

PROPOSED RULEMAKING

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 511a AND 513a]

Persons Required to be Excluded; Underage Gaming

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general specific powers) and the specific authority in 4 Pa.C.S. §§ 1207(8), 1514 and 1515 (relating to regulatory authority of board; regulation requiring exclusion of certain persons; and repeat offenders excludable from licensed gaming facility), proposes to add Chapters 511a and 513a (relating to persons required to be excluded; and underage gaming) to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

Under 4 Pa.C.S. § 1203 (relating to temporary regulations), the Board initially adopted temporary regulations in Chapter 511 at 36 Pa.B. 2905 (June 10, 2006) and in Chapter 513 at 36 Pa.B. 3441 (July 1, 2006). Under 4 Pa.C.S. Part II (relating to gaming), the temporary regulations expire on July 5, 2007.

The Board is proposing to replace the temporary regulations with the permanent regulations in this proposed rulemaking.

Explanation of Chapters 511a and 513a

The temporary regulations in Chapter 511 (relating to persons required to be excluded) implement 4 Pa.C.S. §§ 1514 and 1515. Sections 511.1 and 511.2 (relating to definitions; and maintenance and distribution of the list) define terms used in this chapter and specify the information the Board will provide to slot machine licensees about individuals on the exclusion list. These sections also provide that the exclusion list will be available to the public, both at the Board's offices and on the Board's website.

Sections 511.3—511.5 (relating to criteria for exclusion; duties of the Bureau; and procedure for entry of names onto the exclusion list) list the criteria the Board will use when determining whether or not an individual should be placed on the exclusion list; the duties of the Bureau of Investigations and Enforcement regarding the exclusion process, the process to be used to place a person on the exclusion list and the consequences of being placed on the exclusion list.

Sections 511.6 and 511.7 (relating to application for preliminary placement of a candidate on the exclusion list; and final order of exclusion) address a person's right to a hearing if the person is placed on the exclusion list, the conduct of such hearings and the Board's review of placements.

Section 511.8 (relating to information contained on the exclusion list) requires slot machine licensees to exclude or eject individuals who are on, or meet the criteria to be on, the exclusion list, to notify the Board if an excluded person is found in or attempts to enter a licensed facility and to notify the Board about any individual the slot machine licensee believes meets the criteria for exclusion.

Finally, § 511.9 (relating to duty of slot machine licensee) outlines the petition process that an individual who is on the exclusion list can use to request removal from the exclusion list.

The temporary regulations in Chapter 513 (relating to underage gaming) specify who is excluded from the gaming floor or from engaging in gaming activities based on age. Also included in Chapter 513 are regulations regarding the responsibilities of licensees, permittees, registrants and certification holders regarding underage gaming and defenses that cannot be used in enforcement actions.

Amendments to the temporary regulations in this proposed rulemaking include a large number of editorial changes in both chapters that improve the clarity of the language contained in the existing temporary regulations.

Additionally, § 511a.2 (relating to maintenance and distribution of the exclusion list) was amended to move the provision regarding what information would be provided to slot machine licensees from § 511.8 to this section. The substance of what was previously in § 511.2(c) has been moved to § 511a.8 (relating to duties of slot machine licensees).

In § 511a.4 (relating to duties of the Bureau), the Board has been deleted as an entity who may refer a person for investigation and law enforcement agencies and licensed facilities have been added as entities that can make a referral. Temporary subsection (d) has been deleted; it is no longer needed due to the amendments made to §§ 511a.6 and 511a.7 (relating to demand for hearing on the placement of a person on the exclusion list; Board review). Section 511a.5 (relating to placement on the exclusion list) has been expanded to address the enforcement action taken if an excluded person is caught gaming.

Sections 511a.6 and 511a.7 have been substantially amended to simplify and clarify the process for hearings on placement on the exclusion list and the Board review of placements.

The former § 511.8 has been deleted because the material in this section has been relocated to § 511a.2. In new § 511a.8 (formerly § 511.9), temporary § 511.2(c) is subsection (a).

In Chapter 513a, § 513a.2 (relating to exclusion requirements) has been amended to add check cashing privileges to the list of services that should not be provided to anyone under 21 years of age.

Section 513a.4 (relating to signage requirements) has been added to mandate posting signs that state that individuals under 21 years of age cannot engage in gaming activities, will be removed if found gaming and may be subject to arrest for trespass.

Affected Parties

This proposed rulemaking imposes requirements on slot machine licensees, persons who are placed on the excluded persons list and individuals who are not old enough to engage in gaming (under 21 years of age) or are too young to be on the gaming floor (under 18 years of age).

Fiscal Impact

Commonwealth. This proposed rulemaking will impose costs on the Board regarding placing individuals on the

exclusion list, maintenance and distribution of the excluded persons list and enforcement of the provisions regarding exclusion and underage gaming.

Political subdivisions. This proposed rulemaking will have no significant fiscal impact on political subdivisions of the Commonwealth.

Private sector. Slot machine licensees will experience costs regarding training of employees, signage requirements and compliance with the requirements of the exclusion underage gaming provisions.

General public. Individuals seeking to dispute placement on or seeking removal from the exclusion list will experience some minor costs associated with the hearing and petition processes.

Paperwork Requirements

This proposed rulemaking requires slot machine licensees to maintain, update and disseminate information on excluded persons. A slot machine licensee is also required to submit the names of individuals it believes meet the criteria for placement on the excluded person list.

Individuals demanding a hearing will have to file a response to the notice served by the Clerk. Individuals seeking to be removed from the exclusion list will have to file a petition specifying the grounds for removal.

Effective Date

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking, within 30 days after the date of publication in the *Pennsylvania Bulletin* to Paul Resch, Secretary, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-57.

Contact Person

The contact person for questions about this proposed rulemaking is Richard Sandusky, Director of Regulatory Review, (717) 214-8111.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 28, 2007, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

THOMAS A. DECKER,
Chairperson

Fiscal Note: 125-57. (1) State Gaming Fund; (2) Implementing Year 2006-07 is \$50,000; (3) 1st Succeeding

Year 2007-08 is \$44,000; 2nd Succeeding Year 2008-09 is \$45,000; 3rd Succeeding Year 2009-10 is \$47,000; 4th Succeeding Year 2010-11 is \$49,000; 5th Succeeding Year 2011-12 is \$51,000; (4) 2005-06 Program—\$26,400,000; 2004-05 Program—\$13,200,000; 2003-04 Program—\$2,900,000; (7) State Gaming Board; (8) recommends adoption.

