

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 110]

Noxious Weeds

The Department of Agriculture (Department) proposes to amend the regulation in 7 Pa. Code § 110.1 (relating to noxious weed control list) to designate *Lythrum salicaria* (purple loosestrife), *Lythrum virgatum* and their cultivars and combinations thereof as "noxious weeds." The Department also proposes to add *Galega officinalis* (Goatsrue) and *Heracleum mantegazzianum* (Giant Hogweed) to the noxious weed control list.

Statutory Authority

Sections 3(b), 8 and 9 of the Noxious Weed Control Law (act) (3 P. S. §§ 255.3(b), 255.8 and 255.9), respectively, require the Department to establish a noxious weed control list, prescribe certain plants to be included on that list and empower the Department to adopt regulations necessary to implement the act. The proposed amendment is advanced under authority of these statutory provisions.

Need for the Regulation

There is a compelling public need to protect this Commonwealth's wetland plant and animal populations from the threat posed by nonnative purple loosestrife, cultivars of the plants and cultivars that are combinations of native and nonnative purple loosestrife species.

The addition of Giant Hogweed to the noxious weed control list is necessary to provide the Department needed authority to control and eradicate this nonindigenous plant at the locations in Crawford, Erie, McKean, Venango and Warren Counties where it has appeared. The sap of this plant can cause rashes on the skin of persons with whom it comes into contact.

The addition of Goatsrue to the noxious weed control list will provide the Department needed authority to address the presence of this nonindigenous plant at the Philadelphia area location where it has been detected. This plant is toxic to livestock.

The proposed amendment meets the other relevant regulatory criteria described in Executive Order 1996-1 ("Regulatory Review and Promulgation").

Background

Lythrum salicaria, commonly known as purple loosestrife, is a nonnative wetland plant that thrives in the absence of the insects and diseases that controlled it in Europe and Asia. It clogs waterways, crowds-out native plant species and decreases the population of animals that are dependent upon these native plant species for survival. For this reason the Department placed "*Lythrum salicaria*," commonly known as "purple loosestrife" on the noxious weed control list in § 110.1. This regulatory change was published in 27 Pa.B. 1704 (April 12, 1997) and became effective on that date.

Since *Lythrum salicaria* was added to the noxious weed control list, the need to add other *Lythrum* species and their cultivars and combinations has become apparent. There are many cultivars (cultivated varieties) of purple loosestrife that are listed under species names other than *Lythrum salicaria*. These other species and cultivars

present as great an environmental threat as does *Lythrum salicaria*. The proposed amendment addresses the threat posed by these plants.

Lythrum virgatum is a source of purple loosestrife cultivars. Like *Lythrum salicaria*, *Lythrum virgatum* is a European wetland plant that has been introduced into North America. These two species are very similar, differing in only several minor diagnostic characteristics. The two also cross pollinate freely. For these reasons, a number of plant specialists consider *Lythrum salicaria* and *Lythrum virgatum* to be the same species. The fact that these plants intercross freely has also helped to blur scientific distinctions between cultivars of the two.

Until recently, the various ornamental purple loosestrife cultivars were thought to be sterile. As such, there would be no danger these plants could naturally cross breed with *Lythrum salicaria* and pass along genetic traits which might make purple loosestrife an even greater ecological threat than it is already. Recent research, though, has shown that no purple loosestrife cultivar is sterile.

Although most cultivars are self-sterile (that is, incapable of reproducing alone), they produce large quantities of viable seed when functioning as either male or female parents in cross breeding with other cultivars and species of loosestrife. Bees and wasps are effective pollinators of loosestrife, and provide the means for cross pollination, even between plants that are a considerable distance from each other.

It is possible a relatively benign ornamental cultivar of indigenous purple loosestrife could cross breed with *Lythrum salicaria* and produce a new cultivar of purple loosestrife that combines the native species' tolerance of this Commonwealth's temperature extremes or its ability to thrive in areas other than wetlands with the aggressive growth characteristics and the disease resistant characteristics, or both, of *Lythrum salicaria*. This is not abstract speculation. Some genetic traits of *Lythrum salicaria* have already been found in cultivars of purple loosestrife.

Galega officinalis, commonly known as Goatsrue, is a nonnative plant that is on the Federal noxious weed list and is toxic to livestock. Goatsrue is only known to exist in this Commonwealth at an arboretum in the Philadelphia area.

Heracleum mantegazzianum, commonly known as Giant Hogweed, is a nonnative plant that is on the Federal noxious weed list and causes skin rashes on many persons who come into contact with it. The plant is only known to be present in this Commonwealth in Crawford, Erie, McKean, Venango and Warren Counties.

In light of the foregoing, the Department proposes to amend the regulation in § 110.1 to add all nonnative *Lythrum* species—including *Lythrum salicaria*, *Lythrum virgatum*, their cultivars and combinations thereof—as well as *Galega officinalis* and *Heracleum mantegazzianum*, to the noxious weed control list.

Section 3(c) of the act requires the Noxious Weed Control Committee hold a hearing before adding plants to the noxious weed control list. This hearing was held on August 20, 1998, at which time the Noxious Weed Control Committee voted its unanimous approval of the proposed regulation.

Persons Likely to be Affected

The act affects owners of lands upon which noxious weeds are located, as well as entities which produced or market noxious weeds. The proposed amendment will affect persons who own lands upon which the designated species, cultivars and combinations of purple loosestrife are located, and plant nurseries and similar establishments that sell or market ornamental varieties of purple loosestrife.

The amendment will also affect the Philadelphia-area arboretum where Goatsrue is known to be present.

The amendment will also affect owners of the 97 sites in Crawford, Erie, McKean, Venango and Warren Counties where Giant Hogweed is present.

Of the three plants proposed for inclusion on the noxious weed control list, only purple loosestrife cultivars are sold commercially as ornamental plants. In 1995, the Department surveyed 797 retail and wholesale plant sellers and only 39 (4.9%) handled purple loosestrife cultivars. Purple loosestrife sales were not a significant component of the business conducted by any of these 39 businesses. Since that survey, the Department has used its field personnel, trade publications and horticultural organization meetings to apprise the plant production industry of the forthcoming restrictions with respect to purple loosestrife. Most, if not all, of the businesses that once handled purple loosestrife no longer do so.

Fiscal Impact

Commonwealth

The proposed amendment would impose no costs and have no fiscal impact upon the Commonwealth.

Political Subdivisions

The proposed amendment would impose no costs and have no fiscal impact upon political subdivisions.

