

Changes to the Consumer Notice

December 2008

The State Real Estate Commission recently updated the Consumer Notice in response to feedback it has received over the years. The new Consumer Notice provides additional clarification of the roles and responsibilities of licensees. The purpose of the form remains the same, but the text and format have been modified to improve readability. PAR released a new version of the Consumer Notice last month as a result of changes made by the State Real Estate Commission. These changes are summarized below.

Licensees can continue to use the previous Consumer Notice or can begin using the current Consumer Notice between now and June 13, 2009. After that date, by law, the new Consumer Notice must be used.

To view the current Consumer Notice: [Click Here](#)

To purchase the current Consumer Notice: [Click Here](#)

Introductory Language

The concept of this language remains the same. “First contact where a substantive discussion about real estate occurs” has been replaced with “initial interview.”

Initial interview is defined as “The first substantive discussion between a licensee and a consumer about the consumer’s real estate needs.

“Salesperson or Broker” has been replaced with “licensee.” Previous language stating that “A discussion of the objective facts about the property, including dimensions, zoning classification, age, description or list price/lease amount, is not by itself a substantive discussion” has been removed from the definition of the initial interview.

The warning in the previous version that “unless you select an agency relationship the licensee is not representing you” has been reworded and moved to the end of the current version, just above the signature lines, with the intention of making sure the consumer is aware of this fact immediately before signing. The second sentence of this warning has been shortened to read “A business relationship is NOT presumed.”

Agent Relationships

The types of agent relationships licensees may have with a consumer have been moved above the duties that all licensees owe consumers. This allows the reader to understand the distinctions between the types of agent relationships before learning what all licensees must do for a consumer regardless of the agent's status as an agent or a transaction licensee. As with the previous version of the Consumer Notice, the current form describes the roles and responsibilities of a Seller Agent, Buyer Agent, Dual Agent and Designated Agent. The agency types are now in a paragraph format to improve the readability of the form. In each case, the language now refers to the roles and responsibilities or the "agent" instead of discussing "agency" of a certain type. The changes to each agent status are reviewed below.

Seller Agent

The definition of a Seller Agent is fundamentally the same as the previous Consumer Notice. The language discussing Seller Agent compensation has been removed from the Seller Agent section of the form. All language regarding compensation has been moved to the paragraph discussing negotiable contractual terms, on the back of the form.

Buyer Agent

The definition of a Buyer Agent is fundamentally the same as the previous Consumer Notice. The language discussing Buyer Agent compensation has been removed from the Buyer Agent section of the form. All language regarding compensation has been moved to the paragraph discussing negotiable contractual terms, on the back of the form.

Dual Agent

The only change in the Dual Agent language is the removal from this paragraph of the language that allows the Buyer or Seller to waive their agent's responsibility to continue marketing the property. The language was clarified and remains in the Consumer Notice in the Seller Agent section.

Designated Agent

The following language has been removed from the Designated Agent description: "The designation may take place at the time that the parties enter into a written agreement, but may occur at a later time. Regardless of when the designation takes place, the employing broker is responsible for ensuring that confidential information is not disclosed." This change only removes this language and does not change the roles and responsibilities of a Designated Agent.

Transaction Licensee

The language informing the consumer not to share confidential information with the Transaction Licensee has been removed. Language has been added to make it clear that a Transaction Licensee must disclose known material defects about the property.

Duties of Licensees

The current Consumer Notice sets out a list of duties for licensees, just as the previous Consumer Notice did. The list covers essentially the same topics, but some wording has been changed. These changes include:

The requirement concerning the presentation of the offers has been modified to specify that it applies to *written* offers, counteroffers, notices and communications. It was implied in the previous Consumer Notice that this requirement could be waived in writing by *either party*. The current Consumer Notice makes explicit that *only the Seller* can waive in writing this right for a property that is *under contract*.

“Comply with Real Estate Seller Disclosure *Law*” replaces “Comply with the Real Estate Seller Disclosure Act.”

“As soon as practicable” has been moved to the middle of the sentence concerning the disclosure of conflicts of interest and financial interests.

Negotiable Contract Terms

This section of the Consumer Notice replaces the section in the previous Consumer Notice titled “Other Information About Real Estate Transactions.” The concepts of this section remain the same, with the following wording changes:

In the opening sentence, “The following are negotiable between the licensee and consumer and must be addressed...” replaces “The following are negotiable and shall be addressed...”

“The licensee’s fees or commission” replaces “The fees or commissions.”

“The scope of the licensee’s activities or practices” replaces “The scope of the activities or practices”

“The broker’s cooperation with and sharing of fees with other brokers” replaces “The broker’s cooperation with other brokers, including the sharing of fees.”

The property zoning classification and the Real Estate Recovery Fund language is unchanged.

Signatures

The date, printed name and signature have been moved onto one line. The address and phone number lines have been removed.

A space for the licensee's printed name and the date signed were added. The space to fill in the license number has been added to clearly identify the licensee.

Note: All references to Buyer and Seller throughout this document can be construed as Tenant and Landlord, respectively, when the Consumer Notice is being given for a rental property. There has been no change to the [Oral Consumer Notice](#) or the [Consumer Notice for Tenants](#).