

REAL ESTATE LICENSING AND REGISTRATION ACT (RELRA)

Act of 1980, P.L. 15, No. 9 (Current through 9/4/2009)

63 P.S. §§455.101 – 455.902

(When referring to section numbers, use the number after the decimal point.

For example, §455.603 can be referred to as Section 603.)

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**Chapter 1
General Provisions**

§ 455.101. Short title

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

**Chapter 2
Definitions**

§ 455.201. 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:

“AGENCY RELATIONSHIP.” A relationship whereby the broker or licensees in the employ of the broker act as fiduciaries for a consumer of real estate services by the express authority of the consumer of real estate services.

“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, lease or an 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 any real estate;
- (4) represents himself to be a real estate consultant, counselor, agent or 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;
- (5.1) undertakes to perform a comparative market analysis; or
- (6) attempts to perform any of the above acts.

“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.

“BUYER AGENT.” Any licensee who has entered into an agency relationship with a consumer buyer of real estate.

“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.

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

“CEMETERY COMPANY.” Any person who offers or sells to the public the ownership, or the right to use, any cemetery lot.

“CEMETERY SALESPERSON.” Any person employed by a broker or cemetery broker to perform duties as defined herein under "cemetery broker."

“COMMERCIAL PROPERTY.” Any of the following:

- (1) Any property, or portion thereof, which is used, occupied or is intended, arranged or designed to be used or occupied for the purpose of operating a business, an office, a manufacturing facility or any public accommodation. This paragraph does not include property which consists of less than five residential dwelling units.
- (2) Any vacant land offered for sale or lease, or held, for the purpose of constructing or locating thereon a building, structure or facility, or portion thereof, which is intended, arranged or designed to be used or occupied for the purpose of operating a business, an office, a manufacturing facility or any public accommodation. This paragraph does not include vacant land suitable only for construction or location of less than five residential dwelling units.

“COMMISSION.” The State Real Estate Commission.

“COMMISSIONER.” Commissioner of Professional and Occupational Affairs.

“COMPARATIVE MARKET ANALYSIS.” A written analysis, opinion or conclusion by a contracted buyer's agent, transactional licensee, or an actual or potential seller's agent relating to the probable sale price of a specified piece of real estate in an identified real estate market at a specified time, offered either for the purpose of determining the asking/offering price for the property by a specific actual or potential consumer or for the purpose of securing a listing agreement with a seller.

“CONSUMER.” A person who is the recipient of any real estate service.

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

“DESIGNATED AGENT.” One or more licensees designated by the employing broker, with the consent of the principal, to act exclusively as an agent or as agents on behalf of the principal to the exclusion of all other licensees within the broker's employ.

“DISCLOSURE.” Provision of all relevant facts, without reservation, ambiguity or distortion so as to enable a consumer to understand the options and weigh the risks and benefits in order to make a decision in his or her own best interest.

“DUAL AGENT.” A licensee who acts as an agent for the buyer and seller, or lessee and landlord, in the same transaction.

“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.

“LICENSE.” The term includes both a standard license and a reciprocal license.

“LICENSEE.” A person who holds a standard license or a reciprocal license.

“LISTING BROKER.” A broker engaged as a seller’s agent, dual agent or transaction licensee to market the property of a seller/landlord for sale or lease pursuant to a written agreement with the seller/landlord.

“PERSON.” Any individual, corporation, corporate fiduciary, partnership, association or other entity, foreign or domestic.

“PRINCIPAL.” A consumer of real estate services who has entered into an agency relationship with a broker.

“QUALIFIED ASSOCIATION.” A corporation, limited liability partnership, limited partnership or limited liability company that:

- (1) is incorporated or otherwise organized under the laws of this Commonwealth or another jurisdiction;
- (2) does not hold a license under this act;
- (3) does not hold itself out to the public as providing real estate services or real estate-related services; and
- (4) is solely owned by licensees who are all affiliated with the same broker.

In case of the death of an owner of a qualified association, ownership may continue through the licensees’ estate for a period not to exceed 18 months.

“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.

“REAL ESTATE SERVICE.” An act or acts requiring a real estate license.

“RECIPROCAL LICENSE.” A license issued under section 602 (a) through (e).

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

“SELLER AGENT.” Any licensee who has entered into an agency relationship with a seller of real estate.

“STANDARD LICENSE.” Any license issued under this act that is not a reciprocal license.

“SUBAGENT.” A broker, not in the employ of the listing broker, who is engaged to act for, or cooperate with, the listing broker in selling property as an agent of the seller. A subagent is deemed to have an agency relationship with the seller.

“TIME SHARE.” The right, however evidenced or documented, to use or occupy 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.

“TRANSACTION LICENSEE.” A licensed broker or salesperson who provides communication or document preparation services or performs acts described under the definition of "broker" or "salesperson" for which a license is required, without being an agent or advocate of the consumer.

§ 455.202. 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 cemetery 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) A majority of the members currently serving on the commission shall constitute a quorum. The commission shall elect a chairman, vice-chairman and 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.

Chapter 3 Application of the Act and Penalties

§ 455.301. 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, cemetery broker, cemetery 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.

§ 455.302. 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, cemetery broker, cemetery 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.