(Editor's Note: In Annex A, some references to sections not yet adopted as permanent regulations appear in this proposed rulemaking. The section numbers of the permanent regulations will have an "a" indicator after the chapter number. Refer to the corresponding temporary regulations adopted by the Board when necessary.)

Annex A

TITLE. 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart J. EXCLUSION OF PERSONS

CHAPTER 511a. PERSONS REQUIRED TO BE EXCLUDED

- Sec.
- 511a.1. Definitions.
- 511a.2. Maintenance and distribution of the exclusion list.
- 511a.3. Criteria for exclusion.
- 511a.4. Duties of the Bureau.
- 511a.5. Placement on the exclusion list.
- 511a.6. Demand for hearing on the placement of a person on the exclusion list.
- 511a.7. Board review.
- 511a.8. Duties of slot machine licensees.
- 511a.9. Petition to remove name from the exclusion list.

§ 511a.1. Definitions.

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

Career or professional offender—A person, who for the purpose of economic gain, engages in activities that are deemed criminal violations under 18 Pa.C.S. (relating to crimes and offenses) or equivalent criminal violations in other jurisdictions, or engages in unlawful activities contained in section 1518(a) of the act (relating to prohibited acts; penalties).

Cheat—

(i) To alter, without authorization, the elements of chance, method of selection or criteria which determine:

- (A) The result of a slot machine game.
- (B) The amount or frequency of payment in a slot machine game.
- (C) The value of a wagering instrument.
- (D) The value of a wagering credit.

(ii) The term does not include altering for required maintenance and repair.

(iii) The term includes an act in any jurisdiction that would constitute an offense under section 1518(a)(6) and (a)(7) of the act.

Excluded person—A person who has been placed upon the exclusion list and who is required to be excluded or ejected from a licensed facility.

Exclusion list—A list of names of persons who are required to be excluded or ejected from a licensed facility.

§ 511a.2. Maintenance and distribution of the exclusion list.

(a) The Board will maintain a list of persons to be excluded or ejected from a licensed facility.

(b) The exclusion list will be open to public inspection at the Board's central office during normal business hours and will be distributed to every slot machine licensee within this Commonwealth, who shall acknowledge receipt thereof in writing or electronically.

(c) The following information will be provided to the slot machine licensees for each excluded person on the exclusion list:

(1) The full name and all aliases the person is believed to have used.

(2) A description of the person's physical appearance, including height, weight, type of build, color of hair and eyes and any other physical characteristics which may assist in the identification of the person.

(3) The person's date of birth.

(4) The date the person was added to the list.

(5) A recent photograph, if available.

(6) The last known address of record.

(7) Other identifying information available to the Board.

§ 511a.3. Criteria for exclusion.

(a) The exclusion list may include a person who meets one or more of the following criteria:

(1) A career or professional offender whose presence in a licensed facility would, in the opinion of the Board, be inimical to the interest of the Commonwealth or a slot machine licensee, or both.

(2) An associate of a career or professional offender whose presence in a licensed facility would be inimical to the interest of the Commonwealth or a slot machine licensee, or both.

(3) A person who has been convicted of a criminal offense under the laws of any state, or of the United States, which is punishable by more than 1 year in prison, or who has been convicted of any crime or offense involving moral turpitude, and whose presence in a licensed facility would be inimical to the interest of the Commonwealth or a slot machine licensee, or both.

(4) A person whose presence in a licensed facility would be inimical to the interest of the Commonwealth or licensed gaming therein, including:

(i) Cheats.

(ii) Persons whose gaming privileges have been suspended by the Board.

(iii) Persons whose permits, licenses or other approvals have been revoked.

(iv) Persons who pose a threat to the safety of the patrons or employees of a slot machine licensee.

(v) Persons with a history of conduct involving the disruption of the gaming operations of slot machine licensees.

(vi) Persons subject to an order of a court of competent jurisdiction in this Commonwealth excluding those persons from licensed facilities.

(vii) Persons with pending charges or indictments for a gaming or gambling crime or a crime related to the integrity of gaming operations in this Commonwealth or another jurisdiction.

(viii) Persons who have been convicted of a gaming or gambling crime or crime related to the integrity of gaming operations in this Commonwealth or another jurisdiction.

(ix) Persons who have performed an act or have a notorious or unsavory reputation that would adversely affect public confidence and trust in gaming, including being identified with criminal activities in published reports of various Federal and State legislative and executive bodies that have inquired into criminal or organized criminal activities.

(b) For purposes of subsection (a), a person's presence may be considered "inimical to the interest of the Commonwealth or of licensed gaming therein" if known attributes of the person's character and background meet one or more of the following criteria:

(1) Are incompatible with the maintenance of public confidence and trust in the credibility, integrity and stability of the operation of a licensed facility.

(2) May reasonably be expected to impair the public perception of, and confidence in, the strict regulatory process created by the act.

(3) Create or enhance a risk of the fact or appearance of unsuitable, unfair or illegal practices, methods or activities in the conduct of gaming or in the business or financial arrangements incidental thereto.

(c) A finding of inimicality may be based upon the following:

(1) The nature and notoriety of the character or background of the person.

(2) The history and nature of the involvement of the person with licensed gaming in this Commonwealth or another jurisdiction, or with a particular slot machine licensee or licensees or an affiliate, intermediary, subsidiary or holding company thereof.

(3) The nature and frequency of contacts or associations of the person with a slot machine licensee or licensees, or with employees or agents thereof.

(4) Other factors reasonably related to the maintenance of public confidence in the efficacy of the regulatory process and the integrity of gaming operations, the gaming industry and its employees.

(d) A person's race, color, creed, national origin or ancestry, or sex will not be a reason for placing the name of a person upon the exclusion list.

§ 511a.4. Duties of the Bureau.

(a) The Bureau will, on its own initiative, or upon referral by a law enforcement agency or a slot machine licensee investigate a person to determine whether the person meets the criteria for exclusion provided in section 1514 of the act (relating to regulation requiring exclusion of certain persons) and § 511a.3 (relating to criteria for exclusion).

