

CHAPTER 1029. BROKERS

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Cross References

This chapter cited in 52 Pa. Code § 1011.8 (relating to facility inspections); 52 Pa. Code § 1019.3 (relating to dispatcher application); 52 Pa. Code § 1027.6 (relating to application for sale of transferable rights); 52 Pa. Code § 1029.21 (relating to use of broker); and 52 Pa. Code § 1061.1 (relating to broker registration).

§ 1029.1. Purpose.

(a) This chapter establishes and prescribes Authority regulations and procedures for the registration of individuals as brokers for the sale and transfer of medallions and certificates. Unless the context indicates otherwise, the provisions of this chapter apply to the sale of certificates of public convenience or medallions as provided by this subpart and Subpart C (relating to limousines).

(b) An individual authorized to act as a broker by the Authority on December 3, 2011, shall immediately comply with this chapter before the first registration renewal required under § 1011.3 (relating to annual rights renewal process).

§ 1029.2. Use of broker.

(a) A broker shall be used by the parties to the sale of rights, except as provided in § 1029.3 (relating to use of attorney). A single broker may represent both parties in a transaction. The Authority will maintain a list of brokers, which may be obtained at www.philapark.org/tld.

(b) A person may not act as a broker without having been registered by the Authority under this chapter.

§ 1029.3. Use of attorney.

A party may use an attorney admitted to practice law before the Supreme Court of Pennsylvania in lieu of a broker.

Cross References

This section cited in 52 Pa. Code § 1027.7 (relating to required application information); and 52 Pa. Code § 1029.2 (relating to use of broker).

§ 1029.4. Ineligible persons for broker certification.

An applicant is ineligible to be a broker if in violation of the act, this part or an order of the Authority, including the following:

- (1) Upon conviction or arrest as provided in § 1011.5 (relating to ineligibility due to conviction or arrest).
- (2) The applicant does not speak, read and write the English language sufficiently to draft and review transactional documents as required by the act, this part or an order of the Authority.
- (3) The applicant provides false information in any document submitted to the Authority.
- (4) The applicant is in violation of § 1011.7 (relating to payment of outstanding fines, fees and penalties).
- (5) The applicant is 20 years of age or younger.
- (6) The applicant has failed to satisfactorily complete broker testing as provided in this chapter.

§ 1029.5. Broker registration.

(a) *General.* To obtain a broker registration, an individual shall complete and file Form BR-1 “Broker Application,” along with the application fee as provided in §§ 1001.42 and 1001.43 (relating to mode of payment to the Authority; and Authority fee schedule). The BR-1 may be obtained on the Authority’s web site at www.philapark.org/tld.

(b) *BR-1 application.* The completed BR-1 shall be verified as provided in § 1001.36 (relating to verification and affidavit) and be filed with the Director in person and include the information required by the Authority, including all of the following:

- (1) The name of the applicant and contact information, including a mailing address, a telephone number, an email address and a facsimile number.
- (2) A list of all Authority rights, common carrier rights issued by the PUC and other transportation rights issued by any jurisdiction outside of this Commonwealth in which the applicant has any controlling interest.

(3) The name, address, telephone number, facsimile number and email address of any attorney or broker, or both, assisting the applicant through the Authority's broker registration process.

(4) A criminal history report, issued within 30 days of the filing of the application, from any jurisdiction in which the following individuals have lived during the last 5 years:

- (i) The applicant.
- (ii) Each key employee of the applicant.

(5) A written statement verified as provided in § 1001.36, which provides that:

- (i) The applicant and each key employee have not been subject to a conviction as provided in § 1001.10 (relating to definitions).
- (ii) The applicant and each key employee are in compliance with § 1011.7 (relating to payment of outstanding fines, fees and penalties).
- (iii) The applicant and each key employee are current on all reports due in relation to other rights issued by the Authority.
- (iv) The applicant can comply with the requirements in this chapter.

(6) A completed original of Form BR-5 "Business Experience Questionnaire." A copy of the BR-5 may be obtained on the Authority's web site at www.philapark.org/tld.

(7) The applicant's Social Security number.

(8) A copy of the applicant's Social Security card or documents confirming a legal permanent resident status or an alien authorized to work status, if applicable.

(9) The applicant's driver's license or other government issued photographic identification.

