

No. 1990-58

## AN ACT

HB 11

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," further providing for the application of the act to persons employed by an owner of real estate for the purpose of managing or maintaining multifamily residential property; adding and amending certain definitions; further providing for the commission, for time sharing, for campground memberships, for certain exclusions, for licenses, for offices of certain brokers and agents, for certain prohibitions and for certain disclosures; and further providing for penalties.

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

Section 1. The definitions of "builder-owner salesperson," "limited broker," "limited salesperson," "person" and "time share" in section 201 of the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, amended March 29, 1984 (P.L.162, No.32), are amended and the section 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:

\* \* \*

"Builder-owner salesperson." Any person who is a full-time employee of a builder-owner of single and multifamily dwellings located within the Commonwealth and as such employee shall be authorized and empowered to list for sale, sell or offer for sale, or to negotiate the sale or exchange of real estate, or to lease or rent, or offer to lease, rent or place for rent, any real estate owned by his builder-owner employer, or collect or offer, or attempt to collect, rent for the use of real estate owned by his builder-owner employer, for and on behalf of such builder-owner employer. [The term does not include any person employed by an owner of real estate for the purpose of managing or maintaining multifamily residential property: Provided, however, That such person is not authorized or empowered by such owner to enter into leases on behalf of the owner, to negotiate terms or conditions of occupancy with current or prospective tenants, or to hold money belonging to tenants other than on behalf of the owner. The term "negotiate," as used in this definition does not mean the transmission of information between the owner and current or prospective tenants, such as rental amounts, building rules and regulations or leasing determinations, so long as the owner retains the authority to make all such decisions.]

"Campground membership." *An interest, other than in fee simple or by lease, which gives the purchaser the right to use a unit of real property for the purpose of locating a recreational vehicle, trailer, tent, tent trailer, pickup*

*camper or other similar device on a periodic basis pursuant to a membership contract allocating use and occupancy rights between other similar users.*

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**“Cemetery broker.”** Any person engaging in or carrying on the business or acting in the capacity of a broker within this Commonwealth exclusively within the limited field or branch of business which applies to cemetery lots, plots and mausoleum spaces or openings.

\* \* \*

**“Cemetery salesperson.”** Any person employed by a broker or cemetery broker to perform duties as defined herein under “cemetery broker.”

\* \* \*

**["Limited broker.”** Any person engaging in or carrying on the business or act in the capacity of a broker within the Commonwealth exclusively within the limited field or branch of business which applies to cemetery lots, plots and mausoleum spaces or openings.

**“Limited salesperson.”** Any person employed by a broker or limited broker to perform duties as defined herein under “limited broker”. No person employed by a broker to perform duties other than those activities as defined herein under “limited broker” shall be required to be licensed as a limited salesperson.]

**“Person.”** Any individual, corporation, *corporate fiduciary*, partnership, association or other entity, foreign or domestic.

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**“Time share.”** The right, however evidenced *or documented*, to use or occupy [a dwelling unit held in fee simple or by lease] *one or more units on a periodic basis* according to an arrangement allocating use and occupancy rights of that unit or those units between other similar users. *As used in this definition, the term “unit” is a building or portion thereof permanently affixed to real property and designated for separate occupancy or a campground or portion thereof designated for separate occupancy. The phrase “time share” does not include campground membership.*

Section 2. Sections 202(a) and (c) and 301 of the act, amended or added March 29, 1984 (P.L.162, No.32), are amended to read:

Section 202. State Real Estate Commission.

(a) The State Real Estate Commission is hereby created and shall consist of the Commissioner of Professional and Occupational Affairs; the Director of the Bureau of Consumer Protection, or his designee; three members who shall be persons representing the public at large; five other persons, each of whom shall at the time of his appointment be a licensed and qualified real estate broker under the existing law of this Commonwealth, and shall have been engaged in the real estate business in this Commonwealth for a period of not less than ten years immediately prior to his appointment; and one other person who shall have been licensed as a real estate broker, or [limited real estate] cemetery broker, for a period of at least five years and shall have been engaged in selling cemetery lots for at least ten years immediately prior to his appointment. Each of said members of the commission shall be appointed by the Governor.

