any felony* 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. *Any offering by mail or by telephone of any prize in relation to the offering of sale of real property, including time sharing, shall be accompanied by a statement of the fair market value, not suggested retail price, of all prizes offered, plus a statement of the odds of receiving any such prize. If the offering is by mail the statement of value and odds shall be printed in the same size type as the prize description and shall appear immediately adjacent to said description.*

(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.

(i) Such activities include but are not limited to:

[(i)] (A) 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)] (B) 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)] (C) 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.

(ii) Nothing contained in *this* 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 *this* paragraph [(22)].

(iii) 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.

(iv) 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.

(v) *The Pennsylvania Human Relations Commission shall notify the State Real Estate Commission of findings of violations by the Human Relations Commission against licensees under this act concerning the sale, purchase or lease of real estate in violation of the "Pennsylvania Human Relations Act."*

(23) In the case of a cemetery company registrant, violating any provisions of Title 9 of the Pennsylvania Consolidated Statutes (relating to burial grounds).

(24) In the case of a cemetery company registrant, violating any provisions of the act of August 14, 1963 (P.L.1059, No.459), entitled "An act prohibiting future need sales of cemetery merchandise and services, funeral merchandise and services, except under certain conditions; requiring the establishment of and deposit into a merchandise trust fund of certain amount of the proceeds of any such sale; providing for the administration of such trust funds and the payment of money therefrom; conferring powers and imposing duties on orphans' courts, and prescribing penalties."

(25) *Violating section 606 or 607.*

(b) All fines and civil penalties imposed in accordance with section 305 and this section shall be paid into the Professional Licensure Augmentation Account.

Section 13. Section 605 of the act is amended to read:
Section 605. [Out-of-state] *Promotional* 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.]

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

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

(c) A person may apply to the commission for registration of promotional land sales by filing a statement of record and meeting the requirements of this section. Each registration shall be renewed annually. In lieu of registration or renewal, the commission shall accept registrations, property reports or similar disclosure documents filed in other states or with the

Federal Government: Provided, That the commission may suspend or revoke the registration when the Federal Government or a registering state suspends or revokes a regulation. The commission shall, by rule and regulation, cooperate with similar jurisdictions in other states to establish uniform filing procedures and forms, public offering statements and similar forms. The commission shall charge an application fee as determined by regulation to cover costs associated with processing applications for registrations and renewals.

(d) Unless prior approval has been granted by the commission or the promotional plan is currently registered with the Department of Housing and Urban Development pursuant to the Federal Interstate Land Sales Full Disclosure Act or pursuant to State law, the statement of record shall contain the information and be accompanied by documents specified as follows:

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

(2) A legal description of, and a statement of the total area included in the property and a statement of the topography thereof, together with a map showing the division proposed and the dimensions of the property to be covered by the statement of record and their relation to existing streets and roads.

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

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

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

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

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

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

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

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

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

(12) *Such other information and such other documents and certifications as the commission may require as being reasonably necessary or appropriate to assure that prospective purchasers have access to truthful and accurate information concerning the offering.*

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

(e) *If at any time subsequent to the date of filing of a statement of record with the commission, a change shall occur affecting any material facts required to be contained in the statement, the developer shall promptly file an amendment thereto.*

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

(g) *If it appears to the commission that a statement of record includes any untrue statement of material facts or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the commission may reject such application. The commission shall make an investigation of all consumer complaints concerning real estate promotions in the absence of a reciprocal agreement to handle onsite inspections. Under no circumstances shall a member or an employee of the commission perform an onsite inspection. If the commission determines that a violation of this section has occurred, the commission may:*

(1) *suspend or revoke any registration;*

(2) *refer the complaint to the Consumer Protection Bureau of the Office of Attorney General; or*

(3) *seek an injunction or temporary restraining order to prohibit the complained of activity in the Commonwealth Court.*

(h) *Upon rejection of an application or amendment, the applicant may within 20 days after such notice request a hearing before the commission. Prior to, and in conjunction with such hearing, the commission, or its designee, shall have access to and may demand the production of any books*

and papers of, and may examine, the developer, any agents or any other person in respect of any matter relevant to the application. If the developer or any agents fail to cooperate or obstruct or refuse to permit the making of an investigation, such conduct shall be grounds for the denial of the application.

Section 14. The act is amended by adding sections to read:

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.

(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.

(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 property except for single-family dwellings. Failure of any sales agreement or sales contract to contain a statement of the zoning classification of the property shall render the sales agreement or sales contract null and void and 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.

(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 must contain the zoning classification of a property.

Section 15. Section 803 of the act, amended March 7, 1982 (P.L.158, No.50), is amended to read:

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 trans-

action for which a license or registration certificate is required under this act (including with respect to cemetery companies any violation of 9 Pa.C.S. § 308(b) (relating to accounts of qualified trustee)) 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] claim and shall not exceed \$100,000 per licensee**. If the **[\$20,000] \$100,000** 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 or registrant, such **[\$20,000] \$100,000** 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 or registrant 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%] 10%** a year, the amount paid from the Real Estate Recovery Fund.

(g) 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 registrant the registrant shall automatically be denied the right to sell cemetery lots upon the effective date of the payment thereof by the commission. No such registrant shall be granted the right to sell cemetery lots until he has repaid in full plus interest at the rate of ~~[6%]~~ 10% a year, the amount paid from the Real Estate Recovery Fund.

Section 16. Persons who are members of the State Real Estate Commission on the effective date of this act shall serve on the State Real Estate Commission as provided for in this amendatory act until their current terms on the State Real Estate Commission would have expired or until their successors are duly appointed and qualified but no longer than six months after the expiration of their terms.

Section 17. Any person who holds a valid license issued by the State Real Estate Commission under the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, prior to the effective date of this amendatory act shall, on and after the effective date hereof, be deemed to be licensed by the State Real Estate Commission as provided for in this amendatory act.

Section 18. Each rule, regulation or fee of the commission in effect on the effective date of this act shall remain in effect after such date until repealed or amended by the commission.

Section 19. This act, with respect to the State Real Estate Commission, shall constitute the legislation required to reestablish an agency pursuant to the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

Section 20. (a) Section 453 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is repealed.

(b) All acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 21. (a) Sections 18, 19 and 21 of this act shall take effect immediately.

(b) The provisions of sections 606 and 607 contained in section 14 shall take effect in one year.

(c) The remainder of this act shall take effect in 90 days.

APPROVED—The 29th day of March, A. D. 1984.

DICK THORNBURGH