

No. 1982-50

AN ACT

HB 1218

Amending the act of February 19, 1980 (P.L.15, No.9), entitled "An act establishing the State Real Estate Commission and providing for the licensing of real estate brokers and salesmen," providing for the registration of cemetery companies and providing for fees, enforcement and penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 101, act of February 19, 1980 (P.L.15, No.9), known as the "Real Estate Licensing Act," is amended to read:

Section 101. Short title.

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

Section 2. Section 201 of the act is amended by adding definitions to read:

Section 201. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

"Cemetery." A place for the disposal or burial of deceased human beings, by cremation or in a grave, mausoleum, vault, columbarium or other receptacle, but the term does not include a private family cemetery.

"Cemetery company." Any person who offers or sells to the public the ownership, or the right to use, any cemetery lot.

* * *

Section 3. Sections 301 and 303 of the act are amended to read:

Section 301. Unlawful to conduct business without license *or registration certificate.*

From and after the effective date of this act, it shall be unlawful for any person, directly or indirectly, to engage in or conduct, or to advertise or hold himself out as engaging in or conducting the business, or acting in the capacity of a broker or salesperson, limited broker, limited salesperson, builder-owner salesperson, [or] rental listing referral agent *or cemetery company* within this Commonwealth without first being licensed *or registered* as such as provided in this act, unless he is exempted from obtaining a license *or registration certificate* under the provisions of section 304.

Section 303. Criminal penalties.

Any person who shall, after the effective date of this act, engage in or carry on the business, or act in the capacity of a broker, salesperson, limited broker, limited salesperson, builder-owner salesperson [or],

rental listing referral agent *or cemetery company*, within this Commonwealth, without a license *or registration certificate*, or shall carry on or continue business after the suspension or revocation of any such license *or registration certificate* issued to him, or shall employ any person as a salesperson or limited salesperson to whom a license has not been issued, or whose license *or registration certificate* as such shall have been revoked or suspended, shall be guilty of a summary offense and upon conviction thereof for a first offense shall be sentenced to pay a fine not exceeding \$500 or suffer imprisonment, not exceeding three months, or both and for a second or subsequent offense shall be guilty of a felony of the third degree and upon conviction thereof, shall be sentenced to pay a fine of not less than \$2,000 but not more than \$5,000 or to imprisonment for not less than one year but not more than two years, or both.

Section 4. Section 304 of the act, amended December 9, 1980 (P.L.1145, No.206), is amended to read:

Section 304. Exclusions.

The provisions of this act shall not apply to an owner of real estate with respect to property owned or leased by such owner, provided that in the case of a partnership or corporation, this exclusion shall not extend to more than five of its partners or officers, respectively, but to no other partnership or corporation personnel or employee, except the employees of a public utility acting in the ordinary course of utility related business under the provisions of Title 66 of the Pennsylvania Consolidated Statutes (relating to public utilities), with respect to negotiating the purchase, sale or lease of property, nor shall this act apply to officers or employees of a partnership or corporation whose principal business is the discovery, extraction, distribution or transmission of energy or mineral resources, provided that the purchase, sale or lease of real estate is a common and necessary transaction in the conduct of such principal business; nor shall this act be construed to include in any way the services rendered by an attorney in fact under a duly executed and recorded power of attorney from the owner or lessor (provided such power of attorney is not utilized to circumvent the intent of this act); nor by an attorney at law, nor shall it be held to include a person acting as receiver, trustee in bankruptcy, administrator, executor, trustee or guardian while acting under a court order or under the authority of a will or of a trust instrument, nor shall this act apply to the duly elected officer of any banking institution or trust company operating under Federal or State banking laws where real estate of the banking institution or trust company only is involved, nor shall they be held to include any officer or employee of a cemetery company who, as incidental to his principal duties and without remuneration therefor, shows lots in such company's cemetery to persons for their use as a family burial lot, and who accepts deposits on such lots for the representatives of the cemetery company, legally authorized to sell the same, *nor shall it apply to cemetery companies and cemeteries owned or controlled by a bona fide church or religious congregation or fraternal organization or by any association created by a bona fide church or reli-*

gious organization or by a fraternal organization, nor shall it be held to include any properly licensed auctioneer, under statutes of this State, while performing authorized duties at any bona fide auction.

