

**APPENDIX A****I. NEGOTIATING REAL ESTATE SALES CONTRACTS****A. Transmittal of Offers and Counteroffers**

1. Offer, acceptance, and counteroffer - First party makes an offer or enter into a contract; other party can accept the offer exactly as made, reject the offer, or make a counteroffer, remember that:
  - a. The offer remains open until withdrawn or terminated.
  - b. The offer may be withdrawn any time before it is accepted.
  - c. Rejection terminates an offer.
  - d. A counteroffer automatically rejects (and terminates) an offer.
  - e. Once terminated, an offer cannot be reinstated unless it is renegotiated.
  - f. The offer is terminated by death of the offeror or destruction of a thing essential to the agreement.
2. Death of the parties to a contract does not nullify a contract. It becomes binding on decedent heirs or assigns.
3. Broker must present all written offers (in no particular order).

**B. Elements of Enforceable Real Estate Sales Contract**

1. Essential elements of a contract:
  - a. Competent parties - Both buyer and seller must be of sound mind and legal age. Mutual assent, contractual ability.
  - b. Offer and acceptance - There must be a meeting of minds on the terms of a contract.
  - c. Consideration - Something of value must be exchanged, either money or valuable goods or "love and affection".
  - d. Legal object
  - e. Written and signed agreement - Statute of Frauds
2. Contract classifications:
  - a. Bilateral - Contract contains two promises; for example, one party agrees to sell, and the other buy.
  - b. Unilateral - Contract contains one promise for a completed act; however, there is no obligation to act.
  - c. Express - Parties' intentions are expressed, either orally or in written form.
  - d. Executed - Both parties have fulfilled the obligations in the contract.
  - e. Executory - Something remains to be completed by one or both parties.
  - f. Implied - Intention is shown by act of a party.
3. Legal effects of a contract:
  - a. Valid - The contract contains all essential elements, and is binding and enforceable by both parties.
  - b. Void - The contract has no legal effect because it does not contain all essential elements.
  - c. Voidable - The contract may be disaffirmed by at least one party. It is however, valid until disaffirmed. Reasons to disaffirm include:
    - i. Fraud - The contract can be disaffirmed only by the victim of fraud or duress.
    - ii. Duress, or undue influence.
    - iii. Minority - The contract is disaffirmed until the party's majority is

reached, plus reasonable time.

- d. Unenforceable - A party fails to perform, but the other party cannot sue for performance. Either an essential element is missing in the contract, or the second party did not sue before the statute of limitations ran out.
- C. Contract Contingencies - must be met.
- D. Forfeiture Provisions - broker must get both parties signatures before releasing escrow.
- E. Earnest Money - Payment made by buyer at time of signing sales agreement to show good faith. It is applied to purchase price; if transaction fails because of seller's failure, it is returned to buyer. Any interest on earnest money deposit follows principle.
- F. Personal Property--transferred through bill of sale.
- G. Financing Requirements (new loan, assumption, subject to)
- H. Assignability
  - 1. Assignment - Assignment is a transfer of rights and/or duties under contract.
    - a. Rights can be assigned, unless the contract expressly forbids assigning them.
    - b. Obligations can often be assigned, but the original party is secondarily liable for them.
    - c. Assignee - getting rights; assigner - giving up rights.
  - 2. Novation - novation also is a transfer of rights and/or duties under contract.
    - a. The original contract is canceled.
    - b. A new contract is renegotiated and redrawn, with same parties or new second party.
    - c. The original party, if replaced, is not liable.
- I. Rights of Parties in Enforcement
  - 1. Breach of contract
    - a. If a contract is not discharged, it is breached; that is one party has defaulted or failed to perform. The other party has remedy.
      - i. When seller has defaulted, the buyer may:
        - a) rescind, or terminate, the contract
        - b) sue for specific performance, and force the other party to perform
        - c) sue for damages - this is usually an amount of money that would partially compensate the innocent party.
      - ii. When buyer has defaulted, the seller may:
        - a) perform any of the three preceding options
        - b) in most cases, declare the contract forfeited - in real estate, the seller may retain earnest money and other payments already received.

