

Commercial Real Estate Brokerage Laws and Customs: Pennsylvania

by W. Grant Scott, Marcy E. Hamilton, and Diana C. Bruce, Meyer, Unkovic & Scott LLP, with Practical Law Real Estate

Status: Law stated as of 24 Oct 2024 | Jurisdiction: Pennsylvania, United States

This document is published by Practical Law and can be found at: content.next.westlaw.com/7-537-1285
Request a free trial and demonstration at: tr.com/practicallaw-home

A Q&A guide to state laws and customs on brokerage laws relating to commercial real estate transactions in Pennsylvania. This Q&A addresses the state-specific guidance on several questions relating to brokerage laws and customs, including licensing requirements, legal restrictions on a broker's role in a real estate transaction, brokerage agreements, commission payments, and brokers' lien rights. This Q&A guide also provides guidance on any licensing requirements for managing commercial real estate. Answers to questions can be compared across a number of jurisdictions (see Real Estate Brokerage Laws and Customs: State Q&A Tool).

Licensing Laws and Requirements

1. Does your state regulate real estate brokers? If so:

- What statutes or laws regulate licensing requirements for brokers?
- What department oversees the licensing and regulation of brokers?
- Are different types of brokers or other roles recognized by the regulations? If so, specify the scope of responsibilities of these different roles.

Licensing Laws

In Pennsylvania, the Real Estate Licensing and Registration Act (RELRA) regulates the licensing requirements for real estate:

- Brokers.
- Salespersons.
- Associate salespersons.
- Builder-owner salespersons.
- Rental listing referral agents.

(63 P.S. §§ 455.101 to 455.902.)

Many of the answers in this State Q&A are based on the RELRA Regulations provided in the Pennsylvania Code (49 Pa. Code §§ 35.201 to 35.385). While the interpretation of these regulations and statutes depends on the courts, this State Q&A provides general descriptions or rules provided in the statutes and citations to the appropriate statute.

In Pennsylvania, without first being licensed or registered as provided in the RELRA, a person cannot, directly or indirectly, engage in, conduct, or advertise that they may engage or conduct business in the capacity of a broker, salesperson, builder-owner salesperson, or rental listing referral agent in Pennsylvania unless they are exempted from obtaining a license or registration certificate (63 P.S. § 455.301). A person who holds a current license to provide real estate services issued by another state may be issued a reciprocal license under RELRA (63 P.S. § 455.602).

Regulator

The Pennsylvania Department of State, [State Real Estate Commission](#) (Commission) regulates real estate brokers.

Types of Brokers and Their Roles

Pennsylvania statutes identify and define:

Commercial Real Estate Brokerage Laws and Customs: Pennsylvania

- Broker (see Broker).
- Salesperson (see Salesperson).
- Builder-owner salesperson (see Builder-Owner Salesperson).
- Rental listing referral agent (see Rental Listing Referral Agent).

(49 Pa. Code § 35.201.)

Broker

A broker is a licensed individual or entity (holding either a standard or reciprocal license) that for a fee, commission, or other valuable consideration:

- Negotiates with or aids a person in locating or obtaining for purchase, lease, or acquisition an interest in real estate.
- Negotiates the listing, sale, purchase, exchange, lease, time share, and similarly designated interests, financing, or option for real estate.
- Manages real estate.
- Represents themselves as a real estate consultant, counselor, or house finder.
- Undertakes to promote the sale, exchange, purchase, or rental of real estate. However, this does not apply to an individual or entity whose main business is that of advertising, promotion, or public relations.
- Undertakes to perform a comparative market analysis.
- Attempts to perform one of the actions listed above.

(49 Pa. Code § 35.201.)

An associate broker is an individual broker who is employed by another broker (49 Pa. Code § 35.201).

Salesperson

A salesperson is a licensed individual (holding either a standard or reciprocal license) who is employed by a broker to:

- Sell or offer to sell real estate or list real estate for sale.
- Buy or offer to buy real estate.
- Negotiate the purchase, sale, or exchange of real estate.
- Negotiate a loan on real estate.

- Lease or rent or offer to lease or rent real estate or to place real estate for rent.
- Collect rent or offer or attempt to collect rent for the use of real estate.
- Assist a broker in managing property.
- Perform a comparative market analysis.

(49 Pa. Code § 35.201.)