(b) If, upon completion of an investigation, the Bureau determines that an individual should be placed on the exclusion list, the Bureau will file a petition for exclusion with the Board, identifying the candidate and setting forth a factual basis for the petition. The petition must include information demonstrating that the individual satisfies the criteria for exclusion under section 1514 or 1515 of the act (relating to repeat offenders excludable from licensed gaming facility) or this chapter.

(c) When the Bureau files a complaint alleging a violation of section 1514(e) of the act and § 511a.8(b)(2)

(relating to duties of slot machine licensees) against a slot machine licensee, the Bureau will file simultaneously a petition to exclude the person alleged in the complaint to meet the criteria for exclusion under § 511a.3.

§ 511a.5. Placement on the exclusion list.

(a) A person may be placed on the exclusion list:

(1) Upon the filing of a petition for exclusion by the Bureau in accordance with the procedures under § 511a.4 (relating to duties of the Bureau).

(2) Upon receipt of an order from a court of competent jurisdiction within this Commonwealth, excluding the person from licensed facilities.

(b) The placement of a person on the exclusion list shall have the effect of requiring the exclusion or ejection of the excluded person from licensed facilities.

(c) An excluded person may not collect in any manner or in any proceeding any winnings or recover any losses arising as a result of any gaming activity for the entire period of time that the person is on the Board's exclusion list.

(d) Winnings incurred by an excluded person shall be remitted to the Board to support compulsive and problem gambling programs.

(e) For the purposes of this section, any winnings issued to, found on or about, or redeemed by an excluded person shall be presumed to constitute winnings subject to remittance to the Board.

§ 511a.6. Demand for hearing on the placement of a person on the exclusion list.

(a) Upon placement of a person on the exclusion list, the Clerk will serve notice of the placement to the person by personal service or certified mail at the last known address of the person. When the placement is a result of a petition for exclusion filed by the Bureau, a copy of the petition will be included with the notice.

(b) Upon service of the notice by the Clerk, an excluded person shall have 30 days to demand a hearing before the Board. Failure to demand a hearing within 30 days after service shall be deemed an admission of all matters and facts alleged in the Bureau's petition for exclusion.

(c) If a hearing is demanded by the excluded person, a hearing will be scheduled as provided in § 492a.6 (relating to hearings generally). At the hearing, the Bureau will have the affirmative obligation to demonstrate that the excluded person satisfies the criteria for exclusion in section 1514 or 1515 of the act (relating to regulation requiring exclusion of certain persons; and repeat offenders excludable from licensed gaming facility) or § 511a.3 (relating to criteria for exclusion). Unless the matter is heard directly by the Board, the presiding officer will prepare a recommendation as provided in § 494a.4 (relating to report or recommendation of the presiding officer) for consideration by the Board.

§ 511a.7. Board review.

After a hearing or consideration of a petition for exclusion filed by the Bureau when no hearing was requested, the Board will:

(1) Issue a final order affirming the placement of the person on the exclusion list.

(2) Issue a final order removing the person from the exclusion list.

(3) Refer the matter to the presiding officer for further hearing.

§ 511a.8. Duties of slot machine licensees.

(a) A slot machine licensee shall have the responsibility to distribute copies of the exclusion list to its employees. Additions, deletions or other updates to the list shall be distributed by a slot machine licensee to its employees within 2 business days of the slot machine licensee's receipt of the updates from the Board.

(b) A slot machine licensee shall exclude or eject the following persons from its licensed facility:

(1) An excluded person.

(2) A person known to the slot machine licensee to satisfy the criteria for exclusion in section 1514 of the act (relating to regulation requiring exclusion of certain persons) and § 511a.3 (relating to criteria for exclusion).

(c) If an excluded person enters, attempts to enter, or is in a licensed facility and is recognized by employees of the slot machine licensee, the slot machine licensee shall immediately notify the Bureau of the fact in accordance with the procedures set forth by the Board.

(d) It shall be the continuing duty of a slot machine licensee to inform the Bureau, in writing, of the names of persons the slot machine licensee believes are appropriate for placement on the exclusion list and the reason for placement on the exclusion list.

(e) A slot machine licensee or employees thereof will not be liable to any person for damages in a civil action, which is based on the following:

(1) Withholding winnings from an excluded person.

(2) Permitting an excluded person to gamble.

(3) Excluding an excluded person from the licensed gaming facility.

§ 511a.9. Petition to remove name from the exclusion list.

(a) An excluded person may file a petition with the Clerk to request a hearing for removal of his name from the exclusion list at any time after 5 years from the placement of his name on the exclusion list.

(b) The petition must be signed by the excluded person, contain supporting affidavits, and state the specific grounds believed by the petitioner to constitute good cause for removal from the exclusion list. Upon receipt of the petition, the Bureau may file an answer in accordance with § 493a.5 (relating to answers).

(c) The Board may decide the petition on the basis of the documents submitted by the excluded person and the Bureau. The Board may summarily deny the petition, may grant the petition or direct that a hearing be held in accordance with § 511a.6 (relating to demand for hearing on the placement of a person on the exclusion list). The Board will grant the petition or direct that a hearing be held only upon a finding that there is new evidence, which is material and necessary, or that circumstances have changed since the placement of the excluded person on the exclusion list, and that there would be a reasonable likelihood that the Board would alter its previous decision.

(d) An excluded person who is barred from requesting a hearing concerning his removal from the exclusion list by the 5-year period of exclusion in subsection (a) may petition the Board for early consideration at any time. However, an excluded person may not, within the 5-year period of exclusion, file more than one petition for early consideration.

(e) A petition for early consideration must contain the information required by subsection (b). Upon receipt of the petition, the Bureau may file an answer in accordance with § 493a.5 (relating to answers).

(f) The Board may decide the petition for early consideration on the basis of the documents submitted by the excluded person and the Bureau. The Board may summarily deny the petition or may grant the petition and direct that a hearing be held in accordance with § 511a.6.

(g) The Board will consider the following criteria when making its decision on a petition for early consideration:

(1) Whether there are extraordinary facts and circumstances warranting early consideration of the excluded person's request for removal from the exclusion list.

