

ACT 112 AMENDED

Oral and written disclosures setting out business relationships were added to the Real Estate Licensing and Registrations Act by Act 47 of 2000 (Act 47) and Act 112 of 1999. Act 112 required licensees to provide sellers/landlords and buyers/tenants with the written Consumer Notice (in Section 336 of the regulations) at the initial interview. Act 47 altered this requirement depending upon which of three real estate transactions is involved.

1. Purchase of commercial or residential real estate--Section 608(c) of the Act requires brokers, associate brokers, salespersons, builder/owner salespersons, or campground salespersons involved in the purchase of commercial or residential real estate to provide sellers and buyers with the written Consumer Notice (in Section 336 of the regulations) at the initial interview if the parties meet in person. However, if the initial interview occurs over the telephone, identified licensees must provide the seller or buyer with the following ORAL disclosure:

“The Real Estate Law requires that I provide you with a written Consumer Notice that describes the various business relationship choices that you may have with a real estate licensee. Since we are discussing real estate without you having the benefit of the Consumer Notice, I have the duty to advise you that any information you give me at this time is not considered to be confidential unless and until you and I enter into a business relationship. At our first meeting I will provide you with a written Consumer Notice which explains those business relationships and my corresponding duties to you.”

This same disclosure should also be provided in Internet communications. The written Consumer Notice must then be provided either at the first meeting or at the time a property is first shown.

2. Lease/rental of commercial or residential real estate--Section 608(b) of the Act was amended to remove the requirement that brokers, associate brokers, salespersons or rental listing referral agents provide the written Consumer Notice (in Section 336 of the regulations) when dealing with landlords or tenants for the purpose of rental only. Rather, these licensees must provide the following written statement at the time of the initial interview or when the rental application is taken:

“CONSUMER NOTICE
THIS IS NOT A CONTRACT

(Licensee) hereby states that with respect to this property,
(describe property) I am acting in the following capacity:
(check one)

- (i) owner/landlord of the property;
- (ii) a direct employee of the owner/landlord; or
- (iii) an agent of the owner/landlord pursuant to a property management or exclusive leasing agreement.

I acknowledge that I have received this notice:
(consumer) (date)

I certify that I have provided this notice:
(licensee) (date)”

The identified licensee shall provide a copy of this written statement to the prospective tenant and retain a copy for 6 months. If the tenant refuses to sign the statement, the licensee should note the refusal on the form and retain it for 6 months.

3. Use of time shares—Section 608(e) of the Act was also amended to remove the requirement that brokers, associate brokers, salespersons or time-share salespersons who show times-shares to provide the written Consumer Notice (in Section 336 of the regulations). Rather, the identified licensees must provide the following written statement at the initial interview:

“CONSUMER NOTICE
THIS IS NOT A CONTRACT

(Licensee) hereby states that with respect to this property,
(describe property) I am acting in the following capacity:
(check one)

- (i) owner of the property;
- (ii) a direct employee of the owner; or
- (iii) an agent of the owner pursuant to a property management or exclusive leasing or selling agreement.

I acknowledge that I have received this notice:
(consumer) (date)

I certify that I have provided this notice:
(licensee) (date)”

The identified licensee shall provide a copy of this written statement to the prospective tenant and retain a copy for 6 months. If the tenant refuses to sign the statement, the licensee should note the refusal on the form and retain it for 6 months.

Act 47 also made additional revisions:

(1) It clarifies that in designated agency a broker may designate licensees to serve in a representative capacity at the time the representation agreement is signed. (Section 606)

(2) It clarifies that a licensee may perform a service before a written agreement in Section 608.1 is signed, however, the licensee is not entitled to a fee, commission or other valuable consideration until an agreement is signed. (Section 606.1(b))

(3) It adds a “nonexclusive agreement for a licensee to act as a buyer/tenant agent” to the types of agreements which may be oral, provided there is a written memorandum. (Section 606.1(b)(1))

(4) It permits a subagent or transaction licensee who is cooperating with the listing broker to work with a buyer who refuses to sign the written disclosure statement by noting the refusal on the statement and retaining it for 6 months. (Section 606.1(b)(4))

A copy of Act 47 is available at:

<http://www.legis.state.pa.us/WU01/LI/BI/BT/1999/0/HB2220P3707.HTM>.