(10) A resume detailing the applicant's work history for the 5 years preceding the filing of the BR-1 and qualifications to be a broker.

Authority

The provisions of this § 1029.5 temporarily amended under 53 Pa.C.S. § 57B02.

Source

The provisions of this § 1029.5 temporarily amended May 5, 2017, effective February 25, 2017, expire upon promulgation of final-form regulations or on November 5, 2018, whichever is later, as set forth in 53 Pa.C.S. § 57B02(b), 47 Pa.B. 2558. Immediately preceding text appears at serial pages (360470) to (360471).

Cross References

This section cited in 52 Pa. Code § 1029.6 (relating to broker training); and 52 Pa. Code § 1029.7 (relating to broker testing).

§ 1029.6. Broker training.

(a) Upon submission of a BR-1 application under § 1029.5 (relating to broker registration), an applicant may be scheduled by the Authority to attend an in-class training program upon request of the applicant. The Authority, or its authorized agent, will conduct the training.

(b) Broker training will consist of a minimum of 2 hours of instruction developed to address all areas of the Authority's regulations with emphasis on the following subjects:

- (1) Eligibility to be a certificate owner, dispatcher and medallion owner.
- (2) The forms and records required to complete a sale of rights.
- (3) An overview of frequently encountered subjects in the Authority's regulations, including the following:
 - (i) Authority regulations governing certificate owners.
 - (ii) Authority regulations governing equipment.
 - (iii) Penalties for violation of Authority regulations.
 - (iv) An overview of the administrative process related to the sale of rights.
 - (v) The identification and address of the Authority office responsible for administering the act.

(c) It is within an applicant's discretion to discontinue training and request the scheduling of broker testing as provided in § 1029.7 (relating to broker testing) through written notice to the Manager of Administration.

Cross References

This section cited in 52 Pa. Code § 1029.7 (relating to broker testing).

§ 1029.7. Broker testing.

(a) The applicant will be scheduled by the Authority for broker testing. Testing will be rescheduled upon the request of the applicant to permit completion of broker training as provided in § 1029.6 (relating to broker training) or to address an applicant's scheduling conflict.

(b) The broker test will focus on the subjects identified in § 1029.6.

(c) The Authority will develop a test to assure that applicants for broker registration understand the subjects identified in § 1029.6.

(d) The test will be administered in the English language. The assistance of interpreters will not be permitted.

(e) Except as limited under this chapter, the test may be administered in a manner and in a form deemed appropriate by the Authority. The test may include:

- (1) Questions requiring a written response.
- (2) Multiple choice questions.
- (3) Oral questions.
- (4) The demonstration of an ability to complete all of the documents necessary to sell transferable rights.
- (5) The demonstration of an ability to read, write and speak the English language as required by this part.

(f) An applicant may take the test required by this chapter more than three times.

(g) Failure to pass the test required by this section within 90 days of the filing of the BR-1 application as provided in § 1029.5 (relating to broker registration) will render the application void.

(h) Upon the denial or voiding of a BR-1 as provided in this chapter, an applicant may not reapply for registration for 6 months.

Cross References

This section cited in 52 Pa. Code § 1029.6 (relating to broker training); and 52 Pa. Code § 1029.8 (relating to broker registration approval).

§ 1029.8. Broker registration approval.

(a) If the BR-1 and related broker application documents demonstrate that the applicant is in compliance with the Authority's regulations and the applicant has passed the broker testing under § 1029.7 (relating to broker testing), the Authority will issue a broker registration letter to the applicant and place the applicant's name on the list of brokers maintained by the Authority.

(b) The broker registration letter will confirm the individual's broker status with the Authority and list an expiration date, which will be 1 year from the date of issuance, and contain other information and guidance as the Authority deems appropriate.

(c) The broker registration letter shall be displayed prominently in the broker's office.

(d) The broker registration letter may be served upon the broker by email.

Cross References

This section cited in 52 Pa. Code § 1001.10 (relating to definitions).

§ 1029.9. Broker representation letter.

A broker retained by a party to a sale of rights subject to the act shall file Form BR-2 "Broker Representation Letter" with the Authority on or before the date a sale application is filed with the Authority. The BR-2 may be obtained on the Authority's web site at www.philapark.org/tld.

§ 1029.10. Broker agreements required.