§ 455.303. Criminal penalties

Any person who shall engage in or carry on the business, or act in the capacity of a broker, salesperson, cemetery broker, cemetery 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 cemetery 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.

§ 455.304. Exclusions

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 or director of any banking institution, savings institution, savings bank, credit union or trust company operating under applicable Federal or State laws where only the real estate of the banking institution, savings institution, savings bank, credit union 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.

(10) 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. So long as the owner retains the authority to make all such decisions, the employees may show apartments and provide information on rental amounts, building rules and regulations and leasing determinations.

(11) The elected officer, director or employee of any banking institution, savings institution, savings bank, credit union or trust company operating under applicable Federal or State laws when acting on behalf of the institution in performing appraisals or other evaluations of real estate in connection with a loan transaction.

§ 455.305. 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).

Chapter 4 Powers and Duties of the State Real Estate Commission--General

§ 455.401. Duty to issue licenses and registration certificates

It shall be the duty of the department to issue licenses and registration certificates to any person who shall comply with the provisions of this act.

§ 455.402. 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.

§ 455.403. 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.

§ 455.404. Power to promulgate regulations

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 shall remain in full force and effect until modified by the commission.

§ 455.404a. Continuing education

(a) The commission shall adopt, promulgate and enforce rules and regulations consistent with the provisions of this act establishing requirements of continuing education to be met by individuals licensed as real estate brokers and real estate salespersons under this act as a condition for renewal of their licenses. The commission may waive all or part of the

continuing education requirement for a salesperson or broker who shows evidence, to the commission's satisfaction, that he was unable to complete the requirement due to illness, emergency or hardship. Such regulations shall include any fees necessary for the commission to carry out its responsibilities under this section.

(b) Beginning with the license period designated by regulation, each person licensed pursuant to this act shall be required to obtain 14 hours of mandatory continuing education during each two-year license period. A licensed broker or salesperson who wishes to activate a license which has been placed on inactive status shall be required to document 14 hours of continuing education.

(c) All courses, materials, locations and instructors shall be approved by the commission. No credit shall be given for any course in office management, except for courses offered to brokers that are intended to promote knowledge of the supervisory duties imposed upon brokers by this act and by the rules and regulations promulgated by the commission having to do with document preparation and retention, recordkeeping, deposit and maintenance of escrow accounts, advertising and solicitation limitations and requirements, conflicts of interest, disclosures to prospective sellers and buyers and the general ethical responsibilities of licensees.

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

(e) The commission shall inform licensees of the continuing education requirement prior to the renewal period when continuing education is required. Each renewal notice thereafter shall include the following additional information:

- (1) That licenses may be placed on inactive status for no more than five years.
- (2) That individuals must show evidence of 14 hours of continuing education in order to reactivate a license which has been placed on inactive status.
- (3) The procedure and fee required for activating an inactive license.
- (4) That a licensee who fails to activate his license after five years must retake the appropriate examination.

§ 455.405. Repealed. 1984, March 29, P.L. 162, No. 32, § 7, effective in 90 days

§ 455.406. 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.

§ 455.407. 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.

§ 455.408. 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.

**Chapter 5
Qualifications and Applications for Licenses
and Registration Certificates**

**Subchapter A
General**

§ 455.501. 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, cemetery broker, cemetery 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. An applicant for renewal of a reciprocal license shall provide evidence that the applicant continues to hold a current license in the state where the applicant's principal place of business is located.

(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 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.

**Subchapter B
Broker's License**

§ 455.511. 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 240 hours 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 as a licensed real estate salesperson for at least three years or possess educational or experience qualifications which the commission deems to be the equivalent thereof.

§ 455.512. 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 state the place of business for which such license is desired.

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

§ 455.513. 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**

§ 455.521. 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 60 hours 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.

§ 455.522. 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 passed the examination.

**Subchapter D
Cemetery Broker's License**

§ 455.531. Qualifications for license

Each applicant for a cemetery broker's license shall as a condition to obtaining a license take the cemetery 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 sales person or cemetery salesperson for at least three years or possess educational or experience qualifications which the commission deems to be the equivalent thereof.

§ 455.532. Application for license

(a) An application for a license as a cemetery 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 60 hours 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 passed the examination.

§ 455.533. Corporations, partnerships, associations or other entities

If the applicant for a cemetery 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
Cemetery Salesperson's License**

§ 455.541. Qualifications for license

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

§ 455.542. Application for license

(a) An application for a license as a cemetery 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 cemetery 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**

§ 455.551. 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.

§ 455.552. 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 passed the examination.

**Subchapter G
Rental Listing Referral Agent's License**

§ 455.561. 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.

Subchapter H Cemetery Company Registration Certificate

§ 455.571. Application and fee for registration certificate

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.

Subchapter I Campground Membership Salesperson's License

§ 455.581. 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.

§ 455.582. 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

§ 455.591. 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.

§ 455.592. 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.