Builder-Owner Salesperson

A builder-owner salesperson is a licensed individual who is a full-time employee of a builder-owner of single- and multi-family dwellings located in Pennsylvania and is authorized for and on behalf of the builder-owner to:

- List for sale, sell, or offer for sale the builder-owner's real estate.
- Negotiate the sale or exchange of the builder-owner's real estate.
- Lease or rent or offer to lease, rent, or place for rent the builder-owner's real estate.
- Collect, offer, or attempt to collect rent for the builder-owner's real estate.

(49 Pa. Code § 35.201.)

Rental Listing Referral Agent

A rental listing referral agent is an individual or entity that owns or manages a business that collects rental information for referring prospective tenants to rental units or locations of rental units. This does not include an official or employee of a public housing authority that is created under state or federal law. (49 Pa. Code § 35.201.)

2. What are the licensing requirements for brokers and other roles listed in Question 1?

In Pennsylvania, the licensure requirements for brokers and related roles can be found in the Real Estate Licensing and Registration Act (49 Pa. Code § 35.201 to 49 Pa. Code § 35.385).

General Requirements

To obtain a standard or reciprocal real estate license, an applicant must submit a license application to the Pennsylvania Department of State, [State Real Estate](#)

Commission (Commission). Applicants must also submit with the license application:

- The license fee.
- Complete details of a conviction of or plea of guilty or nolo contendere to a felony or misdemeanor and the sentence imposed.
- Written consent that valid and binding service of process may be made on the applicant.

(49 Pa. Code § 35.221.)

Broker

An individual must pass an examination to obtain a standard real estate broker license. To take the examination, an individual must:

- Be at least 21 years old.
- Meet certain education and professional experience requirements.
- Submit a completed examination application to the Commission.

(49 Pa. Code § 35.271(a).)

A reciprocal licensee is exempt from certain requirements to take the licensing examination and is only required to pass the state portion of the examination (49 Pa. Code § 35.271(c)).

After passing the licensing examination, an individual must submit a license application to the Commission and comply with certain requirements for maintaining an office in Pennsylvania (49 Pa. Code § 35.222(a)). There are separate requirements for an individual obtaining a reciprocal broker's license (49 Pa. Code § 35.222(b)).

Salesperson

An individual must pass an examination to obtain a standard salesperson's license. To take the examination, an individual must:

- Be at least 18 years old.
- Meet certain education requirements.
- Submit a completed examination application to the Commission.

(49 Pa. Code § 35.272(a); 63 P.S. § 455.521.)

A reciprocal licensee is exempt from certain requirements to take the licensing examination

and is only required to pass the state portion of the examination (49 Pa. Code § 35.272(c)).

Within three years of passing the licensing examination, an individual must submit a license application to the Commission (49 Pa. Code § 35.223(a)).

There are separate requirements for an individual obtaining a reciprocal salesperson's license (49 Pa. Code § 35.223(b)).

Builder-Owner Salesperson

An individual must take an examination to obtain a builder-owner salesperson license. To take the examination, an individual must:

- Be at least 18 years old.
- Be employed by a builder-owner who has a good reputation for honesty, trustworthiness, integrity, and competence.
- Submit a completed examination application to the Commission.

(49 Pa. Code § 35.274(a); 63 P.S. § 455.551.)

A reciprocal licensee is only required to pass the state portion of the examination (49 Pa. Code § 35.274(b)).

Within three years of passing the licensing examination, an individual must submit a license application to the Commission (49 Pa. Code § 35.226(a)). There are separate requirements for an individual obtaining a reciprocal salesperson's license (49 Pa. Code § 35.226(b)).

Rental Listing Referral Agent

An individual must take an examination to obtain a standard rental listing referral agent's license. To take the examination, an individual must:

- Be at least 18 years old.
- Meet certain education requirements.
- Submit a completed examination application to the Commission.

(49 Pa. Code § 35.275(a); 63 P.S. § 455.561.)

A reciprocal licensee is exempt from certain requirements to take the licensing examination and is only required to pass the state portion of the examination (49 Pa. Code § 35.275(c)).

Within three years of passing the licensing examination, an individual must submit a license application to the

Commission and comply with certain requirements for maintaining an office in Pennsylvania (49 Pa. Code § 35.227(a)). There are separate requirements for an individual obtaining a reciprocal salesperson's license (49 Pa. Code § 35.227(b)).

3. What are the ongoing requirements for maintaining a license for brokers and other roles listed in Question 1?

Broker

In Pennsylvania, a broker or salesperson must renew their license every two years. Licenses expire May 31 of every even-numbered year. The Pennsylvania Department of State, [State Real Estate Commission](#) (Commission) mails renewal notices two to three months before the license expiration date.