(2) If exclusion was ordered under § 511a.5(a)(2) (relating to placement on the exclusion list), whether the excluded person has completed the period of probation or otherwise satisfied the terms of the court-ordered exclusion.

CHAPTER 513a. UNDERAGE GAMING

Sec.	
513a.1.	Definitions.
513a.2.	Exclusion requirements.
513a.3.	Responsibilities of licensees, permittees, registrants and certification holders.
513a.4.	Signage requirements.
513a.5.	Enforcement.

§ 513a.1. Definitions.

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

Fully executed gaming transaction—An activity involving a slot machine or associated equipment which occurs on the gaming floor of a licensed facility and which results in an individual obtaining any money or thing of value from, or being owed any money or thing of value by, a slot machine licensee.

Winnings—Any money or thing of value received from, or owed by a slot machine licensee as a result of a fully executed gaming transaction.

§ 513a.2. Exclusion requirements.

(a) An individual under 18 years of age may not enter or be on the gaming floor of a licensed facility.

(b) An individual under 21 years of age, whether personally or through an agent, may not operate, use, play or place a wager on, a slot machine in a licensed facility.

(c) An individual under 21 years of age may not receive check cashing privileges, be rated as a player, or receive any complimentary service, item or discount as a result of, or in anticipation of, gaming activity.

(d) An individual under 21 years of age may not collect in any manner or in any proceeding, whether personally or through an agent, winnings or recover losses arising as a result of any gaming activity.

(e) Winnings incurred by an individual under 21 years of age shall be remitted to the Board to support compulsive and problem gambling programs.

(f) For the purposes of this section, winnings issued to, found on or about or redeemed by an individual under 21 years of age shall be presumed to constitute winnings and be subject to remittance to the Board.

§ 513a.3. Responsibilities of licensees, permittees, registrants and certification holders.

(a) A person holding a license, permit, certification or registration issued by the Board is prohibited from permitting or enabling an individual to engage in conduct that violates § 513a.2(a), (b), (c) or (d) (relating to exclusion requirements).

(b) Slot machine licensees shall establish procedures that are designed to prevent violations of this chapter and submit a copy of the procedures to the Board 30 days prior to initiation of gaming activities at the licensed facility. The slot machine licensee may not commence operations until the Board approves its procedures. Amendments to these procedures must be submitted to and approved by the Board prior to implementation.

(c) A slot machine licensee may be subject to Board imposed administrative sanctions if a person engages in conduct that violates § 513a.2(a), (b), (c) or (d) at its licensed facility. Under § 513a.2(e), winnings obtained by a slot machine licensee from or held on account of a person under 21 years of age shall be remitted to the Board and deposited into the Compulsive and Problem Gambling Treatment Fund.

(d) A person holding a license, permit, registration or certification issued by the Board who violates a provision of this chapter may be held jointly or severally liable for the violation.

§ 513a.4. Signage requirements.

A slot machine licensee shall post signs that include a statement that is similar to the following: "It is unlawful for any person under 21 years of age to engage in any gaming activities. Individuals violating this prohibition will be removed and may be subject to arrest for criminal trespass under 18 Pa.C.S. § 3503 (relating to criminal trespass)." The complete text of the sign shall be determined by the Board. The signs shall be prominently posted within 50 feet of each entrance and exit of the gaming floor.

§ 513a.5. Enforcement.

In a prosecution or other proceeding against a person for a violation of this chapter, it will not be a defense that the person believed an individual to be 21 years of age or older.

[Pa.B. Doc. No. 07-595. Filed for public inspection April 6, 2007, 9:00 a.m.]

STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

[49 PA. CODE CH. 39]

Administrator-in-Training Program

The State Board of Examiners of Nursing Home Administrators (Board) proposes to amend §§ 39.1, 39.5, 39.61 and 39.72 and add §§ 39.101—39.103 (relating to AIT Program) to read as set forth in Annex A. The proposed rulemaking updates and amends the requirements for admission to the licensing examination.

A. *Effective Date*

The proposed rulemaking will be effective on final-form publication in the *Pennsylvania Bulletin*.

B. *Statutory Authority*

Under section 4(c) of the Nursing Home Administrators Licensing Act (act) (63 P.S. § 1104(c)), the Board is authorized to make rules and regulations as may be necessary for the proper performance of its duties. Under section 4(a)(1) of the act, the Board is authorized to develop, impose and enforce standards that must be met by individuals in order to receive a license as a nursing home administrator (NHA). These standards must be designed to insure that NHAs will be individuals who are of good character and are otherwise suitable and qualified by training or experience in the field of institutional administration to serve as NHAs.

C. *Background and Need for Amendments*

Section 39.5(a) (relating to requirements for admission to licensing examination; examination procedures) provides that a candidate who seeks admission to the licensing examination shall meet the following requirements: (1) be at least 21 years of age; (2) submit evidence of good moral character and suitability as prescribed by the Board in the examination application; and (3) pay the required fee for examination and licensure.

In addition to these general requirements, § 39.5(b) gives candidates the opportunity to sit for the examination provided they meet certain educational and experience requirements. Each of the five options requires candidates to serve 6 to 12 months as assistant NHAs prior to sitting for the examination. Many nursing homes simply cannot afford to hire and pay assistant administrators. Therefore, it is exceedingly difficult for candidates to obtain the requisite experience under the current regulations.

In a profession that has seen a significant decline of licensees over the past 5 years, the institution of an administrator-in-training program (AIT), as proposed by this rulemaking, will give candidates who do not meet the requirements of § 39.5(b) an incentive and an alternative option to become licensed NHAs. The Board believes that, by offering candidates who meet the rigid standards of higher education an additional means of qualifying to sit for the examination, more candidates would be encouraged to enter the field of nursing home administration.

The proposed AIT program will permit an individual with a baccalaureate or master's degree to serve as an AIT, or intern, under the supervision of an NHA, who will function as a mentor to the AIT. Under the NHA's supervision, a candidate with a baccalaureate degree will be required to obtain 1,000 hours of experience in the practice of nursing home administration, while a candidate with a master's degree will be required to obtain 800 hours. Each AIT program will be individualized and approved, in advance, by the Board. Each program must have a detailed, goal-oriented training plan with supporting documentation that relates educational objectives, subject areas of the required core of knowledge, estimated number of hours for mastering each objective and the total number of hours involved. This program must consist of no less than 20 hours nor more than 60 hours per week. At the completion of the AIT program, both the supervising NHA and candidate shall submit to the Board comprehensive documentation that the candidate is qualified to sit for the examination.