**Chapter 6
Duties of Licensees**

§ 455.601. Duty of brokers, cemetery brokers and rental listing referral agents to maintain office

(a) Each broker (which term in this section shall include cemetery broker) and rental listing referral agent who holds a standard license shall maintain a fixed office within this Commonwealth. The current license of such a rental listing referral agent or broker and of each licensee employed by such broker or rental listing referral agent shall be prominently displayed in an office of the broker or rental listing referral agent. The address of the office shall be designated on the current 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 current license at the new location for the unexpired period, if the new location complies with the terms of this act. Each broker who holds a standard license shall maintain a sign on the outside of his office indicating the proper licensed brokerage name.

(b) If the applicant for a standard 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 office. Every such application shall state the location of such office. Each office shall be under the direction and supervision of a manager who is either the broker or an associate broker: Provided, however, That such broker or an associate broker may direct and supervise more than one office.

§ 455.602. Reciprocal licenses

(a) Any person who holds a current license to provide real estate services issued by another state and whose principal place of business for the provision of those services is outside of this Commonwealth may be issued a reciprocal license under this act in accordance with this section. The reciprocal license shall be the type of license that the commission determines is most similar to the type of license issued by the other state.

(b) Obtaining a reciprocal license shall constitute sufficient contact with this Commonwealth for the exercise of personal jurisdiction by the commission and the courts of this Commonwealth over the licensee in any action or proceeding arising out of acts or omissions by the licensee:

- (1) in this Commonwealth; or
- (2) relating to an actual or proposed transaction involving real property located in this Commonwealth.

(c) The commission shall issue a reciprocal license upon the filing with the commission of an application and the receipt of:

- (1) a duly certified copy of a current license issued to the applicant by the state in which the principal place of business of the applicant is located, or a certified statement that the applicant holds a current license in that state, in either case sent to the commission by the appropriate licensing body in that state;
- (2) a certified statement sent to the commission by that licensing body as to whether the applicant has been the subject of any disciplinary proceeding and the details of those proceedings; and
- (3) a verified statement from the applicant that:
 - (i) to the knowledge of the applicant, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either this Commonwealth or another jurisdiction;
 - (ii) the applicant has reviewed and is familiar with this act and the rules and regulations of the commission and that the applicant agrees to be bound by this act and those rules and regulations; and
 - (iii) the applicant agrees to permit the disclosure to the commission of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any jurisdiction in which the applicant is or has been licensed.
- (4) payment of a fee in the same amount as the fee required to be paid in connection with the issuance of a standard license of the same type; and
- (5) a consent to service of process in a form prescribed by the rules and regulation of the commission.

(d) This section may be implemented by written reciprocal licensing agreements with the real estate licensing authorities of other states as follows:

- (1) The Commission may enter into such an agreement whenever the commission in its discretion determines that such an agreement is necessary or desirable to provide residents of the Commonwealth with the opportunity to secure a license in the other state substantially comparable to the opportunity afforded to residents of the other state by this section.
- (2) It shall not be necessary for the commission to have entered into an agreement with a particular state in order for the commission to issue a reciprocal license under this section to an applicant from that state, subject to the restrictions in subsection (e).

(e) Whenever the commission determines that another state does not offer reciprocal licensure opportunities to residents of this Commonwealth that are substantially comparable to those afforded to residents of that state by this section, the commission shall require applicants from that state who apply for a reciprocal license to meet education, experience and examination requirements substantially comparable to those required by that state with respect to residents of this Commonwealth who seek reciprocal licensure in that state, except that any requirements imposed under this subsection shall not exceed the requirements for obtaining a license under this act imposed on residents of this Commonwealth.

(f) The commission shall publish annually in the Pennsylvania Bulletin and make available both on request and via the Internet:

- (1) a list of those states with which the commission has signed agreements under subsection (d), and a summary of the terms of each agreement; and
- (2) a list of those states that the commission has identified under subsection (e) as not offering substantially comparable reciprocal licensure opportunities, and a description of the additional requirements the commission has determined are necessary to comply with that subsection.

(g) A person who holds a reciprocal license shall promptly notify the commission if the person's principal place of business for the provision of real estate services becomes located in this Commonwealth. Upon receipt of the notice by the commission, the person's reciprocal license shall not be renewed and the person shall be required to obtain a standard license.

(h) A reciprocal licensee shall have the same rights and responsibilities as if the person held a standard license, except that a person holding a reciprocal license:

- (1) shall not be eligible to be a member of the commission;
- (2) shall be exempt from the requirements of sections 404.1, 501(b), 513 and 533; and
- (3) shall be exempt from taking and passing the examination required for standard licenses.

(i) An associate broker, salesperson, campground membership salesperson or time-share salesperson holding a reciprocal license shall not conduct business in this Commonwealth except in affiliation with a broker holding either a standard or a reciprocal license.

(j) If the applicant for a reciprocal broker's license is a corporation, partnership or association, the applicant must designate in its application a broker of record who is an individual holding a current reciprocal or standard broker's license.

§ 455.603. Employment of associate brokers, salesperson

(a) No associate broker or salesperson (which term in this section shall include cemetery 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.

§ 455.604. 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:

- (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.

(5.1) Failing to comply with any of the requirements of section 608.e.

(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 or advertising 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.

(12.1) Paying of a commission or any valuable consideration by a broker to anyone other than his licensed employees or another real estate broker for the performance of any acts specified in this act.

