

No. 1990-69

AN ACT

SB 430

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," further providing for the broker's disclosures to the buyer, timeshares, campground memberships and prohibited acts.

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

Section 1. The definition of "time share" in 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 29, 1984 (P.L.162, No.32), is amended and the section is amended by adding definitions 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:

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"Campground membership." *An interest, other than in fee simple or by lease, which gives the purchaser the right to use a unit of real property for the purpose of locating a recreational vehicle, trailer, tent, tent trailer, pickup camper or other similar device on a periodic basis pursuant to a membership contract allocating use and occupancy rights between other similar users.*

"Campground membership salesperson." *A person who either as an employee or an independent contractor sells or offers to sell campground memberships. Such person shall sell campground memberships under the active supervision of a broker. A person licensed as a broker, as a salesperson or as a time-share salesperson shall not be required to be licensed as a campground membership salesperson as a condition for selling or offering to sell campground memberships.*

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"Time share." *The right, however evidenced or documented, to use or occupy [a dwelling unit held in fee simple or by lease] one or more units on a periodic basis according to an arrangement allocating use and occupancy rights of that unit or those units between other similar users. As used in this definition, the term "unit" is a building or portion thereof permanently affixed to real property and designated for separate occupancy or a campground or portion thereof designated for separate occupancy. The phrase "time share" does not include campground membership.*

"Time-share salesperson." *A person who either as an employee or independent contractor sells or offers to sell time shares. Such person shall sell time shares under the active supervision of a broker. A person licensed as a broker or as a salesperson shall not be required to be licensed as a time-share salesperson as a condition for selling or offering to sell time shares.*

Section 2. Section 301 of the act, amended March 29, 1984 (P.L.162, No.32), is amended to read:

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

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, *campground membership salesperson*, *time-share salesperson*, builder-owner salesperson, rental listing referral agent or cemetery company within this Commonwealth without first being licensed or registered as provided in this act, unless he is exempted from obtaining a license or registration certificate under the provisions of section 304.

Section 3. Section 302 of the act is amended to read:

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, *campground membership salesperson*, *time-share 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 4. Section 303 of the act, amended March 29, 1984 (P.L.162, No.32), is amended to read:

Section 303. Criminal penalties.

Any person who shall engage in or carry on the business, or act in the capacity of a broker, salesperson, limited broker, limited salesperson, *campground membership salesperson*, *time-share 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 5. Section 406 of the act, amended March 7, 1982 (P.L.158, No.50), is amended to read:

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:

(1) 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.

(2) Those activities involving cemeteries and cemetery companies for which registration is required under this act and to instruct and require its agents to bring prosecutions for unauthorized or unlawful activities.

(3) *Those activities involving campground memberships for which licensing is required under this act and to instruct and require its agents to bring prosecutions for unauthorized or unlawful activities.*

Section 6. Section 501(a) of the act, amended March 29, 1984 (P.L.162, No.32), is 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, *campground membership salesperson, time-share 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.

* * *

Section 7. Chapter 5 of the act is amended by adding subchapters to read:

CHAPTER 5
QUALIFICATIONS AND APPLICATIONS FOR LICENSES
AND REGISTRATION CERTIFICATES

* * *

SUBCHAPTER I
CAMPGROUND MEMBERSHIP SALESPERSON'S LICENSE

Section 581. Qualifications for license.

(a) *The applicant for a campground salesperson's license shall be at least 18 years of age.*

(b) *The applicant shall have successfully completed 15 hours in the following areas of study:*

(1) *Basic contract law.*

(2) *Sales practices and procedures.*

(3) *Sales ethics.*

(4) *Basic theory of campground memberships.*

(c) *The applicant shall undergo not less than 30 days of onsite training at a campground membership facility.*

Section 582. Application for license.

(a) *An application for a license as a campground membership 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 a broker certifying that the broker will actively supervise and train the applicant and certifying the truth and accuracy of the certification of the applicant.*

(c) *A license shall be renewed biennially.*

(d) *The commission shall establish an application fee and a biennial renewal fee by regulation.*

**SUBCHAPTER J
TIME-SHARE SALESPERSON'S LICENSE**

Section 591. Qualifications for license.