To renew a current standard license, a broker or salesperson must complete 14 hours of Commission-approved continuing education classes during the preceding license period. The continuing education must be completed by the May 31 renewal deadline. (49 Pa. Code § 35.382(a).)

To reactivate and renew a non-current standard license, a broker or salesperson must complete 14 hours of Commission-approved continuing education classes during the two-year period preceding the date of submission of the reactivation application (49 Pa. Code § 35.382(b)).

Salesperson

The ongoing requirements for maintaining a salesperson's license are the same as for a broker's license (see Broker).

4. What is the best way to determine if a real estate professional is duly licensed?

The Pennsylvania Department of State's [licensing system](#) can be used to check if a particular real estate broker or salesperson is licensed.

5. What is the best way to file a complaint against a real estate professional for fraud, material misrepresentations, negligent acts, or intentional misconduct?

In Pennsylvania, real estate brokers and agents are prohibited from making misrepresentations or engaging in any conduct that demonstrates bad faith, dishonesty, untrustworthiness, or incompetency (63 P.S. § 455.604(a)(20)).

An individual can [file a complaint](#) about the way in which a real estate broker or agent conducted themselves in a transaction by using the Pennsylvania Licensing System's [online complaint form](#). If the individual cannot upload supporting documents, copies may be mailed to:

Professional Compliance Office
Pennsylvania Department of State
P.O. Box 69522
2601 North Third Street
Harrisburg, PA 17106-9522

Customs in Practice for Brokers

6. With regard to brokers in your jurisdiction, please briefly describe:

- The broker's customary involvement in a transaction.
- Whether there are any restrictions on the broker's role.

Broker's Involvement

Real estate broker customs vary throughout Pennsylvania. For commercial real estate transactions, a broker generally is involved in:

- **Transfers of real property.** Brokers are typically involved in the preparation and negotiation of the offer letter, which is usually expressly non-binding. Once the parties have agreed on the terms, real estate attorneys are generally involved in the drafting of the agreement of sale. For lower priced or less complex commercial transactions, brokers sometimes complete the transaction without real estate attorneys. Brokers stay involved throughout the contract period.
- **Leasing of real property.** The real estate broker is often involved in the preparation and negotiation of the term sheet, which is usually expressly non-binding. Depending on the transaction, real estate

attorneys are sometimes involved in the term sheet stage. Real estate attorneys often become involved in negotiation and drafting of the lease. Brokers stay actively involved in the lease negotiations with the attorneys.

Restrictions on Broker's Involvement

Pennsylvania considers the unlawful practice of law by a real estate broker or salesperson as grounds for disciplinary action.

The Pennsylvania Supreme Court has not provided a specific definition for the practice of law. The court has concluded that the practice of law involves engaging in a "judgment requir[ing] the abstract understanding of legal principles and a refined skill for their concrete application" (*Kohlman v. W. Pa. Hosp.*, 652 A.2d 849, 851-52 (Pa. Super. Ct. 1994) (citing *Dauphin Cty. Bar Ass'n v. Mazzacaro*, 351 A.2d 229 (Pa. 1976))).

Persons engaging in the unauthorized practice of law are subject to statutory penalties (42 Pa. C.S.A. § 2524).

Customs in Practice for Attorneys

7. With regard to real estate attorneys in your jurisdiction, please briefly describe:

- When an attorney becomes involved in the transaction, if at all.
- If an attorney can receive commission without a real estate broker license.
- Whether the attorney is exempt from the licensing regulations in Question 1.
- Whether an attorney can act as broker and legal counsel in the same transaction. If so, are any disclosures required?

Involvement

In Pennsylvania, attorney involvement depends on whether the transaction is a lease or acquisition. Attorneys generally are more likely to be involved in complex transactions at an earlier stage.

In commercial leases, attorneys are sometimes involved in:

- Completing the term sheet.
- Negotiating and drafting the lease agreement.

In commercial acquisitions, attorneys participate by:

- Drafting and negotiating the purchasing agreement.
- Conducting and coordinating the closing.

In commercial acquisitions, attorneys are sometimes involved in the offer letter stage.

Commission

An attorney cannot receive commissions without also having a real estate broker license.

Exemption from Licensing Regulations

An attorney is not exempt from the licensing regulations of a real estate broker and must obtain a real estate broker license to do any of the actions requiring a license under the Real Estate Licensing and Registration Act (see Questions 1 and 2).