Private Sector

The proposed amendment would impose no costs and have no applicable fiscal impact upon the private sector. Only a small percentage of this Commonwealth's plant nurseries and similar establishments ever handled purple loosestrife. Of those that did, sales of those plants comprised only a small part of their business. As a result of the nursery industry's awareness of the environmental threat posed by purple loosestrife and the fact the proposed amendment was forthcoming, it is believed the fiscal impact of this amendment upon the private sector will be insignificant.

The inclusion of Goatsrue and Giant Hogweed on the Noxious Weed Control List is not expected to result in significant costs to the private sector. These plants are present in relatively few locations in this Commonwealth, and can be eliminated without significant expense.

General Public

The proposed amendment would impose no costs and have no fiscal impact upon the general public.

Paperwork Requirements

The proposed amendment would not result in an appreciable increase in paperwork.

Public Comment Period

The public comment period with respect to the proposed amendment is for 30 days from the date of publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 24, 2000, the Department submitted a copy of the proposed amendment to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and the Senate Standing Committees on Agriculture and Rural Affairs. In addition to submitting the proposed amendment, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has an objection to any portion of the proposed regulation, it will notify the Department within 10 days after the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by the portion of the proposed amendment with respect to which an objection is made. The Regulatory Review Act specifies detailed procedures for review of these objections by the Department, the General Assembly and the Governor prior to final publication of the proposed amendment.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Will Mountain.

Sunset/Expiration Date

Although the proposed amendment would have no sunset date, its efficacy would be reviewed on an ongoing basis.

Effective Date

The proposed amendment would take effect on the date of final adoption.

SAMUEL E. HAYES, Jr.,
Secretary

Fiscal Note: 2-117. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART V. PLANT INDUSTRY

CHAPTER 110. NOXIOUS WEEDS

§ 110.1. Noxious weed control list.

Under section 3(b) of the Noxious Weed Control Law (3 P. S. § 255.3(b)), the Noxious Weed Control Committee establishes the following noxious weed control list:

* * * * *

(2) [*Lythrum salicaria*, commonly known as purple loosestrife.] The *Lythrum salicaria* Complex: Any nonnative *Lythrum* including, *Lythrum salicaria* and *Lythrum virgatum*, their cultivars and any combinations thereof.

* * * * *

(12) *Heracleum mantegazzianum*, commonly known as Giant Hogweed.

(13) *Galega officinalis*, commonly known as Goatsrue.

[Pa.B. Doc. No. 00-214. Filed for public inspection February 4, 2000, 9:00 a.m.]

[7 PA. CODE CH. 138h]

Agricultural Land Conservation Assistance Grant Program

The Department of Agriculture (Department) proposes to amend Chapter 138h (relating to agricultural land conservation assistance grant program).

Authority

Section 7.3 of the act of June 18, 1982 (P. L. 549, No. 159) (3 P. S. § 1207.3) (act) authorizes the Department to award grants to counties for designated purposes related to the conservation of agricultural land, and empowers the Department to promulgate regulations necessary to support the grant program. It is under this statutory authority these regulatory revisions are offered.

The act requires the Department to consult with the State Agricultural Land Preservation Board (State Board) in establishing eligibility criteria for grants and in promulgating regulations necessary to administer and enforce the act. The State Board reviewed and approved these proposed regulatory revisions at its November 5, 1998 meeting.

Need for the Proposed Amendments

The Department is preparing to solicit a second round of grant applications under the Agricultural Land Conservation Assistance Grant Program (Grant Program). The proposed regulations would help to remove certain ambiguous or unnecessary language, clarify the criteria pursuant to which grants will be awarded and otherwise facilitate the distribution of grant funds to meet the underlying Legislative intent.

In summary, the Department is satisfied there is a need for the proposed amendments, and that the proposed amendments are otherwise consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

Summary of the Proposed Amendments

The proposed revisions reflect the experience the Department gained in administering the Grant Program through its first round of grant applications. The revisions are intended to remove certain ambiguous or unnecessary language, clarify the criteria pursuant to which grants will be awarded and otherwise make the Grant Program more workable.

Proposed § 138h.1 (relating to grant program objectives) would emphasize the primary purpose of the Grant Program: the protection and preservation of agricultural land. The final sentence of this section would be deleted, since the substance of that sentence is set forth in the definitions of "applicant" and "eligible county," in § 138h.2 (relating to definitions).

A new term "costs incurred" would be added in proposed § 138h.2. This term is used repeatedly in § 138h.4(c) (relating to uses of grant funds). The definition would help to clarify that costs incurred by an

applicant in the absence of a grant agreement specifically addressing those costs will not be reimbursed under the Grant Program.

Proposed § 138h.4 would accomplish several revisions:

Proposed § 138h.4(c)(1) would replace the term "spatial mapping database" with "Geographic Information Systems (GIS) database." This would make use of the most widely used and accepted term for the type of database described in that paragraph. In addition, the paragraph would reflect that a GIS database is generally available for purchase and need not be "created." The paragraph would also allow greater flexibility in terms of the resource data a GIS database would contain.

Proposed § 138h.4(c)(4) would be added to allow for up to \$2,000 of a grant to be used for the purchase of computer hardware necessary for a GIS database or to develop ordinances described elsewhere in subsection (c). The Department believes the objectives of the grant program are served when a successful applicant has the full benefit of current computer technology to implement its project.

Proposed § 138h.4(e) would allow "in-kind" or "like-kind" contributions to constitute the lesser of 20% or \$2,000 of an applicant's contribution of matching funds toward its project.

Proposed § 138h.5(b) (relating to eligibility criteria) would streamline the criteria pursuant to which grants are awarded. Applications would be evaluated but not "ranked." The "innovativeness" of a project and the availability of funds from other sources would no longer be criteria in evaluating an application. Separate criteria addressing the impact and relevance of the project would be combined. The Department believes these revisions would facilitate the evaluation process.

The proposed amendments would add a new subsection (c) to § 138h.6 (relating to applications generally). This subsection would help to facilitate the grant process by reminding an applicant to document that it is an eligible county and reminding persons acting on behalf of an eligible county to confirm their authority in this regard. The proposed revision of this section would also delete the unnecessary requirement that an applicant document it could not borrow matching funds without the grant it seeks from the Department. Subsection (e) would extend the time within which the State Board or the Secretary can request additional documentation by 20 days. This would afford a full 30 days from receipt of application materials within which to request additional documentation. This extension will be more workable—particularly in light of the meeting schedule of the State Board.

Proposed § 138h.7 (relating to filing applications) would clarify that applications must be received by the Department by 4 p.m. on the last day of the 45-day application window. This revision is prompted by the large number of eligible counties that submitted their application materials late during the Grant Program's first round of applications. The final phrase in proposed § 138h.7(b) would also address applications submitted at the end of the 45-day application window by allowing for the receipt and consideration of additional necessary documentation beyond the date the application window closes.

