

Pennsylvania Legal Update

2018 TriplePlay

Hank Lerner, Esq.
PA Association of Realtors®
hlerner@parealtor.org
Facebook/Twitter: @PARhank
717-561-1303



Pennsylvania Association of Realtors®

Road map

- RELRA Amendments
- License Law
- Seller Disclosure
- Inspection Reports
- Landlord-Tenant
- Fair Housing
- Code of Ethics



Pennsylvania Association of Realtors®

RELRA Amendments



Pennsylvania Association of Realtors®

Background

- HB 863 – Act 75
 - New licensees
 - BPOs
- Full law on PAR website
 - Extensive FAQ
- Effective date: August 28, 2018
 - Kinda’...

New Licensees

- 75 hours of prelicense education
 - Increased from 60
- Commission to update outlines
 - Real Estate Fundamentals (30)
 - Real Estate Practice (45)
 - Two update cycles
- More practical application
 - Mirrors PSI exam updates – application v. recall

New Licensees

- High school diploma or equivalent
 - Contact Commission with specific questions
- Does NOT apply to current licensees, ever

Broker Price Opinions (BPOs)

Old Law

- CMA – yes.
 - Likely buy/sell price on behalf of actual or potential buyer/seller client
- BPO – no.
 - ...anything else

New Law

- CMA – yes (still)
 - Likely buy/sell price on behalf of actual or potential buyer/seller client
- BPO – yes...but with substantial restrictions
 - Experience
 - Education
 - Broker participation
 - Limited uses
 - Content requirements

Definition - BPO

“An estimate prepared by a broker, associate broker or salesperson that details the probable selling price of a particular parcel of real property and provides a varying level of detail about the property’s condition, market and neighborhood, and information on comparable sales....”



Pennsylvania Association of Realtors®

BPOs - Experience

- At least 3 years as licensed salesperson
 - No specific transaction/point requirements



Pennsylvania Association of Realtors®

BPOs - Education

- Prerequisite education
 - Determined by State Real Estate Commission
 - Pending
- At least 3 hours of BPO education in each renewal cycle
 - Per SREC guidelines
- Agent & Broker



Pennsylvania Association of Realtors®

BPOs – Broker Participation

- BPO also must be signed by broker (or associate broker designated by the broker)
 - Broker/Associate Broker has same education requirement
- All fees must go through broker
- Broker can limit/prohibit practice



Pennsylvania Association of Realtors®

BPOs – Permitted Uses

- REO property after unsuccessful foreclosure sale
- Mortgage or equity line modification
- Short Sale
- Evaluation or monitoring of a portfolio of properties



Pennsylvania Association of Realtors®

BPOs – Prohibited Uses

- Originating a mortgage loan/refinance
- Eminent Domain
- Tax Appeals
- Bankruptcy
- Divorce or equitable distribution proceedings
- Any court proceeding
- Distribution of estate
- Anything you don't see on 'permitted' list



Pennsylvania Association of Realtors®

BPO – Content Requirements

- Disclaimer
 - Same as CMA
- Minimum seven criteria
 - Intended users
 - Property description
 - Basis for conclusion (comps, etc.)
 - Assumptions or limiting conditions
 - Existing or contemplated interests of licensee
 - Effective date
 - License Number



Pennsylvania Association of Realtors®

Takeaways

- Lots of use cases are still prohibited
- Can't do it until education available
- Broker can (and should) control



Pennsylvania Association of Realtors®

License Law



Pennsylvania Association of Realtors®

Ladd v. State Real Estate Commission

- Nice lady “just” helping with vacation rentals
- Seeking relief from license law requirements
 - Property management requires broker license or brokerage affiliation
 - Claims limited scope should mean limited requirements



Pennsylvania Association of Realtors®

Ladd v. State Real Estate Commission

- Nope
- License law serves legitimate purpose
 - Quotes from case...
- Currently on appeal to Supreme Court



Pennsylvania Association of Realtors®

Seller Disclosure - I



Pennsylvania Association of Realtors®

Phelps v. Caperoon

- Sale of farm
 - Home, barn, garage & greenhouse
 - Home was residence and base of business
 - As-is Agreement of Sale
- No seller disclosure form provided
 - ...on advice of counsel...