North Carolina, Ohio and Maryland currently have AIT programs in place. This proposed rulemaking is similar to

the AIT regulations of those states. Those states, however, require that the supervising NHA attend a training course to become "preceptors" to the AIT. This proposed rulemaking requires that the supervisor to the AIT be licensed by the Board and be employed as the administrator-of-record at the facility where the AIT is training.

D. *Description of Proposed Amendments*

§ 39.1. Definitions.

The Board proposes to add definitions of "AIT—administrator-in-training" and "AIT program" to § 39.1.

§ 39.5. Requirements for admission to licensing examination; examination procedures.

The proposed amendments to § 39.5 would change the experience requirements to immediately precede the date of application, not date of examination.

Section 39.5(b)(3)(ii) would be amended to add a baccalaureate degree equivalent to nursing home administration as an alternative to a baccalaureate degree in nursing home administration and the requirement that the candidate who possesses the equivalent degree provide transcripts that demonstrate that the candidate has completed a 120-hour course in nursing home administration as part of the baccalaureate curriculum.

Section 39.5(b)(3)(iii)(C) and (4)(ii)(B) would be amended to add an experience alternative for candidates with baccalaureate or baccalaureate-equivalent degrees and master's degrees to participate in the AIT program in lieu of obtaining actual experience in a nursing home or health related facility prior to sitting for the examination.

§ 39.61. Requirements.

The Board proposes to add § 39.61(b)(5) to provide that up to 24 clock hours of continuing education may be obtained through serving as a supervisor in a Board-approved AIT program, when the AIT successfully completes the AIT program under § 39.103 (relating to AIT program reports).

§ 39.72. Fees.

The Board proposes to amend § 39.72 to include a \$50 AIT application fee.

§§ 39.101—39.103. AIT Program.

The Board proposes to add §§ 39.101—39.103 to institute the AIT program.

Section 39.101 (relating to AIT) requires an AIT applicant to file an application with the Board and describes the criteria for approval as an AIT.

Section 39.102 (relating to AIT program) requires documentation for the individualized AIT program, which includes a pretraining assessment of the AIT's background and a written training plan prepared by the AIT and supervisor for approval by the Board. This section also sets forth the weekly and hourly requirements and that the program may not consist of more than 60 hours per week nor less than 20 hours per week. Further, this section sets forth procedures in the event the AIT program is discontinued or terminated before completion.

Section 39.103 sets forth the procedure for AIT program reports that must be submitted to the Board by both the AIT and the AIT's supervisor within 30 days of completion of the AIT program.

E. *Fiscal Impact*

The proposed rulemaking will have a limited fiscal impact on the Commonwealth and its political subdivisions. The proposed rulemaking establishes a new fee associated with the proposed AIT program. However, this fee is intended to defray a portion of the Board's operational costs. There are no other costs or savings to the State government associated with implementation of the proposed rulemaking.

F. *Paperwork Requirements*

The proposed rulemaking will require the Board to alter some of its forms to reflect the new fee and to create applications for AITs. The Board will further provide a detailed training plan to NHAs who supervise AITs. Further, the proposed rulemaking will create additional paperwork for AITs and supervisors, who will be responsible for submitting a detailed, individualized AIT framework for each AIT and documentation of progress and completion of the AIT program.

G. *Sunset Date*

The Board continuously monitors the effectiveness of its regulations. 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 March 28, 2007, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

I. *Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking within 30 days of publication of this proposed rulemaking to Christina Stuckey, Administrator, State Board of Examiners of Nursing Home Administrators, P. O. Box 2649, Harrisburg, PA 17105-2649, cstuckey@state.pa.us. Reference No. 16A-627 (Administrator-in-Training Program) when submitting comments.

BARRY S. RAMPER, II,
Chairperson

Fiscal Note: 16A-627. 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 39. STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

GENERAL

§ 39.1. Definitions.

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

AIT—Administrator-in-training—An individual registered with the Board under § 39.101 (relating to AIT), to serve a period of practical training and experience under the supervision of a licensed nursing home administrator.

AIT program—A program established by the Board as a means for an applicant for licensure as a nursing home administrator to obtain practical training and experience under the supervision of a licensed nursing home administrator.

* * * * *

§ 39.5. Requirements for admission to licensing examination; examination procedures.

* * * * *

(b) A candidate who seeks admission to the licensing examination shall also meet one of the following sets of education and experience requirements. The candidate shall:

(1) Have:

(i) **[Commencing March 1, 1993, successfully] Successfully** completed 120 clock hours in a program of study approved by the Board as prescribed in § 39.14(a)(2) (relating to approval of programs of study).

* * * * *

(iii) Done one of the following:

(A) During the 18 months **immediately** preceding the date of **[examination] application**, acquired experience in the practice of nursing home administration by having served satisfactorily in a nursing home or related health facility as a full-time assistant administrator under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of **[this] the Commonwealth.**

(B) During 3 of the 5 years **immediately** preceding the date of **[examination] application**, served satisfactorily as a full-time supervisor in a nursing home or related health facility, 1,000 hours of which service shall have been in the practice of nursing home administration under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth.

(2) Have:

(i) **[Commencing March 1, 1993, successfully] Successfully** completed 120 clock hours in a program of study approved by the Board as prescribed in § 39.14(a)(2).

* * * * *

(iii) Done one of the following:

(A) [Served] During the 18 months immediately preceding the date of the application, served satisfactorily as a full-time Director of Nursing for 6 months and, during the 12 months immediately preceding the date of [examination] application, but not concurrent with the service as a Director of Nursing, acquired experience in the practice of nursing home administration by having served satisfactorily as a full-time assistant administrator in a nursing home or related health facility under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of [this] the Commonwealth.

(B) During 2 of the 5 years immediately preceding the date of [examination] application, served satisfactorily as a full-time Director of Nursing in a nursing home or related health facility, 1,000 hours of which service shall have been in the practice of nursing home administration under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth.