Proposed § 138h.8 (relating to review of applications by the State Board) would delete the requirement that all applications received within the 45-day application window be reviewed by the State Board at the same meeting. This addresses situations when additional necessary documentation for an application is not received until after the scheduled meeting of the State Board at which all other applications are considered.

Proposed § 138h.10 (relating to grant agreement) would clarify that it is possible to extend the termination date of a grant agreement if the Department and the grant recipient agree in writing, but would limit any extension to no more than 6 months. This revision is proposed in light of the experience gained by the Department in administering the first round of grant applications. Several worthy grant projects took longer to complete than the grant recipients had, in apparent good faith, anticipated. The proposed revision balances the occasional need for an extension of the grant agreement termination date with the need to administer the grants efficiently and avoid a backlog of uncompleted projects.

Persons Likely to be Affected

The proposed amendments will affect any county agricultural land preservation program seeking a grant for purposes consistent with the act.

Fiscal Impact

Commonwealth

The proposed amendments will impose no costs and have no fiscal impact upon the Commonwealth. The act, itself, allows for up to \$750,000 to be awarded in grants. The proposed amendments would not increase or decrease that sum, but would help ensure the grant funds are spent for the purposes described in the act. To date, the Department has awarded grants totaling \$145,351.84. As a result, there remains authority to award an additional \$604,648.16 in grants.

Political Subdivisions

The proposed amendments will impose no costs and have no fiscal impact upon political subdivisions. If a county seeks grant funds for a project permitted under the act, though, it must pay at least 50% of the project's costs.

Private Sector

The proposed amendments will impose no costs and have no fiscal impact on the private sector.

General Public

The proposed amendments will impose no costs and have no fiscal impact upon the general public.

Paperwork Requirements

The proposed amendments are not expected to result in an appreciable increase in paperwork. The Department has developed grant application forms which it will distribute to interested persons, and will review completed applications in consultation with the State Board. Paperwork will be minimal.

Public Comment Period

The public comment period with respect to the proposed amendments is for 30 days from the date of publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 24, 2000, the Department

submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has an objection to any portion of the proposed amendments, it must notify the Department within 10 days after the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by the portion of the proposed amendments with respect to which an objection is made. The Regulatory Review Act sets forth detailed procedures for review of these objections by the Department, the General Assembly and the Governor prior to final publication of the proposed amendments.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Farmland Protection, 2301 North Cameron Street, Harrisburg, Pa. 17110-9408, Attention: Raymond C. Pickering, Director.

Sunset/Expiration Date

Although the proposed amendments would have no sunset date, their efficacy would be reviewed on an ongoing basis.

Effective Date

The proposed amendments would take effect on the date of final adoption.

SAMUEL E. HAYES, Jr.,
Secretary

Fiscal Note: 2-124. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART V-C. FARMLAND AND FOREST LAND

CHAPTER 138h. AGRICULTURAL LAND CONSERVATION ASSISTANCE GRANT PROGRAM

§ 138h.1. Grant Program objectives.

Through the awarding of grants and the placing of conditions upon how grant funds are to be spent, the Grant Program will fund projects which will increase the protection and preservation of agricultural land within this Commonwealth by encouraging the implementation and effectiveness of county programs in each eligible county. **[A grant will only be awarded to a county whose governing body has appointed an agricultural land preservation board, even though the county may not have a county program.]**

§ 138h.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Costs incurred—Expenses that are permitted under a grant agreement and that have been paid by a grant recipient in expectation of reimbursement under the grant agreement and this chapter.

* * * * *

§ 138h.4. Uses of grant funds.

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(c) Allowable expenditures of grant funds. Grant funds shall be used for one or more of the following purposes:

(1) To cover costs incurred by an applicant in [creating a spatial mapping] obtaining a Geographic Information Systems (GIS) database. The database shall [, at a minimum,] contain resource data such as: county topographic data, property boundaries, soil boundaries, soil capability classes [and], soil productivity ratings and relative values for soils.

* * * * *

(4) To cover costs up to \$2,000 incurred by an applicant in the purchase of computer hardware directly linked to achieving the purposes of paragraphs (1) and (2).

* * * * *

(e) Use of "in-kind" or "like-kind" funding. The value of in-kind or like-kind contributions shall be considered in calculating an applicant's contribution of matching funds to a project. In-kind or like-kind contributions may be counted toward an applicant's matching contribution. In-kind or like-kind contributions used for this purpose may not exceed \$2,000 or 20% of an applicant's total matching contribution, whichever is less.

§ 138h.5. Eligibility criteria.

(a) General. The following general criteria apply to applications for projects:

* * * * *

(2) Subsequent stages or upgrades [of previously completed projects for which funding has already been approved] may be considered for funding if documentation is provided to the Department to demonstrate that the stage [of the project] or upgrade [identified in the application] was not included in funding plans for earlier stages of the project.

(b) Specific. The following specific criteria will be used to evaluate [and rank] applications for funding consideration:

(1) The acceptability of costs within the proposed budget.

(2) [The availability of funding for the project from a source other than the Commonwealth.

(3)] The extent to which the project [shall impact upon the] contributes to the Commonwealth's goal of preserving agricultural [lands within this Commonwealth] land.

[(4) The relevance of the project to encouraging the preservation of agricultural lands.

(5)] (3) * * *

[(6) The value to the community of the project described in the application.

(7) The innovativeness of the project.

(8)] (4) * * *

[(9)] (5) * * *

§ 138h.6. Applications generally.

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(c) Authorization. In addition to the application, applicants shall submit a written resolution passed by the county board authorizing the person submitting the grant application to execute the grant application on behalf of the county board.

[(c)] (d) Additional documentation. The State Board and the Secretary may require an applicant to submit additional documentation to complete or verify the application form. The additional documentation may include a letter, affidavit or other documentation, to:

(1) Verify [the legitimacy of the applicant's agricultural land preservation board] that the applicant is an eligible county.

* * * * *

[(4) Obtain from a third party which is providing matching funds to an applicant a recommendation that a grant under this chapter be awarded the applicant and verifying that its contribution of funds to the project would not be available without a grant from the Department.

(d)] (e) Request for additional documentation. If additional documentation is necessary, the State Board or the Secretary will mail a written request for additional documentation to the applicant within [10] 30 days of receipt of the application.

§ 138h.7. Filing applications.

(a) Place and time. An application for a grant under the Grant Program shall be received by the program administrator at the Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408, during the specific 45-day annual application period as advertised in the Pennsylvania Bulletin. Applications will not be accepted after 4 p.m. on the last day (day 45) of the application period. The advertisement will be published at least 30 days prior to the commencement of the application period.