An attorney nevertheless need not have a license to do regular real estate legal work, including:

- Rendering services under an executed and recorded power of attorney from an owner or landlord of real estate if the power of attorney is not used to circumvent the intent of the act. It is a circumvention of the intent of the act for an owner or landlord of real estate to grant a power of attorney to a property manager for the sole purpose of avoiding the necessity of having the property managed by a real estate broker licensed under the act.
- Receiving a fee from a client for rendering services within the scope of the attorney-client relationship if the attorney does not hold itself out as a real estate broker.

(49 Pa. Code § 35.202(4), (5).)

Acting as Broker and Legal Counsel

If the attorney has a real estate brokerage license, then the attorney likely can act as both a broker and legal counsel in the same transaction. However, as required by the Pennsylvania Code and the Pennsylvania Rules of Professional Conduct (for attorneys), the attorney/broker must meet certain disclosure and consent requirements, including:

- If the real estate transaction involves property in which the attorney has an ownership interest,

first disclosing the interest in writing to all parties concerned.

- If representing or purporting to represent more than one party to a real estate transaction, obtaining written consent of all parties concerned.
- A continuing obligation to disclose to a principal any conflict of interest in a reasonably practicable period of time after the attorney learns or should have learned of the conflict of interest.
- If managing rental property, not accepting a commission, rebate, or profit on expenditures made for the landlord without the landlord's written consent.

(49 Pa. Code § 35.283.)

A licensee who provides financial, title transfer and preparation, insurance, construction, repair, or inspection services cannot require a consumer to use any of these services. If the consumer chooses to use any of these services, the licensee must provide the consumer with a written disclosure of any financial interest, including a referral fee or commission that the licensee has in the service. This disclosure must be made when the licensee first advises the consumer that an ancillary service is available or when the licensee first learns that the consumer will be using the service. (49 Pa. Code § 35.283(d), (e).)

An attorney may enter into a business transaction with a client if:

- The transaction terms are fair and reasonable to the client.
- The attorney follows the requirements of the Pennsylvania Rules of Professional Conduct (204 Pa. Code §§ 81.1 to 81.4).

Brokerage Agreements

8. Please describe different brokerage agreements commonly used in your jurisdiction between individuals selling or leasing their property and the brokers.

Exclusive and non-exclusive brokerage agreements are used in Pennsylvania purchase and sales, and all listings must specify a definite time during which the broker is to be employed. The listing period generally cannot exceed 12 months, though there can be a renewal provision.

The different types of brokerage agreements commonly used in Pennsylvania are:

- **Open listings.** The broker has the right to bring prospective buyers to see the property. If the buyer purchases the property, the broker gets a commission. Property owners generally can give an open listing to an unlimited number of brokers.
- **Exclusive agency listings.** The broker lists and markets the property and gets a commission if the property sells through any broker or real estate company. If the seller finds a buyer on its own, the seller does not owe the broker a commission.
- **Exclusive right to sell listings.** The broker obtains a commission no matter who the buyer is, even if the seller finds the buyer itself.
- **Multiple listings.** A multiple listing clause may be included in a contract to authorize the broker to register the listing with the local Multiple Listing Service (MLS) office. MLSs are organizations whose broker-members share listing information with one another. The listings are then published to all MLS members, any of whom may sell any listed property. If a sale of property is made by someone other than the broker who took the listing initially, the commission is divided between the listing and selling broker.

Multiple listings are popular. However, the Pennsylvania Supreme Court has held that the multiple listing practices of an organization of real estate brokers that operated to exclude a licensed broker from participation in the multiple listing were per se unreasonable and an unlawful restraint of trade (*Collins v. Main Line Bd. of Realtors*, 304 A.2d 493 (Pa. 1973)).

9. Is there a customary tail period for exclusive brokerage agreements?

Pennsylvania does not have a statutory tail period that outlines how long after the agreement the broker can continue to collect brokerage fees in a purchase and sale transaction. However, a customary tail period for exclusive brokerage agreements is six months.

For example, the Philadelphia County Court of Common Pleas found that a broker was entitled to a commission on the sale of a building three years after its agency agreement expired because the building was purchased by a tenant's designee and the agreement provided that the broker was entitled

to a commission if a tenant's designee purchased the building. The court held that the RELRA was not violated. (*Situs Props. v. Peter Roberts Enters.*, 2005 WL 293686, at *4 (Phila. Ct. Com. Pl. Jan. 26, 2005).)

Commission Payments

10. With regard to commissions in your jurisdiction:

- Does a broker need a written brokerage agreement to claim its commission?
- When is a broker entitled to its commission?
- May a commission be earned if the closing does not occur?
- Are there any statutory restrictions on commission rates?
- If the parties are permitted to negotiate a commission, what is the customary range for commission rates.