Section 5. Sections 401 and 406 of the act are amended to read:

Section 401. Duty to issue licenses *and registration certificates*.

It shall be the duty of the department to issue licenses *and registration certificates* to individuals, copartnerships and corporations, who shall comply with the provisions of this act.

Section 406. Administration and enforcement.

The commission shall have the power and its duty shall be to administer and enforce the laws of the Commonwealth relating to: **[those]**

(1) *Those activities involving real estate for which licensing is required under this act and to instruct and require its agents to bring prosecutions for unauthorized and unlawful practice.*

(2) *Those activities involving cemeteries and cemetery companies for which registration is required under this act and to instruct and require its agents to bring prosecutions for unauthorized or unlawful activities.*

Section 6. The heading of Chapter 5 of the act is amended and a subchapter is added to read:

CHAPTER 5 QUALIFICATIONS AND APPLICATIONS FOR LICENSES AND REGISTRATION CERTIFICATES

SUBCHAPTER H CEMETERY COMPANY REGISTRATION CERTIFICATE

Section 571. Application and fee for registration certificate.

(a) *An application for a registration certificate for a cemetery company to operate a cemetery shall be made, in writing to the department, upon a form provided for the purpose by the department, and shall contain such information as to the applicant as the commission shall require.*

(b) (1) *The fee for application and initial biennial registration as a cemetery company shall be \$25 which shall be paid at the time of application and which shall be nonrefundable.*

(2) *The biennial fee for the renewal of a cemetery company registration certificate shall be \$25.*

(3) *The fees established in this subsection shall be subject to the act of July 1, 1978 (P.L. 700, No. 124), known as the "Bureau of Professional and Occupational Affairs Fee Act," in the same manner as other fees of the commission.*

Section 7. The introductory paragraph of section 604 is amended and paragraphs are added to read:

Section 604. Prohibited acts.

The commission may upon its own motion, and shall promptly upon the verified complaint in writing of any person setting forth a complaint

under this section, ascertain the facts and, if warranted, hold a hearing for the suspension or revocation of a license *or registration certificate* or for the imposition of fines not exceeding \$500. The commission shall have power to refuse a license *or registration certificate* for cause or to suspend or revoke a license *or registration certificate* or to levy fines up to \$500 where the said license has been obtained by false representation, or by fraudulent act or conduct, or where a licensee *or registrant*, in performing or attempting to perform any of the acts mentioned herein, is found guilty of:

* * *

(23) *In the case of a cemetery company registrant, violating any provisions of Title 9 of the Pennsylvania Consolidated Statutes (relating to burial grounds).*

(24) *In the case of a cemetery company registrant, violating any provisions of the act of August 14, 1963 (P.L.1059, No.459), entitled "An act prohibiting future need sales of cemetery merchandise and services, funeral merchandise and services, except under certain conditions; requiring the establishment of and deposit into a merchandise trust fund of certain amount of the proceeds of any such sale; providing for the administration of such trust funds and the payment of money therefrom; conferring powers and imposing duties on orphans' courts, and prescribing penalties."*

Section 8. Sections 702, 802 and 803 of the act are amended to read: Section 702. Imputed knowledge, limitations.

(a) No violation of any of the provisions of this act on the part of any salesperson, associate broker, or other employee of any licensed broker, shall be grounds for the revocation or suspension of the license of the employer of such salesperson, associate broker, or employee, unless it shall appear upon the hearings held, that such employer had actual knowledge of such violation.

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

(c) A course of dealing shown to have been followed by such employee shall constitute prima facie evidence of such knowledge upon the part of his employer.

Section 802. Funding of the fund.