(a) A broker shall have a written agreement with each client that clearly identifies the broker's client or clients, the scope of services to be performed and the consideration to be paid by each client upon completion of the closing on the sale as provide § 1027.12 (relating to approval process and closing on sale).

(b) A broker shall confirm that a power of attorney signed by a client complies with § 1001.28 (relating to power of attorney).

(c) A broker may not offer an Authority issued right for sale unless authorized in advance and in writing by the owner of the right.

(d) A broker agreement that creates an exclusive listing relationship must include as a signed and notarized addendum Form BR-3 “Broker Exclusive Listing” to confirm the understanding of a broker’s client or clients that an exclusive relationship exists and its term. The BR-3 may be obtained at www.philapark.org/tld. An exclusive listing may not be extended beyond the termination date in the BR-3 unless a new BR-3 is signed and dated by the client as provided in this section.

(e) If a broker intends on participating in a sale of rights as an insurance broker, automobile dealer or in some other capacity in addition to that of a broker, the exact nature of the nonbroker roll, and the consideration associated with that roll, shall be disclosed in writing to the broker’s client and filed with the Authority along with the BR-2. If the nonbroker roll is developed after the filing of the BR-2, the disclosure shall be made to the client and filed with the Authority immediately.

§ 1029.11. Professional liability insurance.

(a) A broker shall continuously maintain professional liability insurance in the amount of \$50,000, including coverage for errors and omissions caused by the broker’s negligence in the performance of duties from an insurer authorized to do business in this Commonwealth.

(b) A broker registration will not be issued or renewed unless confirmation of required insurance has been filed with the Authority as provided in § 1025.2 (relating to insurance forms and procedures).

§ 1029.12. Broker duties.

The following duties are owed by a broker to a client in the sale of rights subject to the act and may not be waived:

- (1) Exercising reasonable professional skill and care.
- (2) Dealing honestly and in good faith and maintain confidentiality.
- (3) Presenting, in a reasonably practicable period of time, all offers, counteroffers, notices and communications to and from the parties in writing, unless the rights at issue are subject to an existing SA-1 and the seller has agreed in a written waiver.
- (4) Providing advanced written disclosure in a reasonably practicable period of time of all conflicts of interest and financial interests required by this chapter.
- (5) Advising the client to seek expert advice on matters about the sale that are beyond the broker’s expertise.
- (6) Ensuring that all services are provided in a reasonable, professional and competent manner.
- (7) Keeping the client informed about offers to purchase rights, the sale and tasks to be completed.
- (8) Providing assistance with document preparation.

(9) Advising the client about compliance with laws and regulations pertaining to the rights at issue without rendering legal advice.

(10) Providing a copy of all documents prepared or maintained by the broker on behalf of the client to the client at or before the date the sale closes or otherwise immediately upon request.

§ 1029.13. Disclosure of interest.

(a) A broker may only participate in a transaction involving rights subject to the act in which the broker has an interest after first disclosing that interest in writing to all parties concerned.

(b) A broker may not represent, or purport to represent, more than one party to a sale of rights subject to the act without the written consent of all parties concerned.

(c) A broker who provides financial services, insurance or mechanical repair services may not require a client to use any of these services.

(d) If the client chooses to use any of the services referenced in subsection (c), the broker shall provide the client with a written disclosure of any financial interest, including a referral fee or commission that the broker may earn. The disclosure required under this paragraph shall be made at the time the broker first advises the client that an ancillary service is available or when the broker first learns that the client will be using the service.

(e) A broker has a continuing obligation to disclose to a client, any conflict of interest in a reasonably practicable period of time after the broker learns or should have learned of the conflict of interest.

§ 1029.14. Broker conduct and obligations.

(a) A broker may not give assurances or advice concerning an aspect of rights subject to sale that the broker knows, or reasonably should be expected to know, is incorrect, inaccurate or improbable.

(b) A broker is not required to independently verify the accuracy or completeness of any representation made by the clients to a sale which the broker reasonably believes to be accurate and reliable.

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

(d) A broker shall keep and maintain records related to its clients and each sale in which it participates in any manner as provided in § 1011.11 (relating to record retention), including the following records:

- (1) The names and addresses of buyers, sellers, lenders or lienholders, if any.
- (2) The purchase price.
- (3) The amount of deposit paid on the contract.
- (4) The amount of commission paid to the broker.