Pennsylvania Association of Realtors®

Decision – disclosure form

- Seller disclosure form was required
 - “Shall” disclose (§ 7303)
 - “shall” deliver (§ 7305)
- Residential real estate transfer (§ 7103)
 - 1-4 residential dwelling units
 - Everything else incidental
- No overrides
 - As-is
 - Attorney advice



Pennsylvania Association of Realtors®

Decision - damages

- “...liable in the amount of actual damages suffered by the buyer as a result of a violation of this chapter.” (§ 7311)
- \$60,000 to fix roof and other issues
- \$120,000 loss in value (appraiser)
- “Actual damages” means cost to repair (capped by market value)
 - Maybe difference in value if not repairable



Pennsylvania Association of Realtors®

Extras

- Licensees can be liable for non-disclosure if they are aware of the defect (§ 7310)
 - No licensees in this case
- Courts may “...impose punitive damages or apply other remedies applicable under any other provision of law.”
 - Fraud is often charged
 - Apparently not here



Pennsylvania Association of Realtors®

Takeaways

- Shall means shall
 - You gotta’ do it
 - Learn the list of actual exceptions
- Actual damages means what it would actually cost to fix
 - Note that this case was reminded to better determine the actual numbers



Pennsylvania Association of Realtors®

Seller Disclosure - II



Pennsylvania Association of Realtors®

Medlock v. Chilmark Home Inspections v. Gitomer

- Residential resale
- Seller disclosure form provided
- *Most* renovations were disclosed
 - Seller did not disclose basement renovation considered “cosmetic”



Pennsylvania Association of Realtors®

Medlock v. Chilmark Home Inspections v. Gitomer

- Basement partially under tiled patio in yard
- Several months later, buyer (Medlock) discovered ceiling stains
- Removed “readily accessible panel” in wall and found rotting support beams with other water damage
- Paid \$76,000 for basement/patio repairs & renovations



Pennsylvania Association of Realtors®

Decision - disclosure

- “...shall disclose to the buyer any material defects with the property know to the seller by completing all applicable items in a property disclosure statement...”
- Must complete the whole form, not just the items the seller thinks are material defects
- Minimum form v. PAR form



Pennsylvania Association of Realtors®

Decision - disclosure

- Fact of basement renovations should have been disclosed
 - Form asks for additions/alterations
 - Similar work disclosed
 - Basement involved drywall, lighting & at least an electrical permit w/inspections



Pennsylvania Association of Realtors®

Decision - damages

- NO DAMAGES
- Testimony showed no actual knowledge by seller
 - Did not suspect water damage when renovations done (10 yrs ago)
 - Contractor did not inform them of any issues
 - Nothing was visible & apparent to them
- No proof the buyers would have discovered damage had the renovations been disclosed



Pennsylvania Association of Realtors®

Takeaways

- Shall means shall
 - You gotta' do it
 - Fill out the whole form!
- "...liable in the amount of actual damages suffered by the buyer as a result of a violation of this chapter." (§ 7311)
 - Need a solid link between violation and damages



Pennsylvania Association of Realtors®

Inspection Reports



Pennsylvania Association of Realtors®

Inspection Contingency

- Current form
 - Accept/terminate with no inspection reports
 - Negotiate only by providing reports
- 2019 form
 - “Present all inspection reports...”



Pennsylvania Association of Realtors®

Disclosure Updates

- Seller must update form based on knowledge
 - “...known to the seller...”
 - Buyer must be informed of anything “rendered inaccurate prior to final settlement” (§ 7307)
- If buyer terminates after inspections, what does seller “know”?
- Seller not liable for information in “expert report” (§ 7309)
 - Inspector, contractor, etc.



Pennsylvania Association of Realtors®

Landlord-Tenant



Pennsylvania Association of Realtors®

E.S. Management v. Yingkai Gao, et al.

- Several Chinese students wanted to rent an apartment
- Wired \$5,685 to secure the lease
 - \$100 application fee
 - Security Deposit equal to two months' rent
 - Prepaid final month rent
- Cancelled out 2 days later



Pennsylvania Association of Realtors®

The Rule

- Landlord-Tenant act of 1951 prohibits a landlord from requiring:
 - “in excess of two months’ rent to be deposited in escrow for the payment of damages to the leasehold premises and/or default in rent thereof during the first year of any lease.”



Pennsylvania Association of Realtors®

Decision - deposits

- Landlord violated the rule
 - Regardless of name, last month's rent was clearly meant to protect against future default and/or excess damages



Pennsylvania Association of Realtors®

Decision - damages

- Violation of Unfair Trade Practice & Consumer Protection Law (UTPCPL)
 - 15-page, single-spaced lease
 - Complicated provisions
 - No meaningful review of contract
 - Cancelled 2 days after application, and before lease executed
- Treble Damages!