Written Brokerage Agreement

In Pennsylvania, a broker in both purchase and sale and leasing transactions needs a written brokerage agreement to claim its commission (49 Pa. Code § 35.281).

A written brokerage agreement must contain:

- Notice that a Real Estate Recovery Fund exists to reimburse a person who has:
 - obtained a final civil judgment against a Pennsylvania real estate licensee for fraud, misrepresentation, or deceit in a real estate transaction; and
 - been unable to collect the judgment after exhausting legal and equitable remedies.
- Notice that payments of money received by the broker for a sale must be held by the broker in an escrow account pending consummation or a prior termination of the sale.
- Notice that the broker's commission and the duration of the agreement have been determined because of negotiations between the broker or a licensee employed by the broker and the seller/landlord or buyer/tenant.
- A description of the services to be provided and the fees to be charged.

- Notice about the possibility that the broker or any licensee employed by the broker may provide services to more than one party in a single transaction and an explanation of the duties owed to the other party and the fees that the broker may receive for those services.
- Notice of the broker's or salesperson's continuing duty to disclose in a reasonably practicable period of time any conflict of interest.
- In an agreement between a broker and a seller/landlord:
 - a statement regarding cooperation with subagents and buyer agents;
 - a disclosure that a buyer agent, even if compensated by the listing broker or seller/landlord, will represent the interests of the buyer/tenant; and
 - a disclosure of any potential for the broker to act as a dual agent.
- In an agreement between a broker and a buyer/tenant:
 - an explanation that the broker may be compensated based on a percentage of the purchase price;
 - the broker's policies regarding cooperation with listing brokers willing to pay buyer's brokers;
 - a disclosure that the broker, even if compensated by the listing broker or seller/landlord, will represent the interests of the buyer/tenant; and
 - a disclosure of any potential for the broker to act as a dual agent.

(49 Pa. Code § 35.331.)

All the requirements listed above generally are included in standard written brokerage agreements. However, any extensions (or other modifications) to those agreements must also be in writing and signed by the parties for the agreements (and therefore the broker's rights to commissions) to be enforceable.

In 2011, the Pennsylvania Superior Court addressed the enforceability of an oral extension to a written listing agreement. The Court refused to allow a real estate broker to recover a commission from a landlord based on an oral extension to a brokerage agreement. (*Michael Salove Co. v. Enrico Partners, L.P.*, 23 A.3d 1066, 1071 (Pa. Super. 2011).)

Before an agreement of sale is executed, the brokers involved in the transaction must provide each party with a written estimate of reasonably foreseeable expenses associated with the sale that the party may be expected to pay, including:

- The broker's commission.
- The mortgage payments and financing costs.
- Taxes and assessments.
- Settlement expenses.

(49 Pa. Code § 35.334.)

Timing of Commission Payment

Real estate broker commissions on a sale are typically due at closing.

For leases, a commission payment can be due with each rental payment.

For commercial leases, the timing of commission payments largely depends on how parties draft the brokerage agreement. For example, it is not unusual to see a schedule of commission payments, such as 50% within 60 days of the execution of the lease and 50% within 60 days after the occurrence of other events, such as the tenant opening their business and the commencement of rental payments by the tenant to the landlord.

Commission Payment Without Closing

A commission payment can become due even if a transaction does not close. However, few brokers try to collect a commission in this circumstance. Parties often include a provision in the brokerage agreement that no commission will be considered as earned if closing is not complete.

Statutory Restrictions

Pennsylvania does not have any statutory restrictions on commission payments in purchase and sale or leasing transactions. The rates are negotiated between the parties.

Range of Negotiated Rates

As parties may negotiate a commission rate, the customary range for commission rates is between five and seven percent of the purchase price.

11. Is it customary for the seller or the landlord to pay the commission? If so, how is payment to the purchaser's or tenant's broker usually ensured?

In Pennsylvania, it is customary for the seller or landlord to pay the commission. The payment is customarily ensured by agreements among the brokers.

12. Is fee splitting permitted or customary in your state? If so, are there any restrictions?

In Pennsylvania, licensees must disclose their policies regarding cooperation with other brokers, including the sharing of fees. This can be addressed in the brokerage agreement, as the terms are negotiable. (63 P.S. § 455.608(a)(6).)

A salesperson or associate broker cannot accept a commission or any valuable consideration from anyone other than the licensed real estate broker with whom they are affiliated (63 P.S. § 455.604(a)(12)).