- (5) The expenses of procuring financing, if any.
- (6) Closing statements.
- (e) Upon suspension or cancellation of a broker's registration with the Authority, no other broker may use the services of the former broker, as an employee or otherwise, to perform broker related services.
- (f) An advertisement placed by a broker related to the sale of rights subject to the act must indicate that the advertiser is a registered broker. A broker may not use deceptive or misleading advertising.

§ 1029.15. Duty to deposit money belonging to another into escrow account.

A broker shall deposit money that the broker receives belonging to another into an escrow account in a Federally- or State-insured bank or depository to be held pending consummation of the sale of rights subject to the act or a prior termination thereof that does not involve a dispute between the parties to the sale, at which time the broker shall pay over the full amount to the party entitled to receive it.

§ 1029.16. Nonwaiver of escrow duty.

A broker's escrow duty may not be waived or altered by an agreement between the parties to the sale, between the broker and the parties, or between the broker and other brokers who may be involved in the sale.

§ 1029.17. Deadline for depositing money into escrow account.

- (a) Except as provided in subsection (b), a broker shall deposit money belonging to another into one escrow account by the end of the next business day following its receipt in the broker's office.
- (b) If the money of another has been tendered to the broker in the form of a check under an offer to purchase or lease a right subject to the act, the broker may, with the written permission of both the buyer and the seller or the lessee and the lessor, refrain from depositing the money into an escrow account by the deadline in subsection (a) pending the seller's or lessor's acceptance of the offer. In those cases, the broker shall deposit the check into an escrow account within 1 business day of the seller's or lessor's acceptance of the offer.
- (c) A broker shall notify each client of the bank's name, address and the account number of each account holding escrowed funds related to the sale.
- (d) Upon request, a broker shall notify the owner of the escrowed funds of the name, address and account number of the account holding in escrow. For purposes of this subsection, the owner of the escrowed funds is the party that provided the funds to the broker for placement in escrow.

§ 1029.18. Escrow account.

- (a) A broker escrow account must:

- (1) Be maintained in a Federally- or State-insured bank or recognized depository.
 - (2) Designate the broker as trustee.
 - (3) Provide for the withdrawal of funds without prior notice.
 - (4) Be used exclusively for escrow purposes.
- (b) If money is expected to be held in escrow for more than 6 months, the broker is encouraged to deposit the money into an interest-bearing escrow account. Interest earned on an escrow account shall be held and disbursed, pro rata, in the same manner as the principal amount, unless the parties to the transaction direct otherwise by agreement. A broker may not claim the interest earned on an escrow account.
- (c) Upon request, a broker shall provide the Authority with its records related to any escrow accounts maintained during the past 5 years or authorize the release of the records by each bank or recognized depository.

§ 1029.19. Prohibition against commingling or misappropriation.

- (a) Except as provided in subsection (b), a broker may not commingle money that is required to be held in escrow or interest earned on an escrow account, with business, personal or other funds.
- (b) A broker may deposit business or personal funds into an escrow account to cover service charges assessed to the account by the bank or depository where the account is located or to maintain a minimum balance in the account as required by the regulations of the bank or depository.
- (c) A broker may not misappropriate money that is required to be held in escrow or interest earned on an escrow account, for business, personal or other purposes.

§ 1029.20. Procedure when entitlement to money held in escrow is disputed.

If a dispute arises between the parties to a sale over entitlement to money that is being held in escrow by a broker, the broker shall retain the money in escrow until the dispute is resolved. If resolution of the dispute appears remote without legal action, the broker may, following 30 days' notice to the parties, petition the Philadelphia Court of Common Pleas to interplead the rival claimants.

§ 1029.21. Escrow records.

A broker shall keep records of moneys received by him that are required to be held in escrow and shall produce the records for examination by the Authority or its authorized representatives upon written request. The records must contain the following information:

- (1) The name of the party from whom the broker received the money.
- (2) The name of the party to whom the money belongs.
- (3) The name of the party for whose account the money is deposited.

- (4) The date the broker received the money.
- (5) The date the broker deposited the money into the escrow account.
- (6) The date the broker withdrew the money from the escrow account.

§ 1029.22. Broker in possession of medallion.

If a medallion has been deposited with a broker, the broker shall deliver the medallion to the Authority for placement into storage within 48 hours of receipt.

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