(a) *The applicant for a time-share salesperson's license shall be at least 18 years of age.*

(b) *The applicant shall have successfully completed 30 hours of instruction in the following areas of study:*

(1) *Basic contract law.*

(2) *Sales practices and procedures.*

(3) *Sales ethics.*

(4) *Basic theory of resort time sharing.*

(c) *The applicant shall undergo not less than 30 days of onsite training at a time-share facility.*

Section 592. Application for license.

(a) *An application for a license as a time-share 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 a broker certifying that the broker will actively supervise and train the applicant and certifying the truth and accuracy of the certification of the applicant.*

(c) *A license shall be renewed biennially.*

(d) *The commission shall establish an application fee and a biennial renewal fee by regulation.*

Section 8. Section 603 of the act, amended March 29, 1984 (P.L.162, No.32), is amended to read:

Section 603. Employment of associate brokers, salesperson.

(a) 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 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 no later than ten days after the intended date of change, pay the required fee, and return his current license. The commission, shall, upon receipt of acknowledgment from the new broker of the change of

employment issue a new 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 commission as his temporary license pending receipt of his new current license. It shall be the duty of the applicant to notify the commission if a new license or other pertinent communication is not received from the commission within 30 days.

(b) No campground membership salesperson or time-share salesperson shall be supervised by any other broker than is designated upon the current license issued to such salesperson. Whenever a campground membership salesperson or a time-share salesperson desires to be supervised by a different broker, such licensee and the commission shall follow the procedure specified in subsection (a) for real estate salespersons.

Section 9. Section 604(a)(18) of the act, amended March 29, 1984 (P.L.162, No.32), is amended and the subsection is amended by adding paragraphs 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 \$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 \$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:

* * *

(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.

(i) Any offering by mail or by telephone of any prize, gift, award or bonus 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.] a clear and conspicuous manner.

(ii) If a prize is to be awarded as a rebate, coupon or discount certificate, a statement of that fact shall be included. An offering by mail shall include a statement of any fees and the maximum amount of each which the prizewinner must pay in order to receive the prize. Such fees shall include, but not be limited to, dealer preparation, shipping, han-

ding, redemption and shipping insurance. Each fee associated with a prize and the odds of receiving the prize shall appear in a clear and conspicuous manner on any offering by mail.

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

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

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

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(27) In the case of a broker licensee, failing to exercise adequate supervision over the activities of a campground membership salesperson or a time-share salesperson within the scope of this act.

(28) Failure of a broker, campground membership salesperson or time-share salesperson to comply with the requirements of paragraph (5), or such alternative requirements established by the rules of the commission, in connection with deposits or other moneys received by the broker, campground membership salesperson or time-share salesperson in conjunction with the sale of a campground membership or a time-share.

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Section 10. Sections 606, 607 and 608 of the act, added March 29, 1984 (P.L.162, No.32), are amended 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.] have been determined as a result of negotiations between the broker and the seller.**

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

Section 607. Broker's disclosure to buyer.

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

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

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

(3) A statement of the zoning classification of the 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] in cases where the property (or each parcel thereof, if subdividable) is zoned solely or primarily to permit single-family dwellings. Failure to comply with this requirement** shall render the sales agreement or sales contract **[null and void and] voidable at the option of the buyer, and, if voided,** any deposits tendered by the buyer shall be returned to the buyer without any requirement for any court action.

(4) A statement that access to a public road may require issuance of a highway occupancy permit from the Department of Transportation.

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 *or that the broker is the agent of the buyer.*

(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 *except in cases where the property (or each parcel thereof, if subdividable) is zoned solely or primarily to permit single-family dwellings.*

Section 11. Section 702 of the act is amended by adding a subsection to read:

Section 702. Imputed knowledge, limitations.

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(d) No violation of any of the provisions of this act on the part of any campground membership salesperson or time-share salesperson shall be grounds for the revocation or suspension of the license of the broker responsible for supervising such salesperson unless it shall appear upon the hearings held that such broker had actual knowledge of such violation. A course of dealing shown to have been followed by such salesperson shall constitute prima facie evidence of such knowledge upon the part of such broker.

Section 12. Section 801 of the act is amended to read:

Section 801. Establishment of the fund.

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

(b) The Real Estate Recovery Fund shall not apply to the sale of, or the offer to sell, a campground membership or to a campground membership salesperson.

Section 13. This act shall take effect as follows:

- (1) Section 2 (section 301) shall take effect in one year.
- (2) The remainder of this act shall take effect in 60 days.

APPROVED—The 1st day of July, A. D. 1990.

ROBERT P. CASEY