(3) Have:

* * * * *

(ii) [Commencing March 1, 1993, successfully] Successfully completed 120 clock hours in a program of study approved by the Board as prescribed in § 39.14(a)(2), unless the candidate has a baccalaureate degree in nursing home administration or a baccalaureate degree in a program equivalent to nursing home administration. The burden is on the candidate to demonstrate that the baccalaureate degree that the candidate has earned is equivalent to a baccalaureate degree in nursing home administration. Baccalaureate degree equivalency will be determined by the Board based upon the applicant's transcripts and course descriptions. Candidates who have successfully completed a baccalaureate curriculum which is not in nursing home administration or equivalent to nursing home administration, but incorporates the 120-hour program as part of the curriculum, are not required to complete the 120-hour program separately. The burden is on the candidate to demonstrate that the 120-hour program is incorporated in the baccalaureate curriculum. The Board will evaluate the transcripts and course descriptions of the candidate to determine if the 120-hour program was successfully completed as part of the baccalaureate curriculum.

(iii) Done one of the following:

(A) During the 9 months immediately preceding the date of [examination] application, acquired experience in the practice of nursing home administration by having served satisfactorily in a nursing home or related health facility as a full-time assistant administrator under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth.

(B) During 18 months of the 5 years immediately preceding the date of [examination] application, served satisfactorily as a full-time supervisor in a nursing home or related health facility, 1,000 hours of which

service shall have been in the practice of nursing home administration under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth.

(C) [During 2 of the 5 years preceding the date of examination, which date of examination may not be later than August 31, 1995, served satisfactorily as a full-time chief administrator in a nursing home or related health facility.] During the 2 years immediately preceding the date of application, acquired 1,000 hours of experience in the practice of nursing home administration by having served satisfactorily as an AIT in a nursing home under the supervision of a full-time nursing home administrator licensed in the Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth, in accordance with §§ 39.101—39.103 (relating to AIT Program).

(4) Have:

* * * * *

(ii) [Either] Done one of the following:

(A) During the 5 years immediately preceding the date of application, either acquired 6 months of satisfactory full-time supervisory experience in the administration of a nursing home under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth or acquired 6 months of satisfactory full-time experience in the administration of a related health facility under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth, except that an individual who is acquiring satisfactory full-time experience in the administration of a related health facility on December 31, 1994, even though the experience is not being acquired under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth, shall have until June 30, 1995, to apply for admission to the licensing examination under the regulations in effect immediately prior to December 31, 1994]

(B) During the 2 years immediately preceding the date of application, acquired 800 hours of experience in the practice of nursing home administration by having served satisfactorily as an AIT in a nursing home under the supervision of a full time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth, in accordance with §§ 39.101—39.103.

(5) Have:

(i) [Commencing March 1, 1993, successfully] Successfully completed 120 clock hours in a program study approved by the Board as prescribed in § 39.14(a)(2).

* * * * *

(iii) Done one of the following:

(A) During the 18 months immediately preceding the date of [examination] application, acquired experi-

ence in the practice of nursing home administration by having served satisfactorily in a nursing home or related health facility as a full-time assistant administrator under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth.

(B) During 3 of the last 5 years **immediately** preceding the date of [**examination**] **application**, served satisfactorily as a full-time supervisor in a nursing home or related health facility, 1,000 hours of which service shall have been in the practice of nursing home administration under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth.

(c) The [**1,000**] hours of experience in the practice of nursing home administration required of a candidate qualifying under subsection (b)(1)(iii)(B), (2)(iii)(B), (3)(iii)(B) **or (C), (4)(ii)(B) or (5)(iii)(B)** is designed to insure that the candidate has been exposed to hands-on practical application of the areas of educational training required in § 39.14(a)(2). The [**1,000**] hours of experience [**shall**] **must** include a minimum of 300 hours in general administration, a minimum of 250 hours in patient services and care and a minimum of 250 hours in health and social service delivery systems. [**The 200**] **Any** remaining hours may be distributed as needed to obtain the best results for each individual candidate. The nursing home administrator who supervised the candidate shall certify that the candidate has acquired the minimum number of hours for each area.

* * * * *

CLOCK HOURS REQUIREMENT

§ 39.61. Requirements.

* * * * *

(b) Of the 48 hours required, the following [**applies**] **apply**:

* * * * *

(5) **Up to 24 clock hours may be obtained by serving as a supervisor in a Board-approved AIT program, when the AIT successfully completes the AIT program.**

(6) A maximum of 6 clock hours may be awarded retroactively for attending programs, to include lectures, and college or university courses, which have not been preapproved. The attendee shall submit a written request for approval within 30 days of attending the program and document attendance. The attendee shall demonstrate to the Board's satisfaction that the programs meet the requirements of §§ 39.14(a)(2) and 39.51 (relating to approval of programs of study; and standards for continuing education programs).

* * * * *

RENEWAL

§ 39.72. Fees.

The following is the schedule of fees charged by the Board:

* * * * *

AIT application fee \$50

AIT PROGRAM

(*Editor's Note:* The following sections are new and are printed in regular type to enhance readability.)

§ 39.101. AIT.

(a) An applicant seeking to become an AIT shall file an application for approval on a form prescribed by the Board.

(b) To be approved as an AIT, the applicant shall:

(1) Have attained the general education requirements in § 39.5(b)(3)(i) or (4)(i) (relating to requirements for admission to licensing examination; examination procedures) or be enrolled in the final year of a baccalaureate or master's degree program at an accredited college or university.

(2) Verify that if the AIT is employed at the nursing home in any capacity other than that of AIT during the period of practical training and experience, that employment is in addition to the hours required for the AIT program.

§ 39.102. AIT program.

(a) The AIT program must provide documentation that the following requirements have been met:

(1) The AIT and the AIT's supervisor have jointly made a pretraining assessment of the AIT's background in terms of educational level, pertinent experience, maturity, motivation and initiative.

(2) Based on the pretraining assessment, the AIT and the AIT's supervisor jointly have developed a detailed, goal-oriented training plan with supporting documentation which includes:

(i) Educational objectives.

(ii) Subject areas of the core of knowledge as required by §§ 39.5(c) and 39.7 (relating to requirements for admission to licensing examination; examination procedures; and subject matter for examinations).

(iii) Training sites or agencies involved.

(iv) Estimated number of hours needed for mastering each objective.