(b) Incomplete or inaccurate applications. The Department will review each application and any supporting documentation that is received within the 45-day application period. If an application is found to be incomplete or inaccurate, the Department will request additional information and will discontinue further processing of the application if the documentation is not received by the Department within [the 45-day application period described in subsection (a)] 15 days from the date of the request or the close of the 45-day application period, whichever is longer.

§ 138h.8. Review of application by State Board.

(a) Transmittal of application to State Board. When the Department determines a grant application is complete and accurate, it will forward this application, together with supporting documentation submitted therewith, to the State Board for review at its next regularly scheduled meeting. [Since all applications are to be submitted and completed within the same time period, all applications for funding will be transmitted to the State Board at the same time.]

* * * * *

§ 138h.9. Notice of disposition of application.

The Department will mail to the applicant written notice of the approval or disapproval of a grant application within 30 days of [a] the State Board's decision.

This notice will be by regular mail to the address indicated by the applicant on the grant application form.

§ 138h.10. Grant agreement.

(a) **General.** After the State Board approves a grant application, and as a precondition to the Department's release of grant funds to a successful applicant, the Department and the applicant shall execute a written grant agreement which describes the terms and conditions subject to which the grant is made. This grant agreement shall contain and conform to the requirements of this chapter and applicable State laws. It shall also contain any special terms and conditions required by the State Board and the Secretary.

(b) **Extension of project completion date.** Although the project completion date set forth in the grant agreement may be extended by mutual written agreement of the Department and the grant recipient, the project completion date will not be extended more than 6 months.

§ 138h.12. Grant cancellation.

* * * * *

(b) **Failure to [establish a] obtain State Board approval of a county program.** If, within 2 calendar years of the date of the first grant agreement to that county, the grant recipient does not have a county program in place, the grant funds provided to the eligible county under this chapter shall be returned to the Department in full as described in § 138h.11(c).

[Pa.B. Doc. No. 00-215. Filed for public inspection February 4, 2000, 9:00 a.m.]

STATE REAL ESTATE COMMISSION

[49 PA. CODE CH. 35]

Agency

The State Real Estate Commission (Commission) proposes to amend Chapter 35 by amending §§ 35.201, 35.281, 35.283, 35.284, 35.287, 35.331—35.333 and 35.336, and adding §§ 35.292, 35.311—35.316 and 35.337 as set forth in Annex A.

A. Effective Date

The amendments will be effective upon publication of the final-form regulations in the *Pennsylvania Bulletin*.

B. Statutory Authority

The amendments are proposed under the authority of sections 606—606.6 and 608.1—608.4 of the Real Estate Licensing and Registration Act (act) (63 P. S. §§ 455.606—455.606f and 455.608a—455.608d).

C. Background and Purpose

This proposal implements the act of November 24, 1998 (P. L. 908, No. 112) (Act 112). Act 112 codified the duties of licensees generally, expanded the relationships which licensees may have with consumers, and delineated mandatory provisions in written agreements and sales contracts.

To provide the most guidance to licensees, the Commission has drafted its preamble in two sections. The first section organizes statutory and corresponding proposed regulatory provisions by subject matter. The second section provides substantive interpretations of various statutory provisions.

D. Description of Proposed Amendments

Organization

The proposed amendments track statutory language. For ease of reference, the first column contains the statutory citation, the second column contains the proposed regulatory citation and the third column contains the subject matter.

<i>Statute</i>	<i>Proposed Regulation</i>	<i>Subject Matter</i>
§ 455.201	§ 35.201	Definitions
§ 455.606a(b) §§ 455.606a(b)(2)—455.606a(b)(4)	§ 35.281(a) § 35.281(b)	Contracts in writing Exceptions
§ 455.606a(a)(13)	§ 35.283	Conflicts of interest
§ 455.606a §§ 455.606a(h)—606a(i)	§ 35.292(a) § 35.292(b)—(d)	Duties of licensees Exceptions
§ 455.606 § 455.606a(c) § 455.606a(d) § 455.606a(g)	§ 35.311(a) § 35.311(b) § 35.311(c) § 35.311(d)	Permitted relationships Delegation Exception Confidentiality
§ 455.606b § 455.606a(e) § 455.606a(b)(4) § 455.606	§ 35.312(a) § 35.312(b) §§ 35.312(c)—(d) § 35.312(e)	Duties of seller's agents Exception Compensation Status of licensees
§ 455.606c § 455.606a(f) § 455.608(7) § 455.606	§ 35.313(a) § 35.313(b) § 35.313(c) § 35.313(d)	Duties of buyer's agents Exception Compensation Status of licensees

<i>Statute</i>	<i>Proposed Regulation</i>	<i>Subject Matter</i>
§ 455.606d § 455.606d § 455.606a(f)	§ 35.314(a) § 35.314(b) § 35.314(c)—(d)	Duties of dual agent Exceptions Consent
§ 455.606e(a)(1) § 455.606e(a)(2) § 455.606 § 455.606e(b) § 455.606e(a)(3)	§ 35.315(a) § 35.315(c) § 35.315(d) § 35.315(f) § 35.315(g)	Designation Confidentiality Status of licensees Duties of Designated agent Duties of broker
§ 455.606f	§ 35.316	Transaction licensees
§ 455.608a	§ 35.331	Written agreements
§ 455.608b	§ 35.333	Agreements of sales
§ 455.608c	§ 35.337	Comparative market analysis

Substantive Provisions

Current § 35.201 (relating to definitions), would be amended to include new definitions for “agency relationship,” “buyer agent,” “consumer,” “designated agent,” “dual agent,” “listing broker,” “principal,” “seller’s agent,” “sub-agent” and “transaction licensee.”

Interspersed throughout the regulations are numerous references to “broker of record.” Although the act refers to “broker,” the Commission understands that reference to be to the broker responsible for the real estate transactions and the supervision of the licensees. The Commission is cognizant that many real estate companies employ many brokers, but only one serves as a broker of record. As a result, the regulations distinguish between a broker and a broker of record.

Proposed § 35.281(a) (relating to putting contracts, commitments and agreements in writing) would contain the general rule that all sale or lease contracts, commitments and agreements wherein the consumer or principal is required to pay a fee be in writing and contain the information contained in § 35.331 (relating to written agreements generally.) Proposed subsection (b) delineates the exceptions to the general rule set forth in sections 606.1(b)(2)—606.1(b)(4) of the act.