(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 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.

(15.1) Failing to provide a disclosure required by this act or any other Federal or State law imposing a disclosure obligation on licensees in connection with real estate transactions.

(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.

(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 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, handling, 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) (a) If a prospective purchaser must attend a time share sales presentation as a condition of the offering, the required disclosures for the offering shall:

(I) Be provided in writing or electronically, not orally.

(II) Be stated in a clear, coherent and conspicuous manner.

(III) For the disclosure regarding the scheduled sales presentation, appear in boldface type.

(b) The disclosures shall be provided at least once before the scheduled sales presentation and in a reasonable period of time before the scheduled sales presentation to ensure that the prospective purchaser receives the disclosures before departure to attend the sales presentation. If the initial invitation to the sales presentation is made to a prospective purchaser while the purchaser is on the premises, the disclosures may be provided directly to the prospective purchaser prior to the sales presentation.

(c) The required disclosures need not be in every advertisement or other written, oral or electronic communication provided or made to a prospective purchaser before a scheduled sales presentation.

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

(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:

(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.

(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.

(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 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.

(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.

(26) Violating section 609.

(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.

(29) Violating section 602.

(30) Having been disciplined under a real estate licensing law of another jurisdiction, including, but not limited to, having a license suspended or revoked, a fine or penalty imposed, or being censured or reprimanded publicly or

privately; except that the commission shall not have the authority to levy a fine solely on the basis of this paragraph.

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

(i) Participates in any of the prohibited acts under this subsection.

(ii) Is not solely owned by licensees who are all affiliated with the same broker.

(iii) Holds itself out to the public as providing real estate services or real estate-related services.

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

(c) Notwithstanding any other provision of this act, it is not unlawful for a broker to pay a commission or compensation to a qualified association or for an associate broker or salesperson to receive a commission or compensation for the provision of real estate services or real estate-related services from a qualified association in which the associate broker or salesperson owns an interest.

§ 455.605. Promotional land sales; approval

(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 on-site inspections. Under no circumstances shall a member or an employee of the commission perform an on-site 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.

§ 455.606. Relationships between brokers and consumers of real estate services

A broker may act in a real estate transaction, subject to the provisions of this act, as a seller/landlord agent, buyer/tenant agent, as a dual agent for seller/landlord and buyer/tenant or as a transaction licensee. Licensees employed by a broker shall bear the same relationship to the consumer as the broker, except that a broker, including one serving as a dual agent, may designate a licensee to act exclusively as agent of a particular seller/landlord and may designate another licensee to act exclusively as agent of a particular buyer/tenant.

§ 455.606.a Duties of licensee generally

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

(1) to exercise reasonable professional skill and care which meets the practice standards required by this act;

(2) to deal honestly and in good faith;

(3) to present all written offers, written notices and other written communications to and from parties to a real estate transaction in a timely manner, except that the duty of a licensee under this paragraph to present written offers may be waived by a seller of a property that is subject to an existing contract for sale if:

(i) the waiver is in writing; and

(ii) the waiver is in the manner prescribed by the commission by regulation;

(4) to comply with those obligations imposed upon a licensee by the act of July 2, 1996 (P.L. 500, No. 84), known as the "Real Estate Seller Disclosure Act";

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

(6) to provide the consumer with information at the initial interview pursuant to section 608;

(7) to timely disclose to the consumer any conflicts of interest;

(8) to advise the consumer to seek expert advice on matters relating to the transaction that are beyond the licensee's expertise;

(9) to ensure that all services that are to be provided to the consumer are provided in a reasonable, professional and competent manner in accordance with the practice standards of this act;

(10) to advise the consumer regarding the status of the transaction;

(11) to advise the consumer of tasks that must be completed to satisfy an agreement or condition for settlement, provide assistance with document preparation and advise the consumer regarding compliance with laws pertaining to real estate transactions;

(12) to present all offers and counter offers in a timely manner, unless a party has directed the licensee otherwise in writing; and

(13) to provide disclosure to the consumer regarding any financial interest, including, but not limited to, a referral fee or commission, which a licensee has in any services to be provided to the consumer by any other person, including, but not limited to, financial services, title transfer and preparation services, insurance, construction, repair or inspection services. The licensee shall also provide disclosure regarding any financial interest which an affiliated licensee may have in any services to be provided to the consumer by any other person. The disclosures required by this paragraph shall be made at the time the licensee first recommends that the consumer purchase a service in which the licensee or an affiliated licensee has a financial interest or when the licensee first learns that the consumer will be purchasing a service in which the licensee or an affiliated licensee has a financial interest.

(14) A licensee must report to the commission within 30 days of forming or joining a qualified association all of the following:

(i) Name of the qualified association.

(ii) Names of the owners of the qualified association

(iii) The jurisdiction where the qualified association is registered.

(iv) Date the qualified association was registered.

(v) Changes in ownership of the qualified association.

(b) (1) A licensee may not perform a service for a consumer of real estate services for a fee, commission or other valuable consideration paid by or on behalf of the consumer unless the nature of the service and the fee to be charged are set forth in a written agreement between the broker and the consumer that is signed by the consumer. This paragraph shall not prohibit a licensee from performing services before such an agreement is signed, but the licensee is not entitled to recover a fee, commission or other valuable consideration in the absence of such a signed agreement.