\* \* \*

(c) **[Six members of the commission]** *A majority of the members currently serving on the commission* shall constitute a quorum. The commission shall elect a *chairman, vice-chairman and secretary* from among its members. A commission member who fails to attend three consecutive meetings shall forfeit his seat unless the Commissioner of Professional and Occupational Affairs, upon written request from the member, finds that the member should be excused from a meeting because of illness or the death of a family member.

\* \* \*

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

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] cemetery broker**, **[limited] cemetery salesperson**, builder-owner salesperson, rental listing referral agent or cemetery company within this Commonwealth without first being licensed or registered as provided in this act, unless he is exempted from obtaining a license or registration certificate under the provisions of section 304.

Section 3. Section 302 of the act is amended to read:

Section 302. Civil suits.

No action or suit shall be instituted, nor recovery be had, in any court of this Commonwealth by any person for compensation for any act done or service rendered, the doing or rendering of which is prohibited under the provisions of this act by a person other than a licensed broker, salesperson, **[limited] cemetery broker**, **[limited] cemetery salesperson**, builder-owner salesperson or rental listing referral agent, unless such person was duly licensed and registered hereunder as broker or salesperson at the time of offering to perform any such act or service or procuring any promise or contract for the payment of compensation for any such contemplated act or service.

Section 4. Sections 303 and 304 of the act, amended March 29, 1984 (P.L.162, No.32), are amended to read:

Section 303. Criminal penalties.

Any person who shall engage in or carry on the business, or act in the capacity of a broker, salesperson, **[limited] cemetery broker**, **[limited] cemetery salesperson**, builder-owner salesperson, 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] cemetery 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 304. Exclusions.

Except as otherwise provided in this act, the provisions of this act shall not apply to the following:

(1) An owner of real estate with respect to property owned or leased by such owner. In the case of a partnership or corporation, this exclusion shall not extend to more than five of its partners or officers, respectively, nor to other partnership or corporation personnel or employees.

(2) 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.

(3) The 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.

(4) The services rendered by an attorney-in-fact under an 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) or by an attorney at law.

(5) A person acting as 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.

(6) The elected officer *or director* of any banking institution, *savings institution, savings bank, credit union* or trust company operating under *applicable* Federal or State [banking] laws where only the real estate of the banking institution, *savings institution, savings bank, credit union* or trust company is involved.

(7) 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.

(8) 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 religious organization or by a fraternal organization.

(9) An auctioneer licensed under the act of September 29, 1961 (P.L.1745, No.708), known as "The Auctioneers' License Act," while performing authorized duties at any bona fide auction.

(10) *Any person employed by an owner of real estate for the purpose of managing or maintaining multifamily residential property: Provided, however, That such person is not authorized or empowered by such owner to enter into leases on behalf of the owner, to negotiate terms or condi-*

*tions of occupancy with current or prospective tenants or to hold money belonging to tenants other than on behalf of the owner. So long as the owner retains the authority to make all such decisions, the employees may show apartments and provide information on rental amounts, building rules and regulations and leasing determinations.*

*(11) The elected officer, director or employee of any banking institution, savings institution, savings bank, credit union or trust company operating under applicable Federal or State laws when acting on behalf of the institution in performing appraisals or other evaluations of real estate in connection with a loan transaction.*

Section 5. Sections 501 and 512(c) of the act, amended March 29, 1984 (P.L.162, No.32), are amended to read:

Section 501. Reputation; inactive licensee; revoked license.