13. When real property is sold, is the grantor deemed released from any deferred commission payment obligations that are scheduled to come due after the transfer of fee title to the grantee or must there be an express release? Are deferred commission payments automatically assumed by the grantee or must the assumption be express?

Grantor Release from Deferred Commission

In Pennsylvania, a commission agreement is a contract and, to be enforceable, must be in writing. The statutes and regulations are silent on this issue. It therefore largely depends on the language of the agreement.

Most agreements are silent on this issue, and therefore a grantor continues to be liable to a broker for commission payments due even after a sale of the property for which commission is due unless:

- The grantee assumes the payment obligation.
- The creditor/broker releases the grantor.

Grantee's Assumption of Deferred Commission

The purchaser is not deemed to have assumed the obligation to pay the deferred commission payments unless there is express language in the purchase agreement that provides otherwise. The specific details of each case are relevant in determining whether the grantee assumed the obligation.

Costs

14. With regard to the marketing and advertising costs associated with the listing:

- Does a broker typically pass on these costs to the seller or the landlord?
- Are provisions dealing with these costs usually found in exclusive or non-exclusive agreements, or both?

Reimbursement of Costs

In Pennsylvania, the reimbursement of marketing and advertising costs largely depends on the agreement. However, the broker may pass on these costs in a commercial transaction if provided in the agreement.

Cost Provisions

Cost provisions are more likely to be found in exclusive agreements.

Disclosure Laws

15. Describe any disclosure laws affecting real estate brokers or salespersons. Is a broker required to disclose its dual agency?

General Disclosure Laws

Pennsylvania has many statutorily imposed disclosure requirements for brokers in commercial transactions.

The Real Estate Seller Disclosure Law requires that:

- A licensee who represents sellers or a transaction licensee who has entered into an agreement with sellers:
 - advise sellers of their duty to disclose any known material defects with the property by completing a property disclosure statement that satisfies the requirements (relating to disclosure form) in 68 Pa.C.S. § 7304;
 - provide sellers with a property disclosure statement that meets or exceeds the disclosures provided (relating to seller property disclosure statement) in 49 Pa. Code § 35.335a; and
 - deliver the completed property disclosure statement or the property disclosure statement marked “refused” to the buyer, the licensee who represents the buyer, or the transaction licensee who has entered into an agreement with the buyer before the execution of an agreement of sale.
- A licensee who represents buyers or a transaction licensee who has entered into an agreement with buyers:
 - advise buyers that sellers have a duty to provide a completed property disclosure statement; and
 - assure that the completed property disclosure statement or the property disclosure statement marked “refused” was delivered to the buyer before the execution of an agreement of sale.
- Licensees, regardless of whether they represent the buyer or seller disclose to the buyer, in writing, all material defects that are not otherwise disclosed and of which the licensee has actual knowledge. Licensees do not need to conduct an independent investigation to confirm the seller’s disclosures on the property disclosure statement.

(49 Pa. Code § 35.284a.)

If requested, a licensee must provide to the Pennsylvania Department of State, [State Real Estate Commission](#) or its representatives information regarding a franchisor, network, or other parent real estate company with which the licensee is or may become affiliated (49 Pa. Code § 35.285).

A licensee cannot:

- Give assurances or advice concerning an aspect of a real estate transaction that they know or reasonably should be expected to know are incorrect, inaccurate, or improbable.

- Knowingly be a party to a material false or inaccurate representation in a writing regarding a real estate transaction in which they are acting in a representative capacity.

(49 Pa. Code § 35.282.)

Disclosures of Business Relationships and Interests

The disclosure requirements vary depending on the context of the transactions. A licensee must provide a copy of the signed disclosure to the consumers referenced below and retain the signed acknowledgment under 49 Pa. Code § 35.286. If a consumer refuses to sign the acknowledgment, the refusal must be noted on the acknowledgment. (49 Pa. Code § 35.284(d).)

The disclosures listed below do not apply to transactions involving the sale or lease of commercial property, as defined in Section 201 of RELRA, to consumers who are not individuals (49 Pa. Code § 35.284(e)).