(2) Notwithstanding paragraph (1), an open listing agreement or a nonexclusive agreement for a licensee to act as a buyer/tenant agent may be oral if the seller or buyer is provided with a written memorandum stating the terms of the agreement.

(3) Nothing in this subsection shall require a transaction licensee or subagent who is cooperating with the listing broker to obtain a written agreement from the seller.

(4) A subagent or transaction licensee who is cooperating with the listing broker for a fee paid by the listing broker or seller shall provide the buyer, prior to performing any services, with a written disclosure statement signed by the buyer, describing the nature of the services to be performed by the subagent or transaction licensee and containing the information required by section 608. If the buyer refuses to sign the statement, the licensee shall note the refusal on the statement and retain it for six months.

(c) A broker may not extend or delegate the broker's agency relationship with a principal to another broker without the written consent of the principal.

(d) A broker may compensate another broker who assists in the marketing and sale/lease of a consumer's property. Payment of compensation alone does not create an agency relationship between the consumer and the other broker.

(e) The fact that a licensee representing a seller/landlord also presents alternative properties to prospective buyer/tenants does not in itself constitute a breach of a duty or obligation owed by the licensee to the seller/landlord.

(f) The fact that a licensee representing a buyer/tenant also presents alternative properties in which that buyer/tenant is interested to other prospective buyer/tenants does not in itself constitute a breach of a duty or obligation owed by the licensee to that buyer/tenant.

(g) A licensee may not knowingly, during or following the termination of an agency relationship reveal confidential information of the principal, or use confidential information of the principal to the advantage of the licensee or a third party, except when:

- (1) disclosure is made with the consent of the principal;
- (2) the information is disclosed to another licensee or third party acting solely on the principal's behalf and not for any other party;
- (3) the information is required to be disclosed under subpoena or court order;
- (4) it is the intention of the principal to commit a crime and the disclosure of information is believed necessary to prevent the crime; or
- (5) the information is used to defend the licensee in a legal proceeding against an accusation of wrongful conduct.

(h) A consumer of real estate services shall not be liable for the acts of a licensee unless the licensee is acting pursuant to the express direction of the consumer or the licensee is acting based upon a representation of the consumer reasonably relied upon by the licensee. A licensee shall not be liable for acts of a consumer of real estate services unless the consumer is acting at the express direction of the licensee or the consumer is acting as a result of a representation by a licensee reasonably relied on by the consumer.

(i) Unless otherwise agreed, a licensee owes no duty to conduct an independent inspection of the property and owes no duty to independently verify the accuracy or completeness of any representation made by a consumer to a transaction reasonably believed by the licensee to be accurate and reliable.

(j) Nothing in this section shall be construed to relieve a licensee of any duty imposed by another provision of this act.

§ 455.606b. Duties of seller's agent

In addition to the duties generally required of a licensee as set forth in section 606.1, the duties of the broker acting as an agent for the seller include the following:

- (1) to be loyal to the seller by taking action that is consistent with the seller's interest in a transaction; and
- (2) to make a continuous and good faith effort to find a buyer for the property, except that a seller's broker is not obligated to seek additional offers to purchase the property while the property is subject to an existing agreement for sale.

§ 455.606c. Duties of buyer's broker

In addition to the duties generally required of a licensee as set forth in section 606.1, the duties of the broker acting as an agent of the buyer include the following:

- (1) to be loyal to the buyer by taking action that is consistent with the buyer's interest in a transaction;
- (2) to make a continuous and good faith effort to find a property for the buyer, except that a buyer's broker is not obligated to seek additional properties for purchase while the buyer is subject to an existing contract for sale; and
- (3) to disclose to the listing broker, at first contact, that the broker has been engaged as a buyer's agent. In the absence of a listing broker, this disclosure shall be made to the seller.

§ 455.606d. Duties of dual agent

(a) A licensee may act as a dual agent only with the written consent of both parties to the transaction following the disclosures given at the initial interview required by section 608. The consent must include a statement of the terms of compensation.

(b) In addition to the duties generally required of a licensee as set forth in section 606.1, the duties of a dual agent include the following:

(1) to take no action that is adverse or detrimental to either party's interest in a transaction;

(2) unless otherwise agreed to in writing, to make a continuous and good faith effort to find a buyer for the property, except that a dual agent is not obligated to seek additional offers to purchase the property while it is subject to an existing contract for sale; and

(3) unless otherwise agreed to in writing, to make a continuous and good faith effort to find a property for the buyer, except that a dual agent is not obligated to seek additional properties to purchase while the buyer is a party to an existing contract to purchase.

(c) A dual agent may show alternative properties not owned by the seller to prospective buyers and may list competing properties for sale without breaching any duty to the seller. A dual agent may show properties in which the buyer is interested to other prospective buyers without breaching any duty to the buyer.

§ 455.606e. Duties of designated agent

(a) (1) In an agency relationship with a principal, the broker may, with the written consent of the principal, designate one or more licensees employed by the broker to serve as the designated agent of the principal to the exclusion of all other licensees employed by the same broker. A broker who represents both the seller/landlord and the buyer/tenant in the same transaction is a dual agent. Dual agency is permitted only as provided in section 606.4.