(a) Licenses shall be granted only to and renewed only for persons who bear a good reputation for honesty, trustworthiness, integrity and competence to transact the business of broker, salesperson, **[limited] cemetery broker, [limited] cemetery salesperson, builder-owner salesperson or rental listing referral agent**, in such manner as to safeguard the interest of the public, and only after satisfactory proof of such qualifications has been presented to the commission as it shall by regulation require.

(b) Any person who remains inactive for a period of five years without renewing his license shall, prior to having a license reissued to him, submit to and pass the examination pertinent to the license for which the person is reapplying.

(c) Unless ordered to do so by Commonwealth Court, the commission shall not reinstate the license, within five years of the date of revocation, of any person whose license has been revoked under this act. Any person whose license has been revoked may reapply for a license at the end of the five-year period but must meet all of the licensing qualifications of this act for the license applied for, to include the examination requirement.

Section 512. Application for license.

\* \* \*

(c) The application shall be received by the commission within three years of the date upon which the applicant **[took] passed** the examination.

Section 6. Section 522(c), the subchapter heading of Subchapter D and section 531 of the act are amended to read:

Section 522. Application for license.

\* \* \*

(c) The application shall be received by the commission within three years of the date upon which the applicant **[took] passed** the examination.

#### SUBCHAPTER D

#### **[LIMITED] CEMETERY BROKER'S LICENSE**

Section 531. Qualifications for license.

Each applicant for a **[limited] cemetery broker's license** shall as a condition to obtaining a license take the **[limited] cemetery broker's license examination** and score a passing grade. Prior to taking the examination:

(1) The applicant shall be at least 21 years of age.

(2) The applicant shall have been engaged full time as a sales person or **[limited] cemetery** salesperson for at least three years or possess educational or experience qualifications which the commission deems to be the equivalent thereof.

Section 7. Section 532 of the act, amended March 29, 1984 (P.L.162, No.32), is amended to read:

Section 532. Application for license.

(a) An application for a license as a **[limited] cemetery** broker 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) The applicant shall have completed 60 hours in real estate instruction in areas of study prescribed by the rules of the commission, which rules shall require instruction in the area of professional ethics.

(c) The application shall be received by the commission within three years of the date upon which the applicant **[took] passed** the examination.

Section 8. Section 533, the subchapter heading of Subchapter E and sections 541, 542 and 552(c) of the act are amended to read:

Section 533. Corporations, partnerships, associations or other entities.

If the applicant for a **[limited] cemetery** broker's license is a corporation, partnership, association, or other entity, foreign or domestic, then the provisions of sections 531 and 532 shall apply to the individual designated as Broker of Record, as well as those members actually engaging in or intending to engage in the real estate business.

## SUBCHAPTER E

### **[LIMITED] CEMETERY SALESPERSON'S LICENSE**

Section 541. Qualifications for license.

The applicant for a **[limited] cemetery** salesperson's license shall be at least 18 years of age.

Section 542. Application for license.

(a) An application for a license as a **[limited] cemetery** salesperson 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) The applicant for a license shall submit a sworn affidavit by the broker or **[limited] cemetery** broker with whom he desires to be affiliated certifying that the broker will actively supervise and train the applicant and certifying the truth and accuracy of the certification of the applicant.

Section 552. Application for license.

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(c) The application shall be received by the commission within three years of the date upon which the applicant **[took] passed** the examination.

Section 9. Sections 601 and 603 of the act, amended March 29, 1984 (P.L.162, No.32), are amended to read:

Section 601. Duty of brokers **[and limited]**, *cemetery* brokers *and rental listing referral agents* to maintain office.

(a) Each resident licensed broker (which term in this section shall include **[limited] cemetery** broker) *and rental listing referral agent* shall maintain a fixed office within this Commonwealth. The current license of a *rental listing referral agent or* broker and of each licensee employed by such broker shall be prominently displayed in an office of the broker *or rental listing referral agent*. The address of the office shall be designated on the current license. In case of removal of a broker's office from the designated location, all licensees registered at that location shall make application to the commission before such removal or within ten days thereafter, designating the new location of the office, and shall pay the required fees, whereupon the commission shall issue a current license at the new location for the unexpired period, if the new location complies with the terms of this act. Each licensed broker shall maintain a sign on the outside of his office indicating the proper licensed brokerage name.