Section 35.283 (relating to conflicts of interest) would be amended by clarifying subsection (d) and adding subsections (e) and (f) in conformity with section 606.1(a)(13) of the act. Under this new section, licensees are permitted to provide financial, title transfer, deed or document preparation, insurance, construction, repair and inspection to consumers so long as the consumer is provided with a written disclosure delineating the broker of record’s or salesperson’s financial interest. The disclosure must be provided at the time the referral is made. When there is no referral, the disclosure must be made when the broker of record or salesperson learns or should have learned of the conflict.

Section 35.284 (relating to preagreement disclosures to consumers), would be amended to delete current subsections (a) and (b) and replace them with the procedural requirements currently found in § 35.336(b)—(d) (relating to disclosure summary). These provisions are being moved so that the procedural requirements are placed in § 35.284 and the substantive requirements are placed in § 35.336. The information required by current subsections (a) and (b) are contained in the substantive provisions in the Consumer Notice in § 35.336.

Section 35.287 (relating to supervised property management assistance by salespersons), would be amended to

delete current subsection (a), dealing with appraisals. This amendment would conform the regulation with the definitions of salesperson and broker of record in section 201 of the act, in that appraisals, other than a comparative market analysis described in section 608.3 of the act, have been removed from a real estate licensee’s scope of practice.

New § 35.292(a) (relating to duties of licensees generally), would delineate the 12 duties owed to all consumers of real estate services. New subsections (b)—(d) identify the three areas where licensees are not required to act under section 606.1(h) and (i) of the act.

New § 35.311(a) would delineate the business relationships created by section 606 of the act. Subsection (b) would clarify that an agency relationship cannot be extended or delegated without the consent of the principal. Subsection (c) would clarify that an agency relationship is not created where another broker of record is compensated for assisting in the marketing and sale/lease of the property. New subsection (d) would contain the general rule that licensees may not knowingly reveal confidential information and the five exceptions to this rule.

New § 35.312 (relating to seller’s agency) and new subsections (a)—(d) would track statutory language regarding additional duties and compensation. New subsection (e) stems from the requirement in section 606 of the act that employees of the broker of record bear the same relationship with the consumer as the broker of record unless the licensee has been named as a designated agent.

Similar to new § 35.312 is new § 35.313 (relating to buyer’s agency). The additional duties delineated in section 606.3 are set forth in subsection (a). New subsections (b) and (c) of the act track the statutory requirement regarding showing competing properties and compensation. Like § 35.312(e), new subsection (d) stems from the requirement that employees of the broker of record bear the same relationship with the consumer as the broker of record unless designation has taken place.

Proposed § 35.314 would address dual agency and tracks the responsibilities mandated by section 606.4 of the act.

New § 35.315 would govern designated agency. In designated agency, a broker of record, with the consent of the principal, may designate one or more licensees to act exclusively as the agent for the seller/lessor and others to act exclusively on behalf of the buyer/lessee. Licensees

who are not designated by the broker of record would have no agency relationship with either party in the transaction.

When designated licensees in the same company represent both parties to the transaction, designated agents would be subject to the duties imposed on all licensees generally, as well as the additional duties enumerated in new subsection (f). In this situation, the broker of record would assume the status of a dual agent and would be subject to the duties of licensees generally, the duties of dual agents and the additional duties specified in new subsection (g).

The Commission believes that it would be in the best interest of both the licensee and the consumer or principal, if designation were to take place at the time the principal enters into a written agreement. Nonetheless, the Commission acknowledges that there may be circumstances (that is, death, vacation, change of employment) when up-front designation may be impossible. In these instances, not only would the broker of record be required to use reasonable care to ensure that confidential information is not disclosed, but new subsection (b) would require the broker of record to obtain the principal's written consent for the newly designated licensee as well as the principal's agreement to renunciate a previous agency relationship.

The Commission also believes that to ensure that confidential information would not be revealed, brokers of record who permit designated agency in their offices, must develop clear company policy addressing these issues.

New § 35.316 tracks the language of section 606.6 of the act. Unlike buyer's agency, seller's agency and dual agency, the relationships between transaction licensees and consumers is not an agency relationship. Transaction licensees do not act as agents or advocates for the consumer. As such, transaction licensees do not owe consumers the general duty of confidentiality. Transaction licensees would only owe a limited duty of confidentiality for the information specified in subsection (b).

Section 35.331(a) (relating to written agreements generally), would be amended to track the mandatory provisions listed in section 608.1 of the act. New subsection (b) would clarify that the Consumer Notice may be incorporated by reference in the written agreement. The Commission believes that since some of the required information will be explained to consumers in detail at the initial interview, repetition would not be necessary.

Section 35.332(d) (relating to exclusive listing agreements), would be deleted. The Commission agrees with the predrafting suggestion of the Pennsylvania Association of Realtors that since the Commission's regulations do not provide sample agreements for all real estate transactions, this sample is unnecessary.

Section 35.333 (relating to agreements of sales), would be amended to track provisions of section 608.2 of the act and clarify the applicability of this provision to sales of cemetery lots, mausoleums or cremation spaces or openings.

Section 35.336(b) and (c) (relating to the disclosure summary), would be deleted as similar provisions are contained in § 35.284.

E. Compliance with Executive Order 1996-1

In compliance with Executive Order 1996-1, the Commission extended an invitation to the following boards, associations and interested licensees and educators to

preliminarily review and comment on the Commission's draft regulatory proposal: Pennsylvania Association of Realtors; Realtors Educational Institute; Institute of Real Estate Studies; Polley Associates; Pennsylvania Cemetery and Funeral Association; Pennsylvania Bar Association; Allegheny Highland Association; Greater Allegheny-Kiski Area Board; Allegheny Valley Board; Beaver County Association; Bradford-Sullivan County Association; Bucks County Board; Butler County Association; Cambria-Somerset Association; Carbon County Association; Carlisle Association; Central Montgomery County Association; Central Susquehanna Valley Board; Central Westmoreland Board; Centre County Association; Chester County Association; Clearfield-Jefferson Association; Delaware Valley Realtors Association; East Montgomery County Association; Elk-Cameron County Board; Greater Erie Board; Fayette County Board; Franklin County Association; Greenville Area Board; Hanover-Adams County Association; Greater Harrisburg Association; Greater Hazleton Association; Huntingdon County Board; Indiana County Board; Lancaster County Association; Lawrence County Board; Lebanon County Association; Lehigh Valley Association; McKean County Association; Greater Meadville Board; Greater Mercer County Board; Mifflin-Juniata County Board; Mon Yough Association; Monongahela Valley Board; Greater Philadelphia Association; North Central Penn Board; Pike/Wayne Association; Pocono Mountains Association; Reading-Berks Association; Realtors Association of Metropolitan Pittsburgh; Schuylkill County Board; Greater Scranton Association; Tri-State Commercial and Industrial Association; Warren County Board; Washington-Greene Association; West Branch Valley Association; Westmoreland West Association; Greater Wilkes-Barre Association; York County Association; The Pennsylvania Federation of Housing Counselors and Agencies; and The Real Estate Consumer Council.