(2) A broker designating licensees to act as designated agents shall take reasonable care to protect any confidential information disclosed by a principal to his or her designated agent.

(3) A broker has the responsibility to direct and supervise the business activities of designated agents and thereby owes duties to both the seller/landlord and the buyer/tenant as a dual agent.

(b) In addition to the duties generally required of a licensee as set forth in section 606.1, where principals to a transaction are represented by designated agents employed by the same broker, the duties of a designated agent include the following:

(1) to be loyal to the principal with whom the agent is working by taking action that is consistent with that principal's interest in the transaction;

(2) to make a continuous and good faith effort to find a buyer for a principal who is a seller, or to find a property for a principal who is a buyer. A designated agent is not, however, obligated to seek additional offers for a seller principal while the property is subject to an existing contract for sale or, with regard to a principal buyer, to seek additional properties to purchase while the buyer is a party to an existing contract for purchase; and

(3) to disclose to the principal, prior to writing or presenting an offer to purchase, that the other party to the transaction is also represented by a licensee employed with the same broker. The disclosure shall confirm that the broker is a dual agent in the transaction.

§ 455.606f. Duties of transaction licensee

In addition to the duties generally required of a licensee as set forth in section 606.1, the duties of a transaction licensee include the following:

(1) to advise the consumer to be assisted that the licensee is not acting as an agent or advocate of the consumer and should not be provided with confidential information; and

(2) to provide limited confidentiality. A licensee shall not disclose information that the seller will accept a price less than the asking price or listed price, that the buyer will pay a price greater than the price submitted in a written offer or that a seller or buyer will agree to financing terms other than those offered.

§ 455.607. Deleted. 1998, Nov. 25, P.L. 908, No. 112, § 6, effective in one year

§ 455.608. Information to be given at initial interview

(a) Except as set forth in subsections (b), (c), (d), (e), and (f), the commission shall establish rules or regulations which shall set forth the manner and method of disclosure of information to the prospective buyer/tenant or seller/landlord during the initial interview. For the purposes of this section, the initial interview is the first contact between a licensee and a consumer of real estate-related services where a substantive discussion about real estate needs occurs. Such disclosure shall be provided on a form adopted by the commission by regulation and shall include, but shall not be limited to:

(1) A disclosure of the relationships in which the broker may engage with the consumer. The disclosure shall describe the duties that the broker owes in each relationship provided for in this act.

(2) A statement informing sellers and buyers of their option to have an agency relationship with a broker, that an agency relationship is not to be presumed and that it will exist only as set forth in a written agreement between the broker and consumer of real estate service acknowledged by the consumer.

(3) A statement that a real estate consumer has the right to enter into a negotiated agreement with the broker limiting the activities or practices that the broker will provide for on behalf of the consumer and that the fee and services to be provided are to be determined by negotiations between the consumer and the broker.

(4) A statement identifying any possibility that the broker may provide services to another consumer who may be party to the transaction and, if so, an explanation of the duties the broker may owe the other party and whether the broker may accept a fee for those services.

(5) A statement identifying any possibility that the broker may designate one or more licensees affiliated with the broker to represent the separate interest of the parties to the transaction.

(6) A statement of the broker's policies regarding cooperation with other brokers, including the sharing of fees.

(7) A statement that a buyer's broker may be paid a fee that is a percentage of the purchase price and the buyer's broker, even if compensated by the listing broker, will represent the interests of the buyer.

(8) A statement that the duration of the broker's employment and the broker's fees are negotiable.

(9) 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.

(10) A statement that the duration of the listing agreement or contract and the broker's commission are negotiable.

(11) 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.

(b) The following apply to leases:

(1) Subsection (a) shall not apply and disclosure shall be in accordance with paragraph (2) if the licensee is providing information on a property or otherwise dealing with a prospective tenant for the purpose of rental only and if the licensee is:

(i) the actual owner/landlord of the real property, including the owner of an equity interest in an actual owner/landlord of the real property;

(ii) the direct employee of the owner/landlord of the real property; or

(iii) leasing the real property pursuant to a property management agreement or an exclusive leasing agreement with the owner/landlord of the real property.

(2) In cases under paragraph (1), the licensee shall provide to the prospective tenant a written statement indicating the capacity in which the licensee is acting. The written statement shall be provided at the time of the initial interview unless a rental application is required by the licensee, in which case the written statement shall be provided at the time the rental application is taken. The written statement shall be provided at the beginning of the rental application and shall be in the following form:

CONSUMER NOTICE

THIS IS NOT A CONTRACT

(licensee) hereby states that with respect to this property, _____ (describe property), I am acting in the following capacity: (check one)

- (i) owner/landlord of the property;
- (ii) a direct employee of the owner/landlord; or
- (iii) an agent of the owner/landlord pursuant to a property management or exclusive leasing agreement.

I acknowledge that I have received this notice:

(consumer) (date)

I certify that I have provided this notice:

(licensee) (date)

(3) The licensee shall provide a copy of the written statement under paragraph (2) to the prospective tenant and shall retain a copy signed by the prospective tenant and the licensee for six months. If the prospective tenant refuses to sign the statement, the licensee shall note the refusal on the form and retain it for six months.