## APPENDIX B

### II. REAL PROPERTY AND LAWS RELATING TO OWNERSHIP

#### A. Legal Concepts of Real Property

1. Components of real property - the earth's surface extending to the center and upward into space (including sub surface, surface & air rights) including all things attached by man or nature as well as "Bundle of Legal Rights.
2. How personal property (chattels) differ from real property.
  - a. Personal property is anything not real estate; a major characteristic is that it is movable.
  - b. Fixtures are items of personal property that have become affixed to real property and thus become part of the real property. However, trade fixtures used in a business constitute personal property and can be removed by the lessee, as long as it is before the expiration of the lease term.
3. Methods of land description (legal descriptions)
  - a. Metes and bounds
    - i. From a point of beginning, measurement proceeds around the perimeter of the parcel. The description uses feet for measurement and degrees for direction.
    - ii. Monuments, or fixed objects, are used to define the boundaries of a property. If a discrepancy exists, the actual distance between monuments takes precedence over the quoted lineal feet.
    - iii. The measurement must return to the point of beginning.
  - b. Subdivision plats
    - i. A subdivision is divided into blocks and lots, e.g., Lots 7 & 8, Block 4 of Hardly subdivision.
    - ii. Because all states use this method, a description of such property must include the county and state, to distinguish it from the same description in another area.
    - iii. To find the size of the parcel we must refer to the plot map.
  - c. A street address is not a legal description.

### III. RESPA

- A. Buyer and Seller must have knowledge of all settlement costs prior to closing. This knowledge should be supplied by:
  1. Banks
  2. Savings and Loans
  3. Other lenders whose deposits are insured by FDIC or FSLIC, whose mortgages are insured by FHA, guaranteed by VA or administered by HUD, or who intend to sell mortgages to Fannie Mae Ginnie Mae, or Freddie Mae.
- B. RESPA regulations require compliance with the following:
  1. A special information booklet, "Settlement Costs and You" must be given to each loan applicant.
  2. A good faith estimate of settlement costs must be supplied to the borrower.
  3. A uniform Settlement statement (HUD Form 1) must be used in the loan closing.
  4. Kickbacks are strictly prohibited.

## APPENDIX C

### IV. Pennsylvania Licensing Act

#### A. Background

1. The purpose of Real Estate Licensing and Registration Act (RELRA) is to protect the public. Licensees may see this law as one that regulates the industry, but its purpose is to assure that rights of purchasers, sellers, tenants and owners are protected from unscrupulous licensees.
2. The Act was adopted in 1980, amended in 1982, 1984, and 1990. The Rules and Regulations were amended in 1989 and 1992.

#### B. Disclosure of Agency

1. Disclosures have become an important issue in today's consumer oriented society. Disclosure begins with the requirement that licensees disclose whom they represent. Sections 606 and 608 previously required the disclosure that the broker represents the seller. A 1990 amendment clarifies the disclosure by requiring all agreements of sale include a statement as to whether the broker is an agent for the seller or an agent for the buyer.
2. Disclosure of agency relationships is required at an initial interview. The Commission has determined "initial interview" to mean the disclosure must be made prior to the seller signing a listing or a buyer signing an agreement of sale.
3. Section 604 states that a licensee is prohibited from acting for more than one party in a transaction without the knowledge and written consent of all parties to the transaction. In practice, it is impossible to adequately represent all parties to a transaction.

#### C. Campground Membership and Time Share Agreements

1. The right to cancel an agreement to purchase real estate in Pennsylvania has not been recognized. The exception is the addition of Section 609 of the Act in 1990, which states the purchaser has the right to cancel until midnight of the fifth day following the date on which the purchaser executed the purchase agreement. This right exists only for the purchase of time-share or campground memberships purchased within the Commonwealth of Pennsylvania, or for an agreement to purchase time-share or campground membership executed within Pennsylvania.
2. A cancellation clause must be printed in boldface type within the purchase agreement. That clause must be separately initialed by the purchaser. The right to cancel is exercised when the purchaser gives notice of cancellation in writing by certified mail or other means that provide a receipt. The effective date shall be the postmarked date or the delivery date. All payments made under the purchase agreement are to be returned to purchaser within ten days of receipt. Any prizes, gifts or premiums that the purchaser received shall remain the property of the purchaser. The right of cancellation shall not be waivable by a purchaser nor can a purchaser be liable for damages as a result of exercising the right to cancel.

