

LEGISLATIVE BRIEFING PAPER RELRA AMENDMENTS

BACKGROUND:

The Real Estate Licensing and Registration Act (RELRA) governs the practice of real estate licensees in the Commonwealth and serves to protect consumers who work with real estate licensees. PAR has crafted amendments to RELRA concerning a broker's duty to hold escrow and the use of entities.

KEY POINTS OF THE LEGISLATION: Senate Bill 241 (Tomlinson, R-Bucks)

Escrow – RELRA requires that escrow funds be placed in an insured depository within a limited time following receipt by the licensee. These funds may only be taken out of the escrow account when one of two circumstances occurs: 1) the transaction settles; or 2) the transaction terminates without a settlement and there is no lingering dispute between the parties. Releasing funds when settlement occurs has never posed a problem. How to release funds in a failed transaction is problematic and is the most frequently asked question on the PAR Hotline.

The amendment would provide that escrows may be released if: there is a prior agreement or no dispute as to entitlement to the monies, all of the parties agree at any time to release of some or all of the monies, and a court orders release of the monies.

Use of Entities – The use of entities amendment would provide that associate brokers and salespersons may set up entities such as S corporations or LLCs to conduct their real estate business and receive commissions.

TALKING POINTS:

Escrow

- Earnest money may be what the potential buyer needs to purchase another property. If it is not released, those buyers are “on hold” until the matter is resolved.
- A real estate licensee may get caught in the middle of a buyer/seller dispute and is powerless to resolve the problem under current law. Allowing a licensee to release the escrow after termination of an agreement solves this predicament.

Use of Entities

- Individuals licensed to practice almost all other professions or occupations are permitted to organize professional corporations or other forms of entities to conduct their licensed activities.
- Organizing a separate entity provides more substance to a licensed individual's business, i.e. permitting the acquisition of assets in the name of the business, signing leases for space or equipment in the name of the business, etc.
- A separate entity may provide tax benefits for the agent. Permitting agents to organize business entities will also benefit brokers by, for example, allowing a broker to write one commission check to an entity owned by a team of agents instead of requiring the broker to write separate smaller commission checks to each team member as is required at present. Paying commissions to an entity will also simplify the tax reporting for the broker.
- The amendment requires that only licensees may own an entity that is

paid commissions by the broker. In addition, an entity organized by an associate broker or salesperson to receive commissions may not be held out to the public as providing real estate services. If an associate broker

or salesperson does not comply with those restrictions or if the entity is used to violate RELRA generally, the associate broker or salesperson will be subject to discipline.

**For further information, contact Derenda Updegrave, Director, Government Affairs.
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