Disclosures required for specific context are disclosures to:

- **Consumers seeking to sell or purchase real estate.** A licensee must provide the disclosure summary in 49 Pa. Code § 35.336 to consumers seeking to purchase or sell real estate at the initial interview if the interview occurs in person. Section 35.336 relates to disclosure summary for the purchase or sale of real estate or for the lease of real estate when the licensee is working on behalf of the tenant. If the initial interview does not occur in person, the licensee must provide the oral disclosure in 49 Pa. Code § 35.339 at the initial interview and the written disclosure statement in 49 Pa. Code § 35.336 no later than the earlier of:
 - the first meeting that the licensee has in person; or
 - the time the licensee or any person working with the licensee first shows a property to the consumer.
- **Tenants seeking to lease real estate.** A licensee who is working on behalf of the tenant must provide the disclosure summary in 49 Pa. Code § 35.336 as required in 49 Pa. Code § 35.284(a). A licensee who is working on behalf of the owner must provide the disclosure summary provided in 49 Pa. Code § 35.337 to tenants seeking to lease property at the initial

interview. Section 35.337 relates to the disclosure summary for the lease of real estate when the licensee is working on behalf of the owner. Section 35.336 applies to disclosures for a licensee working on behalf of the tenant.

(49 Pa. Code § 35.284(a), (b).)

There are certain contexts that require disclosure and sometimes written consents. For example:

- Where a real estate broker is selling property in which they have an interest individually, they should make a strong effort to demonstrate good faith and full disclosure with a detailed explanation of the terms of agreement of sale (*Perry v. State Real Estate Comm'n*, 333 A.2d 216, 218 (Pa. Cmwlth. 1975)).
- A broker who manages rental property cannot accept a commission, rebate, or profit on expenditures made for the landlord without the landlord's written consent.
- A licensee cannot participate in a real estate transaction involving property in which they have an ownership interest unless they first disclose their interest in writing to all parties concerned.
- A licensee cannot represent or purport to represent more than one party to a real estate transaction without the written consent of all parties concerned.
- A licensee who provides financial, title transfer and preparation, insurance, construction, repair, or inspection services cannot require a consumer to use any of these services. However, if the consumer chooses to use any of the services above, the licensee must provide the consumer with a written disclosure of any financial interest, including a referral fee or commission, that the licensee has in the service. This disclosure must be made when the licensee first advises the consumer that an ancillary service is available or when the licensee first learns that the consumer will be using the service.
- A licensee has a continuing obligation to disclose to a principal any conflict of interest in a reasonably practicable period of time after the licensee learns or should have learned of the conflict of interest.

(49 Pa. Code § 35.283.)

A broker or salesperson that sells or leases their own real estate must comply with the requirements of the Pennsylvania Code and must disclose their licensed status to a prospective buyer or tenant before the buyer or tenant enters into an agreement of sale or lease, as applicable (49 Pa. Code § 35.288).

Dual Agency Disclosure

As a dual agent, the licensee works for both the seller/landlord and the buyer/tenant. A dual agent cannot 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. (49 Pa. Code § 35.314.)

Broker's Liens

16. Can a broker file a lien against real property if it has a claim for its commission? Is a broker's lien an inchoate lien?

In Pennsylvania, the Commercial Real Estate Broker Lien Act (CREBLA) provides that each broker has a lien in the amount of the compensation due for services rendered by the broker regarding the commercial real estate transaction (68 P.S. § 1053). Commercial real estate is defined in the negative. Commercial real estate is **not**:

- Real estate containing one to four residential units.
- Real estate that is zoned agricultural.
- Single-family units.
- Condominiums, townhouses, or homes in a subdivision when they are sold on a unit-by-unit basis, even though they are part of a larger building or parcel of real estate containing more than four residential units.

(68 P.S. § 1052.)

No party, other than a real estate broker, may be allowed a lien. Attorneys, consultants, inspectors, and other similar professionals are not eligible for protection under the CREBLA. (68 P.S. § 1055.)

Only the broker of record can file a lien, and the lien is limited to the amount of compensation agreed to between the consumer and the broker. For the broker to properly file a lien, there must be a written agreement between:

- The consumer and the broker.
- The parties to the real estate transaction to convey an interest in the commercial real estate.

(68 P.S. § 1053.)

A lien attaches to the commercial real estate or any interest in the commercial real estate when the broker both:

- Procures a person or entity that is ready, willing, and able to purchase, lease, or otherwise accept a conveyance of the commercial real estate. That purchase must be according to the terms of the written agreement for the applicable transaction with the owner or otherwise acceptable to the owner or the owner's agent. Alternatively, a lien attaches if the broker is otherwise entitled to a fee or commission under a written agreement that is signed by the owner or the owner's agent.
- Records a notice of lien in the office of the prothonotary in the county in which the real property or any interest in the real property is located before the actual conveyance or transfer of the commercial real estate against which the broker is claiming a lien.

(68 P.S. § 1056(a).)

Filing a Lien

Both the owner and prospective buyer must receive written notice of the intention to file a claim at least three days before settlement. The notice must be served by registered or certified mail. (68 P.S. § 1056(f).)