(c) If an initial interview with a consumer in a situation which is not covered by subsection (b) or (e) does not occur in person, the licensee shall orally advise the consumer of the various business relationships that the licensee may have with the consumer and provide an oral disclosure to the consumer as follows:

The Real Estate Law requires that I provide you with a written consumer notice that describes the various business relationship choices that you may have with a real estate licensee. Since we are discussing real estate without you having the benefit of the consumer notice, I have the duty to advise you that any information you give me at this time is not considered to be confidential, and any information you give me will not be considered confidential unless and until you and I enter into a business relationship. At our first meeting I will provide you with a written consumer notice which explains those business relationships and my corresponding duties to you.

(d) If an oral disclosure is given as provided in subsection (c), the written disclosure form required by subsection (a) shall be provided to the consumer not later than the earlier of:

- (1) the first meeting that the licensee has in person with the consumer after the initial interview; or
- (2) the time a property is first shown to the consumer by the licensee or any person working with the licensee.

(e) The following apply to time-share estates:

(1) Subsection (a) shall not apply and disclosure shall be in accordance with paragraph (2) if the licensee is showing a time-share estate as defined in 68 Pa.C.S. § 3403(a) (relating to public offering statement; time-share estates).

(2) In cases under paragraph (1), the licensee shall provide the consumer with a written statement indicating the capacity in which the licensee is acting. The statement shall be provided at the time of the initial interview and shall be in the following form:

CONSUMER NOTICE

THIS IS NOT A CONTRACT

(licensee) hereby states that with respect to this property, (describe property) , I am acting in the following capacity: (check one)(i) owner of the property; (ii) a direct employee of the owner; or (iii) an agent of the owner pursuant to a property management or exclusive leasing or selling agreement.

I acknowledge that I have received this notice:

(consumer) (date)

I certify that I have provided this notice:

(licensee) (date)

(3) The licensee shall provide a copy of the statement under paragraph (2) to the consumer and shall retain a copy signed by the consumer and the licensee for six months. If the prospective tenant refuses to sign the statement, the licensee shall note the refusal on the form and retain it for six months.

(f) The disclosures required under subsections (a), (b) and (c) do not apply in commercial property sale or lease transactions unless the prospective buyer/tenant or seller/landlord is an individual.

§ 455.608a. Written agreement with broker

An agreement between a broker and a principal, or any agreement between a broker and a consumer whereby the consumer is or may be committed to pay a fee, commission or other valuable consideration, that is required to be in writing by section 606.1, shall be signed by the consumer and shall identify the services to be provided and the fee to be paid, if any. The agreement shall also contain the following information which shall be disclosed in the manner and method the commission shall establish by regulation:

(1) A statement that the broker's fee and the duration of the contract have been determined as a result of negotiations between the broker and the seller/landlord or buyer/tenant.

(2) A statement describing the nature and extent of the broker's services to be provided to the seller/landlord or buyer/tenant and the fees that will be charged.

(3) A statement identifying any possibility that the broker, or any licensee employed by the broker, may provide services to more than one consumer in a single transaction and if so, an explanation of the duties that may be owed the other party and whether the broker may accept a fee for those services.

(4) In an agreement between a broker and seller, a statement of the broker's policies regarding cooperation with subagents and buyer agents, a disclosure that a buyer agent, even if compensated by the broker or seller will represent the interests of the buyer and a disclosure of any potential for the broker to act as a disclosed dual agent.

(5) In an agreement between a broker and a buyer, a statement identifying any possibility that the broker's compensation may be based upon a percentage of the purchase price, a disclosure of the broker's policies regarding

cooperation with listing brokers willing to pay buyer's brokers, a disclosure that the broker, even if compensated by the listing broker or seller, will represent the interests of the buyer and disclosure of any potential for the buyer broker to act as a disclosed dual agent.

(6) 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.

(7) A statement regarding any possible conflicts of interest and informing the consumer of the licensee's continuing duty to timely disclose any conflicts of interest.

§ 455.608b. Mandatory provisions of sales contract

In a sales agreement or sales contract, a broker shall disclose the following information which shall be disclosed in the manner and method the commission shall establish by regulation:

(1) A statement identifying the capacity in which the broker is engaged in the transaction and whether the broker, or any licensee affiliated with the broker, has provided services relating to the subject transaction to any other party to the transaction.

(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 parties to the transaction can receive further information about the fund.

(3) A statement of the zoning classification of the property, except in cases where the property or each parcel of the property, 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 voidable at the option of the buyer, and if voided, any deposits tendered by the buyer shall be returned to the buyer without a requirement for court action.

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

§ 455.608c. Comparative market analysis disclosure

A comparative market analysis must contain the following statement printed conspicuously and without change on the first page:

This analysis has not been performed in accordance with the Uniform Standards of Professional Appraisal Practice which require valuers to act as unbiased, disinterested third parties with impartiality, objectivity and independence and without accommodation of personal interest. It is not to be construed as an appraisal and may not be used as such for any purpose.