#### D. Exclusions from Licensure

1. Owners selling property owned or leased by themselves do not need to be licensed. If property is owned by a partnership or a corporation, this exclusion may not extend to more than 5 individuals who are partners or officers in a

- corporation.
2. An attorney-in-fact (an individual who holds a fully executed and recorded power of attorney)
  3. Attorney at law only to the extent that the attorney renders service within the attorney/client relationship, and not as a real estate broker.
  4. A person who is employed by an owner for the purpose of managing or maintaining multiple family residential property. That is only if the person is not authorized to enter into leases, negotiate terms or conditions of occupancy, or hold money belonging to tenants. An employee may show apartments and give out information on rental amounts, building rules as long as the owner retains the authority to make all decisions. The Commission has determined that this exclusion is for leasing activities, not sales, and where the individuals are full time employees of the landlord and not in the business of selling their services to various landlords to manage their real estate.
  5. An elected officer, director or employee of a banking institution, savings institution, savings bank, credit union or trust company acting in behalf of the institution in performing appraisals or other evaluations of real estate in connection with a loan transaction. This exemption applies only to real estate owned by the institution.
- E. Legal Proceedings
1. The Commission has the authority to take disciplinary action against licensees for violations.
  2. The Real Estate Recovery Fund is established for any aggrieved party who obtains a final judgment against a licensee on the grounds of fraud, misrepresentation or deceit. The fund does not apply to a transaction involving a campground membership salesperson or the sale of a campground membership.
  3. To be able to collect from the Fund, the aggrieved party shall be required to show that the person is not a spouse or personal representative of the debtor; that they have obtained final judgment; that all means and remedies at law and equity have been exhausted to collect judgment; and the person making application is doing so no more than one year after the termination of all proceedings.
  4. The liability cannot exceed \$20,000 for any one claim, and not more than \$100,000 per licensee. Upon payment of the claim, the licensee shall automatically have his license suspended as of the date of payment. The license shall not be reinstated until the individual repays the amount of the claim(s) plus interest at the rate of 10% per year.
  5. The Commission has the authority to investigate complaints and take disciplinary actions for violations of the Act and the Rules and Regulations. The process begins when a complaint is filed. The Office of Prosecutors of the Bureau of Professional and Occupational Affairs has assigned five prosecuting attorneys to the Real Estate Commission. They receive the complaint and review it to determine its merit. Frequently, complaints are dismissed because they are not within the Commission's jurisdiction, are not a violation of the Act or Rules and Regulations or they lack sufficient evidence. After review, a prosecuting attorney determines whether to bring charges against a licensee. The prosecutor, when notifying the licensee of a charge, offers the individual

the option of entering into a consent agreement with the prosecutor's office. A licensee is advised to seek legal counsel. If a licensee chooses not to enter into a consent agreement, a formal hearing will be conducted. If the Commission determines that a licensee is in violation of the Act or the Regulations, it may suspend or revoke a license or registration certificate and/or may impose fines or civil penalties. The amount of the fine or civil penalty is a maximum of \$1,000 for violations arising from a single transaction. The Commission may suspend or revoke a license, in addition to imposing fines or penalties. The Commission only maintains records of disciplinary action it has taken.

6. Licenses

- a. Broker
- b. Associate Broker
- c. Salesperson
- d. Time Share Salesperson
- e. Campground Membership Salesperson
- f. Rental Listing Referral Agents
- g. Builder-Owner Salespersons
- h. Registration Certificates - cemeteries