The broker must mail a copy of the notice of lien to the owner of the commercial real estate by certified mail (68 P.S. § 1056(e)).

After all parties are notified of the intention to file a lien, the broker must file the lien with the court. The lien will be a cloud on the title and impede conveying the property without first satisfying the lien.

When a claim for a lien that would prevent the closing or conveyance is filed with the court, money sufficient to release the lien must be escrowed. Once the money is escrowed, the broker must release the lien. (68 P.S. § 1060.)

Enforcement of Lien

The lien survives for two years, during which time the broker must initiate the proper steps to enforce the lien. A buyer's broker may file a lien against the property no later than 90 days after the buyer takes title. The notice of lien filed with the prothonotary must be preceded by a prior notice served on the buyer client. (68 P.S. §§ 1056 and 1058.)

To enforce the lien, the broker must file a complaint against the client who owes the fee. The complaint must conform to the rules of civil procedure and must contain:

- A brief statement of the agreement on which the lien is founded.
- The date when the agreement was made.
- A description of the services performed.
- The amount due and unpaid.
- A description of the property that is subject to the lien.

(68 P.S. § 1058(a), (e).)

Failure to take this action within two years of filing a notice of lien extinguishes the lien (68 P.S. § 1058(c)).

An owner who is subject to a lien may file a formal notice (praecipe) on the broker requiring the broker to file a complaint within 20 days. If the broker fails to file a formal complaint within 20 days after being served with the praecipe, the lien may be extinguished. This allows owners who feel that the lien has been unjustly placed on the property to bring the matter to issue in a court of law and have the lien properly extinguished. Should an owner prevail against a broker, the broker must pay the owner's legal fees and expenses. Conversely, a broker who prevails is entitled to reimbursement of legal fees and expenses in addition to the amount of the lien. (68 P.S. § 1058.)

Brokers' Liens as Inchoate Liens

When a lien is filed, its priority is determined by the date of filing. Liens filed or recorded before the broker's lien will be paid first out of the proceeds of any sale. However, mortgages and mechanics liens always take priority ahead of a broker's lien, regardless of the date of recording. (68 P.S. § 1059.)

17. How can a real property owner remove a broker's lien?

Under Pennsylvania law, a property owner can remove the broker's lien by both:

- Filing a petition to discharge the lien against the commercial real estate.
- Paying the sum equal to the amount of the putative lien to the court for application to the payment of the amount finally determined to be due.

(68 P.S. § 1061(b).)

Alternatively, instead of paying a cash deposit, a property owner can remove the broker's lien by entering an approved security in these proceedings of two times the amount of the required cash deposit or a lesser amount approved by the court. However, in this context, the security would never be less than the full amount of the required cash deposit under 68 P.S. § 1061(b). (68 P.S. § 1061(d).)

The broker then has 30 days to file a notice with the prothonotary that the lien has been satisfied (68 P.S. § 1058(g)).

When a notice of lien has been recorded and a conveyance fails to occur through no fault or condition of the owner, the lien recorded must be satisfied of record by the broker, and the property is thereafter freed and discharged from the broker's lien. If the broker does not voluntarily satisfy the lien, the owner may demand the filing of a complaint or commence an action against the qualified broker to satisfy or strike the lien. If the court finds that the lien was recorded in bad faith or the refusal to satisfy the lien was in bad faith, a court must then award the owner the amount of the reasonable expenses, including attorneys' fees and court costs. (68 P.S. § 1056(h).)

Managing Real Estate

18. Is a broker's license required to manage real estate and collect rents on behalf of a landlord? If so, what are the statutes regulating the licensing requirements?

In Pennsylvania, a broker's license is generally required to manage real estate and collect rents on behalf of a landlord. A property manager needs a broker's license to:

- Lease, list, or manage real estate.
- Promote the rental of real estate.

(63 P.S. § 455.301.)

However, a salesperson working under a licensed broker may engage in these activities without a broker's license (63 P.S. § 455.301).

There are additional exceptions. For example, employees of owners of multi-family residential property who manage and maintain the property

Commercial Real Estate Brokerage Laws and Customs: Pennsylvania

are exempt from obtaining a broker's license if these employees:

- Do not negotiate lease terms.
- Do not hold money belonging to tenants other than on behalf of the owner.

- Are not authorized to enter into leases on the owner's behalf.

(63 P.S. § 455.304.)

About Practical Law

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at legalsolutions.com/practical-law. For more information or to schedule training, call 1-800-733-2889 or e-mail referenceattorneys@tr.com.