A comparative market analysis prepared in accordance with this act shall not be deemed to be an appraisal within the scope of the act of July 10, 1990 (P.L. 404, No. 98), known as the Real Estate Appraisers Certification Act.

§ 455.608d. Cemetery broker's disclosure

In any sales agreement or sales contract, a cemetery broker shall be subject to the requirements of section 608.2(2) as it relates to the Real Estate Recovery Fund and the disclosure of information.

§ 455.608.e Handling of deposits and other escrows

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

(1) consummation of the transaction involved;

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

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

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

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

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

(b) Deposits and other escrows must be accounted for in the full amount thereof at the time of consummation, termination or release as provided in subsection (a). If less than the full amount held pursuant to subsection (a) is released, notice must be given in writing or electronic form to all the parties to the transaction of the amounts released, the persons to whom distribution is made and the amounts that continue to be held pursuant to subsection (a).

(c) Every associate broker or salesperson shall, promptly following receipt of a deposit or other escrow, pay over the funds to the broker employing the associate broker or salesperson.

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

(e) A broker must deposit moneys and property, of whatever kind or nature, belonging to others, in a separate custodial or trust fund account maintained by the broker with a bank or recognized depository by the end of the business day following their receipt by the broker. The moneys and property must be held by the broker until they are paid or released as provided in subsection (a), 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 the broker may have on deposit.

(f) If a deposit in connection with an offer to buy or lease real estate is in the form of a check and the buyer and seller or lessee and lessor consent in writing or electronic form, the broker may hold the check and not deposit it as otherwise required by this section pending acceptance of the offer. If the offer is not accepted, the broker shall promptly return the check uncashed to the buyer or lessee. If the offer is accepted, the broker shall deposit the check into a custodial or trust fund account by the close of business on the business day following acceptance of the offer.

(g) A broker must keep records of all funds deposited in a custodial or trust fund account, which records indicate clearly the date and from whom the broker received the funds, the date deposited, the dates of withdrawals and other pertinent information concerning the transaction, and must 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, and must be available to the commission, or its representatives, immediately after proper demand or after notice in writing or electronic form given to the broker or depository. Each separate custodial or trust fund account must designate the broker as trustee, and the account must provide for withdrawal of funds without previous notice.

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

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

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

(k) This section does not preclude the parties to a transaction from agreeing in writing or electronic form to have deposits or other escrows held by a person other than the brokers who represent the parties. This subsection shall not be construed to allow an associate broker, salesperson or qualified association to hold deposits or other escrows.

§ 455.609. Right to cancel purchase of time share and campground membership

(a) A purchaser shall have the right to cancel the purchase of a time share or a campground membership until midnight of the fifth day following the date on which the purchaser executed the purchase contract.

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

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

This clause is to be separately initialed by the purchaser. Copies of all documents which place an obligation upon a purchaser shall be given to the purchaser upon execution by the purchaser.

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

(d) Within ten business days after the receipt of a notice of cancellation, all payments made under the purchase contract shall be refunded to the purchaser and an acknowledgment that the contract is void shall be sent to the purchaser. In the event of a cancellation pursuant to this section, any promotional prizes, gifts and premiums issued to the purchaser by the seller shall remain the property of the purchaser.

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

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

(g) In addition to constituting a violation of this act, a violation of this section by any individual, corporation, partnership, association or other entity shall also be deemed a violation of the act of December 17, 1968 (P.L. 1224, No. 387), known as the "Unfair Trade Practices and Consumer Protection Law." The Attorney General is authorized to enforce this section. Any actions brought by the Attorney General to enforce this section shall be in addition to any actions which the commission may bring under this act.

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

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

(j) This act shall be applicable to time shares and campground memberships which are located within this Commonwealth and to time shares and campground memberships which are located outside this Commonwealth but for which the purchase contract was executed by the purchaser within this Commonwealth.

**Chapter 7
Proceedings Before The Commission**

§ 455.701. 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 of 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.

§ 455.702. Imputed knowledge, limitations

(a) 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.

(b) No violation of any of the provisions of this act on the part of any cemetery broker or cemetery salesperson or other employee of any registered cemetery company, shall be grounds for the revocation or suspension of the registration certificate of the cemetery company, unless it shall appear that such cemetery company had actual knowledge of such violation.

(c) 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.

(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.

Chapter 8 Real Estate Recovery Fund

§ 455.801. 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.

§ 455.802. 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 or cemetery company registration certificate, 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 and registrant 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.

§ 455.803. 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 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 claim and shall not exceed \$ 100,000 per licensee. If the \$ 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 \$ 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:

(1) The license of that person shall automatically suspend upon the effective date of the payment thereof by the commission.

(2) No such licensee shall be granted reinstatement until he has repaid in full plus interest at the rate of 10% a year, the amount paid from the Real Estate Recovery Fund.

(3) The commission shall have the right to petition the court that entered the judgment against the licensee to enter a judgment under this subsection, and, upon proof of the amount paid by the fund, the court shall enter a judgment against the licensee for that amount in favor of the commission.

(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 10% a year, the amount paid from the Real Estate Recovery Fund.

Chapter 9 Repealer and Effective Date

§ 455.901. 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).

§ 455.902. Effective date

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