Each licensee entitled to renew his license on or after February 28, 1980, shall, when so renewing his license pay in addition to the applicable license fee a further fee of \$10, which shall be paid and credited to the Real Estate Recovery Fund, thereafter any person upon receiving his initial real estate license *or cemetery company registration certificate*, shall, in addition to all fees, pay into the Real Estate Recovery Fund a sum of \$10. If at the commencement of any biennial renewal period

beginning in 1982 and thereafter, the balance of the fund is less than \$300,000, the commission may assess an additional fee, in addition to the renewal fee, against each licensee *and registrant* in an amount not to exceed \$10 which will yield revenues sufficient to bring the balance of the fund to \$500,000. All said fees shall be paid into the State Treasury and credited to the Real Estate Recovery Fund, and said deposits shall be allocated solely for the purposes of the fund as provided in this act. The fund shall be invested and interest/dividends shall accrue to the fund.

Section 803. Application for recovery from fund.

(a) When any aggrieved person obtains a final judgment in any court of competent jurisdiction against any person licensed under this act, upon grounds of fraud, misrepresentation or deceit with reference to any transaction for which a license *or registration certificate* is required under this act (*including with respect to cemetery companies any violation of 9 Pa.C.S. § 308(b) (relating to accounts of qualified trustee)*) and which cause of action occurred on or after the effective date of this act, the aggrieved person may, upon termination of all proceedings, including reviews and appeals, file an application in the court in which the judgment was entered for an order directing payment out of the Real Estate Recovery Fund of the amount unpaid upon the judgment.

(b) The aggrieved person shall be required to show:

(1) That he is not a spouse of the debtor, or the personal representative of said spouse.

(2) That he has obtained a final judgment as set out in this section.

(3) That all reasonable personal acts, rights of discovery and such other remedies at law and in equity as exist have been exhausted in the collection thereof.

(4) That he is making said application no more than one year after the termination of the proceedings, including reviews and appeals in connection with the judgment.

(c) The commission shall have the right to answer actions provided for under this section, and subject to court approval, it may compromise a claim based upon the application of the aggrieved party.

(d) When there is an order of the court to make payment or a claim is otherwise to be levied against the fund, such amount shall be paid to the claimant in accordance with the limitations contained in this section. Notwithstanding any other provisions of this section, the liability of that portion of the fund allocated for the purpose of this act shall not exceed \$20,000 for any one judgment. If the \$20,000 liability of the Real Estate Recovery Fund as provided herein is insufficient to pay in full claims adjudicated valid of all aggrieved persons against any one licensee *or registrant*, such \$20,000 shall be distributed among them in such ratio that the respective claims of the aggrieved applicants bear to the aggregate of such claims held valid. If, at any time, the money deposited in the Real Estate Recovery Fund is insufficient to satisfy any duly authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the fund, satisfy such unpaid claims or portions

thereof, in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of 6% a year.

(e) Upon petition of the commission the court may require all claimants and prospective claimants against one licensee *or registrant* to be joined in one action, to the end that the respective rights of all such claimants to the Real Estate Recovery Fund may be equitably adjudicated and settled.

(f) Should the commission pay from the Real Estate Recovery Fund any amount in settlement of a claim as provided for in this act against a licensee, the license of that person shall automatically suspend upon the effective date of the payment thereof by the commission. No such licensee shall be granted reinstatement until he has repaid in full plus interest at the rate of 6% a year, the amount paid from the Real Estate Recovery Fund.

(g) Should the commission pay from the Real Estate Recovery Fund any amount in settlement of a claim as provided for in this act against a registrant the registrant shall automatically be denied the right to sell cemetery lots upon the effective date of the payment thereof by the commission. No such registrant shall be granted the right to sell cemetery lots until he has repaid in full plus interest at the rate of 6% a year, the amount paid from the Real Estate Recovery Fund.

Section 9. This act shall take effect in 60 days.

APPROVED—The 7th day of March, A. D. 1982.

DICK THORNBURGH