F. Legal Proceedings

1. Section 604 of the Act defines actions by licensees that are prohibited, including violations of the Commission's Regulations.
2. Misrepresentation is defined as a false statement or statement that conceals material fact with the intention of inducing an action by another party. The person who relied on this statement must be monetarily injured by the misrepresentation. It may be either intentional or negligent. An intentional misrepresentation is one in which the person making the misrepresentation has actual knowledge that a statement is false and is intended to defraud. A negligent misrepresentation occurs when a licensee makes a statement when the information is known or should have been known to be inaccurate, incorrect, or improbable. The safest representations are based on acts that can be verified. If disclosing facts "chills the interest" of a prospective buyer in a particular property or service, there is likely to be a valid reason for being dissuaded from a decision. The Commission advises that if a potential purchaser asks a question for which the salesperson is unsure of the answer, the response should be, "To the best of my knowledge..." or "I don't know." The Commission also advises the salesperson not to gloss over problems relating to the property or the transaction. There is no such thing as "no problem." Salespeople should disclose any defects in a property's condition. Though we do not have a mandatory property condition disclosure law in Pennsylvania at this time, under the RELRA the salesperson is responsible for accurately disclosing any known defects.
3. A licensee may not place a "for sale" or "for rent" sign on any property nor advertise any property without the written consent of the owner (or his authorized agent). Often, permission is given in a listing contract. However, if this is not listing, some kind of written consent must be obtained.
4. A broker, when advertising property for sale or rent that the broker owns, must disclose that the property is owned by that licensed broker. When selling or leasing real estate that a broker or salesperson owns, these licensees must

disclose to a prospective purchaser or tenant that they are licensed before either enters into an agreement to purchase or lease. These regulations ensure that the customers are aware that the owners with whom they are doing business have superior knowledge about real estate.

- a. "Sales volume" or "production" shall refer only to closed transactions.
5. Records of real estate transactions must be retained for at least three years following the consummation of the transaction. These records, as well as those of the escrow accounts, must be available for review by the Commission or its authorized representative upon written request or during an office inspection. During an inspection, the broker must be prepared to explain any discrepancies, including overages, in the escrow account.
6. A broker cannot pay a commission or other valuable consideration to anyone other than the licensees employed by the broker or another real estate broker for performing any activities specified in the Act. The broker is prohibited from paying compensation directly to the licensee or another broker or to an unlicensed individual.
7. A licensee cannot receive any commission or other valuable compensation for performing any activities specified in the Act from anyone other than the employing broker. This includes any bonus, premium, or other sales incentive offered in the course of a real estate transaction. A salesperson cannot accept any compensation from any other licensee or from other individuals who are not licensed.
- G. The Commission can take disciplinary action against a licensee for violations of the Pennsylvania Human Regulations Act.
- H. The Commission receives numerous complaints of unlicensed activity. The Act provides for criminal penalties when individuals are found guilty of performing activities for which licensure is required and individuals employ unlicensed persons. The most frequent violations include selling without proper disclosure; failure to properly activate licenses that have been placed on inactive status; failure to follow proper procedures when changing offices; and failure to license branch offices.
- I. Section 604 of the Act (subsection 18) address practices involving offering prizes, gifts, awards or bonuses in conjunction with the sale of real property. Prizes are defined as such items as money, personal property, vacations, travel certificates, motor vehicles and appliances. Prizes offered by mail or telephone shall include a statement of the fair market value (not the suggested retail value) and the odds of receiving the prize. If the offering is in printed form, the statement of value and odds shall be stated in a clear and conspicuous manner. If the item is a rebate, coupon, or discount certificate, this fact shall also be included. Any fees, such as dealer preparation, shipping, handling, redemption, and shipping insurance that a recipient must pay shall be disclosed. The description of the real property or interest, such as time-share, being promoted, shall be included when offering these prizes. If a condition for awarding the prize is that a prospective prize winner must personally visit and inspect the real property or interest being promoted, and listen to a sales presentation in order to win the prize, this fact must be made known. When offering a prize includes instructions for a recipient to contact a telephone number within a specified time, the business entity that is being contacted must be identified, including its relationship to the entity that is offering the real property.
- J. The Commission assumes that a salesperson or broker has a level of competency

commensurate with the specific area of real estate practice in which the licensee is involved. Though broker and salesperson licenses do not limit the field of specialty a licensee may pursue, licensees are expected to know and practice within the limits of their expertise. Any activity, though not specified elsewhere in the Act, that injures the public interest can be prosecuted under this provision.