In formulating this proposal, the Commission reviewed and considered all comments and suggestions received by these and other interested parties during the regulatory development process.

F. Fiscal Impact and Paperwork Requirements

The proposed amendments should have no fiscal impact or additional paperwork requirement on the Commonwealth. This rulemaking would have a fiscal impact and additional paperwork requirement on the regulated community in that licensees would incur the cost of amending written agreements and sales contracts.

The proposed amendments should not necessitate legal, accounting or reporting requirements on the regulated community.

G. Sunset Date

The Commission reviews the effectiveness of its regulations on an ongoing basis. Therefore, no sunset date has been assigned.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 20, 2000, the Commission submitted a copy of this proposal to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the proposal, the Commission has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Commission in compliance with Execu-

tive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposal, it will notify the agency within 10 days after the expiration of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The act specifies detailed procedures for review, prior to final publication of the regulations, by the agency, the General Assembly and the Governor of objections raised.

I. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Judith Pachter Schuller, Counsel, State Real Estate Commission, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking. Please reference No. 16A-568 (Agency), when submitting comments.

RITA HALVERSON, Chairperson

Fiscal Note: 16A-568. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 35. STATE REAL ESTATE COMMISSION

Subchapter B. GENERAL PROVISIONS

§ 35.201. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Agency relationship—A fiduciary relationship between a broker of record or licensees employed by a broker of record and a consumer who becomes a principal.

* * * * *

Broker—An individual or entity that, for another and for a fee, commission or other valuable consideration, does one or more of the following:

* * * * *

(iii) Manages [or appraises] real estate.

* * * * *

(vi) Undertakes to perform a comparative market analysis.

(vii) Attempts to perform one of the actions listed in subparagraphs (i)—[(v)](vi).

* * * * *

Buyer agent—A licensee who enters into an agency relationship with a buyer/tenant.

* * * * *

Consumer—An individual or entity who is the recipient of any real estate service.

* * * * *

Designated agent—One or more licensees designated by the broker of record, with the consent of the principal, to act exclusively as the agent or agents for the principal to the exclusion of all other licensees employed by the broker of record.

Dual agent—A licensee who acts as an agent for the buyer/tenant and seller/landlord in the same transaction.

* * * * *

Listing broker—A broker of record who has entered into a written agreement with a seller/landlord to market property as a seller's agent, dual agent or transaction licensee.

* * * * *

Principal—A consumer who has entered into an agency relationship with a broker of record or another licensee employed by the broker of record.

* * * * *

Salesperson—An individual who is employed by a broker of record to do one or more of the following:

* * * * *

(vii) Assist a broker in managing [or appraising] property.

(viii) Perform a comparative market analysis.

Seller's agent—A licensee who enters into an agency relationship with a seller/landlord.

Subagent—A licensee, not in the employ of the listing broker, who acts or cooperates with the listing broker in selling property as a seller's/landlord's agent.

* * * * *

Transaction licensee—A licensee who, without entering into an agency relationship with the consumer, provides communication or document preparation services or performs other acts listed in the definition of "broker" or "salesperson."

Subchapter E. STANDARDS OF CONDUCT AND PRACTICE

GENERAL ETHICAL RESPONSIBILITIES

§ 35.281. Putting contracts, commitments and agreements in writing.

(a) [A licensee who acts in a representative capacity in connection with a real estate transaction shall ensure that] All sale or lease contracts, commitments and agreements [regarding the transaction that he has knowledge of, or that he reasonably should] between a broker of record, or a licensee employed by the broker of record, and a principal or a consumer who is required to pay a fee, commission or other valuable consideration shall be [expected to have knowledge of, are] in writing and contain the information specified in § 35.331 (relating to written agreements generally).

(b) [A licensee who enters into an oral open] The following are exceptions to subsection (a):

(1) Open listing [agreement shall provide] agreements may be oral if the seller or landlord is provided with a written memorandum stating the terms of the agreement.

(2) Transaction licensees or subagents cooperating with listing brokers are not required to obtain a written agreement from the seller/landlord.

(3) Transaction licensees or subagents who provide services to the buyer/tenant but are paid by the seller/landlord or listing broker shall provide, and have signed, a written disclosure statement describing the nature of the services and the fees to be paid.

* * * * *

§ 35.283. Conflict of interest.

* * * * *

(d) A [broker] licensee who is engaged in the business of financing the purchase of real or personal property, [or of] lending money on the security of real or personal property, or providing title transfer, deed or document preparation, insurance, construction, repair or inspection services, may not require [, as a condition precedent to the activities, the negotiation by the buyer through a particular insurance company of a policy of insurance or the renewal of the insurance covering the property or the person involved, with the exception of a group creditor policy] a consumer to use any of these service.

(e) If the consumer chooses to use any of the services in subsection (d), the licensee shall provide the consumer with a written disclosure of any financial interest, including a referral fee or commission, that the licensee has in the service. The disclosure shall be made at the time the licensee first advises the consumer that an ancillary service is available or when the licensee first learns that the consumer will be using the service.

(f) A licensee has a continuing obligation to disclose to a principal any conflict of interest in a reasonably practicable period of time after the licensee learns or should have learned of the conflict of interest.

§ 35.284. Preagreement disclosures to [buyer and seller] consumers.

(a) A licensee shall [disclose the following information to a prospective client-seller at the initial interview before the seller enters into a listing agreement:

(1) Whether the broker is the agent of the seller or the agent of the buyer.

(2) The broker's commission and the duration of the listing period are negotiable.

(3) The existence of a Real Estate Recovery Fund to reimburse a person who has obtained a final civil judgment against a Pennsylvania real estate licensee owing to fraud, misrepresentation or deceit in a real estate transaction and who has been unable to collect the judgment after exhausting legal and equitable remedies. Details about the Fund may be obtained by calling the Commission at (717) 783-3658.

(4) The requirement that an agreement of sale executed by the seller shall contain the zoning classification of the property, unless the property (or each parcel thereof, if subdividable) is zoned solely or primarily to permit single-family dwell-

ings] provide the disclosure summary in § 33.336 (relating to disclosure summary) to all consumers at the initial interview.

(b) A licensee shall [disclose the following information to a prospective buyer at the initial interview before the buyer enters into an agreement of sale:

(1) Whether the broker is the agent of the seller or the agent of the buyer.