(v) Total of hours in the training plan.

(3) Prior to its implementation, the training plan must be submitted for approval by the Board on forms provided by the Board. The training plan must include supporting documentation for the training plan, including the allocation of hours to the subject areas required by §§ 39.5(c) and 39.7.

(4) A minimum of 80% of the training must occur from Monday through Friday between 7 a.m. and 7 p.m. An AIT program may not consist of more than 60 hours per week nor less than 20 hours per week.

(b) The Board has the right to monitor and call for conference any AIT or AIT supervisor during the course of the AIT program.

(c) Following the completion of the AIT program and prior to admission to the examination for licensure, the Board will review the report required by § 39.103 (relating to AIT program reports) to determine if the applicant has received training consistent with this section.

(d) If the AIT program is discontinued prior to completion, the following apply:

(1) An AIT program which has been discontinued by a period of full-time military service may be completed within a year after that military service.

(2) An AIT program which has been discontinued for any reason other than military service may not be completed if the absence exceeds 1 year from the date of discontinuance.

(3) If an AIT program has been discontinued before completion for any reason beyond AIT or supervisor control, the AIT and supervisor may apply to the Board for consideration of credit for the period of time completed.

(i) The AIT requesting consideration shall explain why the AIT program was discontinued, how the AIT intends to complete the training and document progress in the manner required by § 39.104 (relating to AIT program reports).

(ii) The supervisor requesting consideration shall explain why the AIT program was discontinued and document the hours that the supervisor spent on the training program.

(4) Only one discontinuance will be permitted.

§ 39.103. AIT program reports.

Within 30 days of the completion of the AIT program, the AIT and supervisor shall submit to the Board a report on the AIT's progress on forms provided by the Board. The AIT and supervisor shall sign the report, verifying the accuracy of the information. The report must include, at a minimum:

- (1) The names of the AIT and supervisor.
- (2) The place of training.
- (3) A statement of the subject areas covered during the program.
- (4) A list of the departments in which the AIT trained, as well as initials of department managers to verify that the AIT trained in those departments.
- (5) The number of hours the AIT has completed during the program in each subject area.
- (6) A description of the administrative activities in which the AIT has participated.
- (7) Suggestions for improvement in the program.
- (8) Other information the Board requests.

[Pa.B. Doc. No. 07-596. Filed for public inspection April 6, 2007, 9:00 a.m.]

**STATE REAL
ESTATE COMMISSION**

[49 PA. CODE CH. 35]

Consumer Notice

The State Real Estate Commission (Commission) proposes to amend §§ 35.201 and 35.336 (relating to definitions; and disclosure summary for the purchase or sale of residential or commercial real estate or for the lease of residential or commercial real estate when the licensee is working on behalf of the tenant) to read as set forth in Annex A.

A. Effective Date

The proposed rulemaking will be effective 30 days after final-form publication in the *Pennsylvania Bulletin*. However, licensees will have 180 days to begin using the new Consumer Notice form.

B. Statutory Authority

The amendments are proposed under section 608 of the Real Estate Licensing and Registration Act (RELRA) (63 P. S. § 455.608).

C. Background and Purpose

The act of November 25, 1998 (P. L. 908, No. 112) (Act 112) amended the RELRA to establish the various agency relationships that real estate licensees are permitted to enter into with consumers. In accordance with section 608 of the RELRA, real estate licensees are required to provide consumers with a disclosure summary at the initial interview that delineates the following eleven items:

- The relationships in which the consumer may engage the broker.
- 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 the consumer.
- A statement that a 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 fees and services to be provided are to be determined by negotiations between the consumer and the broker.
- 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.
- 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.
- A statement of the broker's policies regarding cooperation with other brokers, including the sharing of fees.
- 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.
- A statement that the duration of the broker's employment and the broker's fees are negotiable.
- 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.
- A statement that the duration of the listing agreement or contract and the broker's commission are negotiable.
- A statement that any sales agreement must contain zoning classification of a property except in cases where the property (or each parcel thereof, if subdivided) is zoned solely or primarily to permit single-family dwellings.

At 30 Pa.B. 228 (January 8, 2000), the Commission published a final-form rulemaking containing a disclosure statement in accordance with section 608 of the RELRA. Licensees have advised the Commission that the current

disclosure statement is too long and difficult for consumers to understand. They have requested that the Commission revise the disclosure statement so that it is more consumer-friendly.

D. Description of Proposed Amendments

§ 35.201. Definitions.

Currently, the definition of "initial interview" includes any conversation between a broker or salesperson and a consumer about the consumer's personal, business or financial needs and motivations. With the passage of time, the Commission has found this definition too broad and not in conformity with the definition of "initial interview" in section 608(a) of the RELRA. The Commission has found that information about a consumer's personal or business needs is often aspirational and not relevant to the consumer's actual purchasing ability. The Commission proposes amending this definition to more closely follow the language in the RELRA. Under the definition, consumers must be provided with the Consumer Notice during the first substantive discussion between a licensee and a consumer about the consumer's real estate needs.

§ 35.336. *Disclosure summary for the purchase or sale of residential or commercial real estate or for the lease of residential or commercial real estate when the licensee is working on behalf of the tenant.*

Proposed subsection (a) would contain the requirement in section 608 of the RELRA that real estate brokers, associate brokers and salespersons provide the disclosure summary, called the Consumer Notice, to consumers at the initial interview.

Proposed subsection (b) would contain a simplified and condensed version of the current Consumer Notice. The proposed Consumer Notice first explains the various relationships available to the consumer, then the duties required of all licensees in section 606.1 of the RELRA (63 P. S. § 455.606a) and the contractual terms that must be contained in all agreements, followed by a caution against disclosing confidential information until an agreement selecting a relationship has been executed and an Acknowledgement.

Proposed subsection (c) contains the requirement in section 608 of the RELRA that licensees retain a copy of the signed/refused Acknowledgement and provide the consumer with a copy of the entire disclosure.

E. Review and Comment on Draft Regulatory Proposal

The Commission extended an invitation to the following boards, associations, school and licensees 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 & 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. The Commission considered comments submitted to it in drafting the proposed rulemaking.