1. Right to cancel purchase of time-share and campground membership.
- K. Each year the Commission deals with many violations relating to the handling of escrow funds and escrow accounts. There can be no commingling of funds and deposits cannot be returned or distributed without the written consent of all the parties involved. The broker is not permitted to misappropriate money that is required to be held in escrow, including any interest that is earned on the funds, with business, personal or other funds. The procedures for handling escrow accounts also apply to time-share and campground membership transactions.
1. Money that the broker receives that belongs to another shall be deposited into an escrow account in a federally or state insured bank or depository. It must be held pending consummation of the transaction or may be released prior to the termination of a transaction if there is no dispute between the parties. The broker must have the written consent of all parties prior to distributing the funds.
  2. A frequent violation deals with the time frame within which funds must be deposited. A broker is required to deposit the money into the escrow account by the end of the next business day following receipt in the real estate office where the escrow accounts are maintained. However, if the money is tendered in the form of a check, the broker may, with the written permission of the buyer and seller (lessor and lessee), refrain from depositing funds until one business day following the seller's or lessor's acceptance of the offer.
  3. In addition to the requirement that the agency relationship must be disclosed, there are a number of other disclosure statements that must be provided at an initial interview, and included in a listing agreement and agreement of sale. These sections were amended in 1990.
    - a. The listing agreement must include a statement that the amount of commission and time period of the listing have been determined as a result of negotiations between the broker and seller. The disclosure assures the seller that there is no standardization of practices, which would be contrary to antitrust. There must be a statement describing the purpose of the Real Estate Recovery Fund and a telephone number of the Commission where the seller can receive further information about the Fund.
    - b. The agreement of sale must contain a statement describing the purpose of the Real Estate Recovery Fund and a telephone number of the Commission where a purchaser can receive further information about the Fund. The contract must also contain the zoning classification of the property, except in the cases where the property (or each parcel thereof, if subdividable) is zoned solely or primarily to permit single-family dwellings. Failure to comply with this requirement for any court action. A statement that access to a public road may require issuance of a highway occupancy permit from the Department of Transportation is required as well.

- L. The employing broker is responsible for seeing that all contracts are prepared properly, in accordance with the Act and Regulations. The Regulations require the use of written contracts. The broker is responsible for seeing that all parties to the contract receive copies at the time they are signed.
1. Exclusive Listing agreements shall specify the kind of exclusive contract (if an exclusive right-to-sell), a statement in bold face type that the broker earns a commission during the listing period regardless of whoever made the sale or lease, (including the owner), the sales or lease price, the amount of commission expected, and the duration of the agreement.
  2. An exclusive contract may not contain a listing period that exceeds one year; an automatic renewal clause, a cancellation notice to terminate the agreement at the end of the listing period; authority of the broker to execute a signed agreement of sale or lease for the owner; or authority of the broker to confess judgment against the owner for commission. It is important that sellers understand their liability for commission if they are obligated under several listing agreements at the exclusive-right-to-sell listing.
  3. The Commission's Regulations also require that an agreement of sale shall include the date of the agreement, names of the buyer and seller; description of the property and the interest to be conveyed; sale price; and the dates for payment and conveyance.
  4. The broker is also responsible for seeing that before an agreement of sale is executed, each party is provided with written estimates of reasonably foreseeable expenses associated with the sale that the parties would be expected to pay. The expenses include such items as the broker's commission, mortgage payments and financing costs, taxes and assessments and settlement expenses.
- M. The employing broker is responsible at all times for the supervision of the activities of the activities of underlying licensees, including time-share and campground membership salespersons. The Commission has stated that if a complaint is filed against a licensee, the employing broker will be involved as well.
- N. The Commission has provided several clarifications regarding property management activities. Showing real estate; negotiation or leases; execution of contractual documents on behalf of the owner; access to escrow security or rental accounts; authority to approve or disapprove prospective tenants; and authority to evict tenants or initiate landlord/tenant complaints are considered to be property management functions.
1. The broker can delegate to a license salesperson employed by the broker the activities of showing real estate; negotiation of leases; access to operational accounts and authority to approve or disapprove tenants. However, access to escrow with expressed written authority to a licensed salesperson. The salesperson cannot execute documents on behalf of the owner, evict tenants or initiate landlord/tenant complaints.
  2. The Commission has issued a memorandum about interest money generated by security deposits. Managers must comply with the Act and Regulations. Procedures for residential security deposits are also governed by the Landlord and Tenant Act of 1951. Interest is required to be paid after the second anniversary on security deposits over \$100. The landlord (including the broker, if the landlord) is permitted to retain one percent per annum of the interest as

administrative expenses. The balance of interest is to be paid to the tenant annually on the anniversary date of the lease.