(2) The existence of a Real Estate Recovery Fund to reimburse a person who has obtained a final civil judgment against a Pennsylvania real estate licensee owing to fraud, misrepresentation or deceit in a real estate transaction and who has been unable to collect the judgment after exhausting legal and equitable remedies. Details about the Fund may be obtained by calling the Commission at (717) 783-3658] provide a copy of the entire disclosure to the consumer and shall retain the signed acknowledgment for his records for 6 months, unless the consumer and the broker have entered into a business relationship. In this case, the records shall be retained under § 35.286 (relating to retention and production of records).

(c) If a consumer refuses to sign the acknowledgment, a licensee shall note the refusal on the acknowledgment and retain it as specified in subsection (b).

§ 35.287. Supervised [appraisal and] property management assistance by salespersons.

[(a) A salesperson may assist in the preparation of an appraisal by the employing broker or an associate broker, if the employing broker or associate broker:

(1) Directly supervises and controls the salesperson's work, assuming total responsibility for the contents of the appraisal documents and value conclusions. The salesperson may not arrive at an independent determination of value.

(2) Personally makes a physical inspection of the interior and exterior of the subject property.

(3) Signs the appraisal document as "appraiser" and has the salesperson sign as "assistant to appraiser."

(b)] A salesperson may assist in the management of real estate if the salesperson's work is directly supervised and controlled by the employing broker. The salesperson may not independently negotiate the terms of a lease nor execute a lease on behalf of the [lessor] landlord.

§ 35.292. Duties of licensees generally.

(a) The following duties are owed to all consumers of real estate services and may not be waived:

(1) Exercise reasonable professional skill and care.

(2) Deal honestly and in good faith.

(3) Present, in a timely manner, all offers, counteroffers, notices and communications to and from the parties in writing, unless the property is subject to an existing contract and the seller/landlord has agreed in a written waiver.

(4) Comply with the Real Estate Disclosure Act (68 P. S. § 1021-1036).

(5) Account for escrow and deposits funds as required by section 604(a)(5) of the act (63 P. S. § 455.604(a)(5)) and §§ 35.321—35.328 (relating to escrow requirements).

(6) Provide consumers with the disclosure summary in § 35.336 (relating to disclosure summary) at the initial interview.

(7) Disclose, in a timely manner, all conflicts of interest and financial interests as required in § 35.283 (relating to conflicts of interest).

(8) Advise the consumer to seek expert advice on matters about the transaction that are beyond the licensee's expertise.

(9) Ensure that all services are provided in a reasonable, professional and competent manner.

(10) Keep the consumer informed about the transaction and the tasks to be completed.

(11) Provide assistance with document preparation.

(12) Advise the consumer about compliance with laws pertaining to real estate transactions without rendering legal advice.

(b) A licensee is not required to conduct an independent inspection of the property.

(c) A licensee is not required to independently verify the accuracy or completeness of any representation made by the consumer to a transaction which the licensee reasonably believes to be accurate and reliable.

(d) A licensee is not liable for the acts of a consumer unless the consumer is acting at the express direction of the licensee or as a result of a representation by a licensee reasonably relied on by the consumer.

PERMITTED RELATIONSHIPS

(Editor's Note: The text in §§ 35.311—35.316 is proposed to be added. It is being printed in regular print to enhance readability.)

§ 35.311. Generally.

(a) A licensee and a consumer may enter into the relationship specified in sections 606.2—606.4 and 606.6 of the act (63 P. S. §§ 455.606b—455.606d and 455.606f).

(b) A broker of record may not extend or delegate the broker of record's agency relationship without the written consent of the principal.

(c) Compensation paid by a broker of record to another broker of record who assists in the marketing and sale/lease of a consumer's property does not create an agency relationship between the consumer and that other broker of record.

(d) A licensee in an agency relationship may not knowingly, during or following, reveal or use confidential information of the principal, except when one or more of the following apply:

- (1) The principal consented to the disclosure.
- (2) The information is disclosed to another licensee or third party acting solely on behalf of the principal.
- (3) The information is required to be disclosed under subpoena or court order.
- (4) The disclosure is necessary to prevent the principal from committing a crime.

(5) The information is used by the licensee to defend in a legal proceeding against an accusation of wrongdoing.

§ 35.312. Seller's agent.

(a) In addition to the duties required in § 35.292 (relating to duties of licensees generally), a seller's agent owes the additional duties of:

(1) Loyalty to the seller/landlord by acting in the seller's/landlord's best interest.

(2) Confidentiality, except that a licensee has a duty to reveal known material defects about the property.

(3) Making a continuous and good faith effort to find a buyer/tenant for the property except when the property is subject to an existing agreement of sale/lease.

(4) Disclosure to other parties in the transaction that the licensee has been engaged as a seller's agent.

(b) A licensee does not breach a duty to a seller/landlord by showing alternative properties to a prospective buyer/tenant or listing competing properties.

(c) A seller's agent may compensate other brokers of records as subagents if the seller/landlord agrees in writing. Subagents have the same duties and obligations to the seller/landlord as the seller's agent.

(d) A seller's agent may also compensate a buyer's agent and a transaction licensee who do not have the same duties and obligations to the seller/landlord as the seller's agent.

(e) Upon entering into a written agreement with the seller/landlord, each licensee employed by the broker of record becomes a seller's agent unless a licensee has been named, or is thereafter named, a designated agent under § 35.315 (relating to designated agency).

§ 35.313. Buyer's agency.

(a) In addition to the duties required in § 35.292 (relating to duties of licensees generally), a buyer's agent owes the additional duties of:

(1) Loyalty to the buyer/tenant by acting in the buyer's/tenant's best interest.

(2) Confidentiality.

(3) Making a continuous and good faith effort to find a property for the buyer/tenant except when the buyer is subject to an existing contract for sale/lease.

(4) Disclosure to other parties in the transaction that the licensee has been engaged as a buyer's agent.

(b) A licensee does not breach a duty to a buyer/tenant by showing a property the buyer/tenant is interested in to other buyer/tenants.

(c) A buyer's agent represents the interests of the buyer/tenant even if paid by the seller/landlord.

(d) Upon entering into a written agreement with the buyer/tenant, each licensee employed by the broker of record becomes a buyer's agent unless a licensee has been named, or is thereafter named, a designated agent under § 35.315 (relating to designated agency).

§ 35.314. Dual agency.

(a) A licensee may act as a dual agent if both parties consent in writing.

(b) In addition to the duties required in § 35.292 (relating to duties of licensees generally), a dual agent owes the additional duties of:

(1) Taking no action that is adverse or detrimental to either party's interest in the transaction.

(2) Making a continuous and good faith effort to find a buyer/tenant for the property and a property for the buyer/tenant, unless otherwise agreed.

(3) Confidentiality, except that a licensee is required to disclose known material defects about the property.