F. Fiscal Impact and Paperwork Requirements

The proposed rulemaking should have no fiscal impact or impose additional paperwork requirements on the Commonwealth. The disclosure summary would be available on the Internet for downloading. This rulemaking would have a minimal fiscal impact and additional paperwork requirement on the regulated community in that licensees would incur the cost of reproducing the disclosure summary, keeping the signed acknowledgment and providing a copy of the entire disclosure to the consumer. The proposed rulemaking 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 March 28, 2007, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

I. Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed rulemaking within 30 days of publication of this proposed rulemaking to Judith Pachter Schulder, Coun-

sel, State Real Estate Commission, P. O. Box 2649, Harrisburg, PA 17105-2649. Reference No. 16A-5614 (Consumer Notice), when submitting comments.

JOSEPH J. MCGETTIGAN, Sr.,
Chairperson

Fiscal Note: 16A-5614. 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:

* * * * *

Initial interview—The first [**communication**] **substantive discussion** between a [**broker or salesperson**] **licensee** and a consumer [**involving the personal/business or financial**] **about the consumer's real estate needs [and motivations of the consumer. A discussion of the objective facts about the property, including dimensions, zoning classification, age, description or list price/lease amount, is not by itself a substantive discussion]**.

* * * * *

Subchapter E. STANDARDS OF CONDUCT AND PRACTICE

REAL ESTATE DOCUMENTS

§ 35.336. Disclosure summary for the purchase or sale of residential or commercial real estate or for the lease of residential or commercial real estate when the licensee is working on behalf of the tenant.

(a) Licensees shall provide the consumer with the Consumer Notice at their initial interview.

(b) In an effort to enable consumers of real estate services to make informed decisions about the business relationships they may have with real estate brokers and salespersons (licensees), the Real Estate Licensing and Registration Act (RELRA) requires that consumers be provided with this notice at the initial interview.

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

(Editor's Note: As part of this proposed rulemaking, the Board is proposing to delete the text of the form which appears in 49 Pa. Code pages 35-62.1—35-62.4, serial pages (287915) to (287918), and replace it with the following text, which has been printed in regular type to enhance readability.)

CONSUMER NOTICE

THIS IS NOT A CONTRACT

In an effort to enable consumers of real estate services to make informed decisions about the business relationships they may have with real estate brokers and salespersons (licensees), the Real Estate Licensing and Registration Act (RELRA) requires that consumers be provided with this Notice at the initial interview.

- Licensees may enter into the following agency relationships with consumers:

Seller Agent

As a seller agent, the licensee and the licensee's company works exclusively for the seller/landlord and must act in the seller's/landlord's best interest. All confidential information relayed by the seller/landlord must be kept confidential except that a licensee must reveal known material defects about the property. A subagent has the same duties and obligations as the seller agent.

Buyer Agent

As a buyer agent, the licensee and the licensee's company work exclusively for the buyer/tenant even if paid by the seller/landlord. The buyer agent must act in the buyer/tenant's best interest and must keep all confidential information, other than known material defects about the property confidential.

Dual Agent

As a dual agent, the licensee works for *both* the seller/landlord and the buyer/tenant. A dual agent may not take any action that is adverse or detrimental to either party but must disclose known material defects about the property. A licensee must have the written consent of both parties before acting as a dual agent.

Designated Agent

As a designated agent, the broker of the selected real estate company designates certain licensees within the company to act exclusively as the seller/landlord agent and other licensees within the company to act exclusively as the buyer/tenant agent in the transaction. Because the broker supervises all of the licensees, the broker automatically serves as a dual agent. Each of the designated licensees are required to act in the applicable capacity explained previously. Additionally, the broker has the duty to take reasonable steps to assure that confidential information is not disclosed within the company.

In addition, a licensee may serve as a Transaction Licensee

A transaction licensee provides real estate services without having any agency relationship with a consumer. Although a transaction licensee has no duty of loyalty or confidentiality, a transaction licensee is prohibited from disclosing that:

- The seller will accept a price less than the asking/listing price,
- The buyer will pay a price greater than the price submitted in the written offer, and
- The seller or buyer will agree to financing terms other than those offered.

Like licensees in agency relationships, transaction licensees must disclose known material defects about the property.

- Regardless of the business relationship selected, all licensees owe consumers the duty to:

- Exercise reasonable professional skill and care.
- Deal honestly and in good faith.
- Present, as soon as practicable, all written offers, counteroffers, notices and communications to and from the parties. This duty may be waived *by* the seller *where* the seller's property is under contract and the waiver is in writing.
- Comply with Real Estate Seller Disclosure Act.
- Account for escrow and deposit funds.
- Disclose, as soon as practicable, all conflicts of interest and financial interests.
- Provide assistance with document preparation and advise the consumer regarding compliance with laws pertaining to real estate transactions.
- Advise the consumer to seek expert advice on matters about the transaction that are beyond the licensee's expertise.
- Keep the consumer informed about the transaction and the tasks to be completed.
- Disclose financial interest in a service, such as financial, title transfer and preparation services, insurance, construction, repair or inspection, at the time service is recommended or the first time the licensee learns that the service will be used.
- The following contractual terms are *negotiable* between the licensee and the consumer and must be addressed in an agreement/disclosure statement:
 - The duration of the licensee's employment, listing agreement or contract.
 - The licensee's fees or commission.
 - The scope of the licensee's activities or practices.
 - The broker's cooperation with and compensation to other brokers.

- All sales agreements must contain the property's zoning classification except where the property is zoned solely or primarily to permit single family dwellings.
- The Real Estate Recovery Fund exists to reimburse any 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 all legal and equitable remedies. For complete details about the Fund, call (717) 783-3658.

Before you disclose any financial information to a licensee, be advised that unless you select a business relationship by signing a written agreement, the licensee is NOT representing you. A business relationship is NOT presumed.

ACKNOWLEDGMENT

I acknowledge that I have received this disclosure.

Date: _____
 (Consumer's printed name) (Consumer's signature)

_____)

_____)
 (Consumer's printed name) (Consumer's signature)

_____)

I certify that I have provided this document to the above consumer during the initial interview.

Date: _____
 (Licensee)

**Adopted by the State Real Estate Commission at
 49 Pa. Code § 35.336.**

[Pa.B. Doc. No. 07-597. Filed for public inspection April 6, 2007, 9:00 a.m.]