(b) If the applicant for a broker's license intends to maintain more than one place of business within the Commonwealth, he shall apply for and obtain an additional license in his name at each office. Every such application shall state the location of such office. **[Effective 24 months after the effective date of this act, each]** *Each* office shall be under the direction and supervision of a manager who is either the broker or an associate broker: Provided, however, That such broker or an associate broker may direct and supervise more than one office.

Section 603. Employment of associate brokers, salesperson.

No associate broker or salesperson (which term in this section shall include **[limited] cemetery** salesperson) shall be employed by any other broker than is designated upon the current license issued to said associate broker or said salesperson. Whenever a licensed salesperson or associate broker desires to change his employment from one licensed broker to another, he shall notify the commission in writing no later than ten days after the intended date of change, pay the required fee, and return his current license. The commission, shall, upon receipt of acknowledgment from the new broker of the change of employment issue a new license. In the interim at such time as the change in affiliation of the salesperson or associate broker occurs, he shall maintain a copy of the notification sent to the commission as his temporary license pending receipt of his new current license. It shall be the duty of the applicant to notify the commission if a new license or other pertinent communication is not received from the commission within 30 days.

Section 10. Section 604(a)(5) and (8) of the act, amended March 29, 1984 (P.L.162, No.32), are amended and the subsection is amended by adding paragraphs to read:

Section 604. Prohibited acts.

(a) 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 \$1,000, or both. 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 \$1,000, or both, 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:

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(5) Failure to comply with the following requirements:

(i) all deposits or other moneys accepted by every person, holding a real estate broker license under the provisions of this act, shall be retained by such real estate broker pending consummation or termination of the transaction involved, and shall be accounted for in the full amount thereof at the time of the consummation or termination;

(ii) every salesperson and associate broker promptly on receipt by him of a deposit or other moneys on any transaction in which he is engaged on behalf of his broker-employer, shall pay over the deposit to the broker;

(iii) a broker shall not commingle the money or other property of his principal with his own;

(iv) every broker shall immediately deposit such moneys, of whatever kind or nature, belonging to others, in a separate custodial or trust fund account maintained by the broker with some bank or recognized depository until the transaction involved is consummated or terminated, at which time the broker shall account for the full amount received. Under no circumstances shall a broker permit any advance payment of funds belonging to others to be deposited in the broker's business or personal account, or to be commingled with any funds he may have on deposit; **[or]**

(v) every broker shall keep records of all funds deposited therein, which records shall indicate clearly the date and from whom he received money, the date deposited, the dates of withdrawals, and other pertinent information concerning the transaction, and shall show clearly for whose account the money is deposited and to whom the money belongs. All such records and funds shall be subject to inspection by the commission. Such separate custodial or trust fund account shall designate the broker, as trustee, and such account must provide for withdrawal of funds without previous notice. All such records shall be available to the commission, or its representatives, immediately after proper demand or after written notice given, or upon written notice given to the depository~~l~~;

*(vi) a broker is not required to hold in escrow rents that he receives for property management for a lessor. A broker shall deposit rents received into a rental management account that is separate from the broker's escrow account and general business accounts; or*



*(vii) a broker shall be permitted to deposit moneys into his escrow account to cover service charges to this account assessed by the banking institution.*

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*(8) Placing a "for sale" or "for rent" sign on or advertising any property without the written consent of the owner, or his authorized agent.*

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*(12.1) Paying of a commission or any valuable consideration by a broker to anyone other than his licensed employees or another real estate broker for the performance of any acts specified in this act.*

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*(26) Violating section 609.*

*\* \* \**

Section 11. The act is amended by adding sections to read:

**Section 608.1. Cemetery broker's disclosure.**

*In any sales agreement or sales contract, a cemetery broker shall be subject to the requirements of section 607(2) as it relates to the Real Estate Recovery Fund and the disclosure of information.*

**Section 609. Right to cancel purchase of time share and campground membership.**

*(a) A purchaser shall have the right to cancel the purchase of a time share or a campground membership until midnight of the fifth day following the date on which the purchaser executed the purchase contract.*

*(b) The right of cancellation shall be set forth conspicuously in boldface type of at least ten point in size immediately above the signature of the purchaser on the purchase contract in substantially the following form:*

*"You, the purchaser, may cancel this purchase at any time prior to midnight of the fifth day following the date of this transaction. If you desire to cancel, you are required to notify the seller, in writing, at (address). Such notice shall be given by certified return receipt mail or by any other bona fide means of delivery which provides you with a receipt. Such notice shall be effective upon being postmarked by the United States Postal Service or upon deposit of the notice with any bona fide means of delivery which provides you with a receipt."*

*This clause is to be separately initialed by the purchaser. Copies of all documents which place an obligation upon a purchaser shall be given to the purchaser upon execution by the purchaser.*

*(c) Notice of cancellation shall be given by certified return receipt mail or by any other bona fide means of delivery, provided that the purchaser obtains a receipt. A notice of cancellation given by a bona fide means of delivery shall be effective on the date postmarked or on the date of deposit of the notice with any bona fide means of delivery.*

*(d) Within ten business days after the receipt of a notice of cancellation, all payments made under the purchase contract shall be refunded to the purchaser and an acknowledgment that the contract is void shall be sent to the purchaser. In the event of a cancellation pursuant to this section, any promotional prizes, gifts and premiums issued to the purchaser by the seller shall remain the property of the purchaser.*

*(e) The right of cancellation shall not be waivable by any purchaser.*

*(f) A purchaser who exercises the right of cancellation shall not be liable for any damages as a result of the exercise of that right.*

*(g) In addition to constituting a violation of this act, a violation of this section by any individual, corporation, partnership, association or other entity shall also be deemed a violation of the act of December 17, 1968 (P.L.1224, No.387), known as the "Unfair Trade Practices and Consumer Protection Law." The Attorney General is authorized to enforce this section. Any actions brought by the Attorney General to enforce this section shall be in addition to any actions which the commission may bring under this act.*

*(h) The right of the purchaser to bring an action to enforce this section shall be independent of any rights of action which this section confers on the Attorney General and the commission.*

*(i) Nothing in this act shall affect any rights conferred upon the purchaser by 68 Pa.C.S. Pt. II Subpt. B (relating to condominiums).*

*(j) This act shall be applicable to time shares and campground memberships which are located within this Commonwealth and to time shares and campground memberships which are located outside this Commonwealth but for which the purchase contract was executed by the purchaser within this Commonwealth.*

Section 12. Section 702(b) of the act, amended March 7, 1982 (P.L.158, No.50), is amended to read:

Section 702. Imputed knowledge, limitations.

\* \* \*

(b) No violation of any of the provisions of this act on the part of any **[limited] cemetery broker** or **[limited] cemetery 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.

\* \* \*

Section 13. Section 4 (section 304(6) and (11)) shall apply to the following:

(1) Actions pending before the State Real Estate Commission as of the effective date of this act under section 14(1).

(2) Appeals from decisions of the commission pending as of the effective date of this act under section 14(1).

(3) Actions before the commission where appeal is still timely as of the effective date of this act under section 14(1).

(4) Actions before the commission commenced on or after the effective date of this act under section 14(1) which are based on acts which took place prior to the effective date of this act under section 14(1).

Section 14. This act shall take effect as follows:

(1) Section 4 (section 304(6) and (11)) and this section shall take effect immediately.

- (2) The remainder of this act shall take effect in 60 days.

APPROVED—The 29th day of June, A. D. 1990.

ROBERT P. CASEY