

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

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

**(b) Licensees shall retain a copy of the signed/refused acknowledgement for 6 months and provide the consumer a copy of the entire disclosure summary.**

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

## **CONSUMER NOTICE**

***\*\*THIS IS NOT A CONTRACT\*\****

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

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

### **Seller Agent**

As a seller agent, the licensee and the licensee’s company works exclusively for the seller/landlord and must act in the seller’s/landlord’s best interest, including making a continuous and good faith effort to find a buyer/tenant except while the property is subject to an existing agreement. All confidential information relayed by the seller/landlord must be kept confidential except that a licensee must reveal known material defects about the property. A subagent has the same duties and obligations as the seller agent.

### **Buyer Agent**

As a buyer agent, the licensee and the licensee’s company work exclusively for the buyer/tenant even if paid by the seller/landlord. The buyer agent must act in the buyer/tenant’s best interest, including making a continuous and good faith effort to find a property for the buyer/tenant, except while the buyer is subject to an existing contract, and must keep all confidential information, other than known material defects about the property, confidential.

### **Dual Agent**

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

### **Designated Agent**

As a designated agent, the broker of the selected real estate company designates certain licensees within the company to act exclusively as the seller/landlord agent and other licensees within the company to act exclusively as the buyer/tenant agent in the transaction. Because the broker supervises all of the licensees, the broker automatically serves as a dual agent. Each of the designated licensees are required to act in the applicable capacity

explained previously. Additionally, the broker has the duty to take reasonable steps to assure that confidential information is not disclosed within the company.

In addition, a licensee may serve as a **Transaction Licensee...**

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

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

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

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

- Exercise reasonable professional skill and care which meets the practice standards required by the RELRA.
- Deal honestly and in good faith.
- Present, as soon as practicable, all written offers, counteroffers, notices and communications to and from the parties. This duty may be waived *by* the seller *where* the seller's property is under contract and the waiver is in writing.
- Comply with the Real Estate Seller Disclosure Law.
- Account for escrow and deposit funds.
- Disclose, as soon as practicable, all conflicts of interest and financial interests.
- Provide assistance with document preparation and advise the consumer regarding compliance with laws pertaining to real estate transactions.
- Advise the consumer to seek expert advice on matters about the transaction that are beyond the licensee's expertise.
- Keep the consumer informed about the transaction and the tasks to be completed.
- Disclose financial interest in a service, such as financial, title transfer and preparation services, insurance, construction, repair or inspection, at the time service is recommended or the first time the licensee learns that the service will be used.

**The following contractual terms are *negotiable* between the licensee and the consumer and must be addressed in an agreement/disclosure statement:**

- The duration of the licensee's employment, listing agreement or contract.

- The licensee’s fees or commission.
- The scope of the licensee’s activities or practices.
- The broker’s cooperation with and sharing of fees with other brokers.

All sales agreements must contain the property’s zoning classification except where the property is zoned solely or primarily to permit single family dwellings.

The Real Estate Recovery Fund exists to reimburse any person who has obtained a final civil judgment against a Pennsylvania real estate licensee owing to fraud, misrepresentation, or deceit in a real estate transaction and who has been unable to collect the judgment after exhausting all legal and equitable remedies. For complete details about the Fund, call (717) 783-3658.

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

## ACKNOWLEDGMENT

*I acknowledge that I have received this disclosure.*

CONSUMER 1

Print Name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

CONSUMER 2

Print Name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

AGENT

Print Name Derek A. Bicksler

Signature \_\_\_\_\_

Date \_\_\_\_\_

License Number RS296452

Brokerage RSR, Realtors LLC

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

### **Authority**

The provisions of this § 35.336 issued under section 608 of the Real Estate Licensing and Registration Act (63 P. S. § 455.608); amended under sections 404, 606—606.6 and 608—608.3 of the Real Estate Licensing and Registration Act (63 P. S. § § 455.404, 455.606—455.606f and 455.608—455.608c).

### **Source**

The provisions of this § 35.336 adopted January 7, 2000, effective January 8, 2000, 30 Pa.B. 228; amended March 29, 2002, effective March 30, 2002, 32 Pa.B. 1644; amended November 14, 2008, effective December 15, 2008, however, licensees have until June 15, 2009, to begin using the new Consumer Notice form, 38 Pa.B. 6282. Immediately preceding text appears at serial pages (287915) to (287919).

### **Cross References**

This section cited in 49 Pa. Code § 35.201 (relating to definitions); 49 Pa. Code § 35.284 (relating to disclosures of business relationships); 49 Pa. Code § 35.286 (relating to retention and production of records); and 49 Pa. Code § 35.331 (relating to written agreements generally).