(c) A dual agent does not breach a duty to the seller/landlord by showing properties not owned by the seller/landlord to a prospective buyer/tenant or listing competing properties for sale/lease.

(d) A dual agent does not breach a duty to a buyer/tenant by showing a property the buyer/tenant is interested in to other prospective buyer/tenants.

§ 35.315. Designated agency.

(a) A broker of record, with the written consent of the principal, may designate one or more licensees to act exclusively as the agent of the seller/landlord, and designate one or more licensees to act exclusively as the agent of the buyer/tenant in the same transaction.

(b) Designation should take place at the time that the parties enter into a written agreement. Licensees may be designated after the initial designation or after a written agreement has been entered into, if the broker of record:

(1) Obtains the principal's consent, in writing, to the newly designated licensee.

(2) Obtains, when applicable, the principal's agreement to renunciate any previous agency relationship with the other licensees employed by the broker of record to the exclusion of other designated agents.

(c) Regardless of when the designation takes place, the broker of record and the designated agent shall use reasonable care to ensure that confidential information is not disclosed or used.

(d) The licensees employed by the broker of record who are not designated may not have an agency relationship with either party in the transaction.

(e) The broker of record may, provided there is a written company policy, authorize licensees employed by the broker of record to execute listing and agency contracts indicating themselves or affiliated licensees, or both, who are employed by the broker of record as the designated agents of the consumer.

(f) Each licensee employed by the same broker of record who is a designated agent in the same transaction, owes the following additional duties, in addition to those required in § 35.292 (relating to duties of licensees generally):

(1) Loyalty to the principal with whom the designated agent is acting by acting in that principal's best interest.

(2) Making a continuous and good faith effort to find a buyer/tenant for a principal who is a seller/landlord or to find a property for a principal who is the buyer/tenant except when the seller/landlord is subject to an existing contract for sale or lease or the buyer/tenant is subject to an existing contract to purchase or lease.

(4) Disclosure to a principal prior to writing or presenting an offer to purchase that the other party to the transaction is represented by a designated agent also employed by the broker.

(5) Confirmation that the broker of record is a dual agent in the transaction.

(g) In the transaction specified in subsection (f), the employing broker of record, as a dual agent, has the additional duties, in addition to those specified in § 35.292 and § 35.314 (relating to dual agents), of:

(1) Taking reasonable care to protect any confidential information disclosed to the designated licensees.

(2) Taking responsibility to direct and supervise the business activities of the designated licensees while taking no action that is adverse or detrimental to either party's interest in the transaction.

§ 35.316. Transaction licensee.

In addition to the duties required in § 35.292 (relating to duties of licensees generally), a transaction licensee shall advise the consumer that the licensee:

(1) Is not acting as an agent or advocate for the consumer and should not be provided with confidential information.

(2) Owes the additional duty of limited confidentiality in that the following information may not be disclosed:

(i) The seller/landlord will accept a price less than the asking/listing price.

(ii) The buyer/tenant will pay a price greater than the price submitted in a written offer.

(iii) The seller/landlord or buyer/tenant will agree to financing terms other than those offered.

REAL ESTATE DOCUMENTS

§ 35.331. [Listing] Written agreements generally.

(a) A [listing] written agreement [, of whatever type,] other than a sales agreement or contract, between a licensee and a principal, or between a licensee and a consumer whereby the consumer is or may be committed to pay a fee, commission or other valuable consideration may [state that] contain the following information printed conspicuously:

* * * * *

(2) [Details about the Fund may be obtained by calling the Commission at (717) 783-3658.

(3)] Payments of money received by the broker of record on account of a sale—regardless of the form of payment and the person designated as payee (if payment is made by an instrument)—shall be held by the broker of record in an escrow account pending consummation of the sale or a prior termination thereof.

[(4)] (3) The [brokers] broker of record's commission and the duration of the [listing period] agreement have been determined as a result of negotiations between the broker of record, or a licensee employed by the broker of record, and the seller/landlord or buyer/tenant.

(5) The possibility that the broker of record or any licensee employed by the broker of record may provide services to more than one party in a single transaction, and an explanation of the duties owed to the other party and the fees which the broker of record may receive for those services.

(6) A description of the licensee's conflicts of interest and a method whereby the licensee will disclose future conflicts.

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

(8) In an agreement between a broker of record and a buyer/tenant, an explanation that the broker of record may be compensated based upon a percentage of the purchase price, the broker of record'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/landlord will represent the interests of the buyer/tenant and a disclosure of any potential for the broker of record to act as a dual agent.

(b) To the extent that any of the information required in subsection (b) is set forth in the disclosure summary in § 35.336 (relating to disclosure summary), those provisions need not be repeated, but may be incorporated by reference.

§ 35.332. Exclusive listing agreements.

* * * * *

(b) An exclusive listing agreement shall contain, in addition to the requirements in § 33.331 (relating to written agreements generally):

* * * * *

(2) The commission, fees or other compensation expected on the sale or lease price.

* * * * *

§ 35.333. Agreements of sale.

(a) An agreement of sale, other than for a cemetery lot, mausoleum or cremation space or opening, shall contain, conspicuously:

* * * * *

(7) A statement [as to whether] identifying the capacity in which the broker of record, or a licensee employed by the broker of record is [the agent of the seller or the agent of the buyer] involved in the transaction and whether services have been provided to another party in the transaction.

* * * * *

(d) [The requirements in subsection (a)(1)—(5) and (9) are applicable to an] An agreement of sale for a cemetery lot or plot or a mausoleum space or opening shall contain the requirements in subsection (a)(1)—(5) and (9).

§ 35.336. Disclosure summary.

[(a)] The Disclosure Summary shall be entitled "Consumer Notice" and shall be in the following format available from the Commission office upon request by phone, fax or internet.

* * * * *

[(b) Licensees shall provide the disclosure summary to all consumers at the initial interview.

(c) Licensees shall provide a copy of the entire disclosure to the consumer and retain the signed acknowledgment for their records for 6 months, unless the consumer and the broker have entered into a business relationship whereby the records shall be retained under § 35.286 (relating to retention and production of records).

(d) If a consumer refuses to sign the acknowledgment, licensees shall note the refusal on the acknowledgment and retain it for their records as specified in subsection (c).]

§ 35.337. Comparative market analysis.

(a) A comparative market analysis shall 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 requires 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.

(b) A licensee who is also licensed as an appraiser under the Real Estate Appraisers Certification Act (63 P. S. §§ 457.1—457.19) and who prepares a comparative market analysis that satisfies the Uniform Standards of Professional Appraisal Practice is not required to place the disclosure on the analysis.

[Pa.B. Doc. No. 00-216. Filed for public inspection February 4, 2000, 9:00 a.m.]