Pennsylvania Association of Realtors®

Takeaways

- If it walks like a duck...
 - Don't get cute
 - PAR Form APA discontinued
 - Careful with Form PAL
- Can only retain 1 month after 1st year of a lease



Pennsylvania Association of Realtors®

Fair Housing



Pennsylvania Association of Realtors®

HUD v. Facebook

- Allow(ed) target advertising options to display/not display to:
 - Specific ZIP Codes
 - Various interests or searches
 - Child care
 - Assistance dog
 - Latin America
 - Synagogues



Pennsylvania Association of Realtors®

Facebook's Defense...

- Could be legal/valid in certain circumstances
 - But not housing or employment
- Policies strictly prohibit using categories to discriminate
- Removed about 5,000 options for housing ads



Pennsylvania Association of Realtors®

Takeaways

- Interpretation, not intent
- No “instead of” options
- Ongoing



Pennsylvania Association of Realtors®

PA Act 118 – Assistance/Service Animals

- Signed October 24, 2018 (60 days effective date)
- Criminalizes...
 - Misrepresentation of entitlement to assistance/service animal
 - 3d degree misdemeanor
 - Misrepresentation of animal as assistance/service animal
 - Summary offense (fine)



Pennsylvania Association of Realtors®

PA Act 118 – Assistance/Service Animals

- No change to landlords rights/responsibilities under existing Federal and state law
 - May only ask for proof if disability not apparent
 - Standards for what & by whom unchanged
- Adds liability protections for landlords/HOA



Pennsylvania Association of Realtors®

Takeaways

- Just keep doing what you're doing
- Err on the side of caution
- Consult with counsel



Pennsylvania Association of Realtors®

Code of Ethics



Pennsylvania Association of Realtors®

Standard of Practice 1-7

“Upon the written request of a cooperating broker who submits an offer to the listing broker, the listing broker shall provide a written affirmation to the cooperating broker stating that the offer has been submitted to the seller/landlord, or a written notification that the seller/landlord has waived the obligation to have the offer presented.”



Pennsylvania Association of Realtors®

Standard of Practice 1-7

“Upon the written request of a cooperating broker who submits an offer to the listing broker, the listing broker shall provide a written affirmation to the cooperating broker stating that the offer has been submitted to the seller/landlord, or a written notification that the seller/landlord has waived the obligation to have the offer presented.”



Pennsylvania Association of Realtors®

Standard of Practice 1-7

“Upon the written request of a cooperating broker who submits an offer to the listing broker, the listing broker shall provide a written affirmation to the cooperating broker stating that the offer has been submitted to the seller/landlord, or a written notification that the seller/landlord has waived the obligation to have the offer presented.”



Pennsylvania Association of Realtors®

Standard of Practice 1-7

“Upon the written request of a cooperating broker who submits an offer to the listing broker, the listing broker shall provide a written affirmation to the cooperating broker stating that the offer has been submitted to the seller/landlord, or a written notification that the seller/landlord has waived the obligation to have the offer presented.”



Pennsylvania Association of Realtors®

Standard of Practice 1-7

“Upon the written request of a cooperating broker who submits an offer to the listing broker, the listing broker shall provide a written affirmation to the cooperating broker stating that the offer has been submitted to the seller/landlord, or a written notification that the seller/landlord has waived the obligation to have the offer presented.”



Pennsylvania Association of Realtors®

Standard of Practice 1-7

“Upon the written request of a cooperating broker who submits an offer to the listing broker, the listing broker shall provide a written affirmation to the cooperating broker stating that the offer has been submitted to the seller/landlord, or a written notification that the seller/landlord has waived the obligation to have the offer presented.”



Pennsylvania Association of Realtors®

Standard of Practice 1-7

“Upon the written request of a cooperating broker who submits an offer to the listing broker, the listing broker shall provide a written affirmation to the cooperating broker stating that the offer has been submitted to the seller/landlord, or a written notification that the seller/landlord has waived the obligation to have the offer presented.”



Pennsylvania Association of Realtors®

There's (gonna' be) a form for that!

- Broker's Request for Affirmation (Form BRFA)

1. Written Request

- Terms
- Signed by cooperating broker

2. Written Affirmation

- Submitted or Waived checkboxes
 - Waived because it is under agreement
- Signed by listing broker



Pennsylvania Association of Realtors®

Takeaways

- Yes, it's real
- Yes, it's required
- Don't get cute
- Educate first



Pennsylvania Association of Realtors®

Pennsylvania Legal Update

2018 TriplePlay

Hank Lerner, Esq.

PA Association of Realtors®

hlerner@parealtor.org

Facebook/Twitter: @PARhank

717-561-1303



Pennsylvania Association of Realtors®
