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REAL ESTATE
News Concerning Recent Real Estate Issues

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PENNSYLVANIA LICENSING BOARDS' PENALTY ASSESSMENTS INCREASING

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In July of 2009, the Governor of Pennsylvania signed into law a little known Senate bill, which became Act 25 of 2009 (the Act). Among other things, the Act authorized the licensing boards within the Bureau for Professional and Occupational Affairs (BPOA) to impose civil penalties of up to $10,000 per violation on licensees or certificate holders regulated by the BPOA for offenses that occur on or after September 18, 2009. Prior to the Act, the maximum amount that could have been imposed by a licensing board for a single violation was $1,000. In addition to this ten-fold increase in the per violation penalty, the Act authorized the licensing boards to impose the costs of investigation on violators. As a result, violations of the Real Estate Licensing and Registration Act (RELRA) could lead to the imposition of enormous civil fines, as well as the costs of the investigation – in addition to the usual panoply of other sanctions, including license revocations or suspensions.

Among the prohibitions in the RELRA is the general prohibition against any person acting as a broker or salesperson unless that individual either is licensed by the State Real Estate Commission or falls within an enumerated exemption. The terms "broker" and "salesperson" are broadly defined, and include the following activities:

- Negotiating the listing, sale, purchase, exchange, lease, or time share of real estate
- Managing real estate
- Promoting the sale, exchange, or rental of real estate
- Performing a comparative market analysis
- Collecting rent

In addition to the general prohibition against acting as an unlicensed broker or salesperson, the RELRA penalizes brokers for failing to supervise their salespeople or aiding those who act as a broker or salesperson without a license.

While there are a number of exclusions to the licensing requirements, the exclusions are narrowly construed by the Commission and must be strictly adhered to – otherwise appropriate licensure must be obtained. The exclusions most often applicable are those for an owner of real estate and for those employed by an owner of real estate, managing or otherwise dealing with such owner's multifamily residential property.

For purposes of the RELRA, an "owner" of real estate is defined as the actual owner of the property or, in the case of a partnership or corporation, no more than five of its partners or officers (as the case may be). Although the RELRA predates the Limited Liability Company Law of 1994, and thus does not address limited liability companies specifically, the exclusion should be available to up to five members of a limited liability company that owns real estate. Shareholders, directors, managers and employees of individual, partnership, limited liability company, or corporate property owners are not considered to be owners of real estate for purposes of this exclusion. Unlicensed employees or managers of an owner may manage multifamily residential real estate under the exclusion, such as show apartments and provide information on rental amounts, building rules and regulations and leasing determinations, but cannot enter into leases on behalf of the owner, negotiate terms or conditions of occupancy, or hold money belonging to tenants. Rather, only an owner, or a licensed broker or licensed salesperson under the supervision of a licensed broker, may undertake these latter functions.

In real estate management firms that manage multifamily residential buildings, many practices that have become customary in the name of economic efficiency may not comply with the strict requirements of the RELRA. For example, if office employees have the power to agree to the

terms of a lease on the owner's behalf within a certain rent continuum, or agree to certain minor changes in the lease, these employees are actually negotiating the lease and must hold either a broker's license or a salesperson's license (who, of course, must be supervised by a licensed broker). Consequently, only a licensee or an "owner" may negotiate and enter into such leases. Even employees managing residential real estate cannot execute a lease on behalf of the owner. Further, advertisements that innocently suggest to the public that various unlicensed individuals are in fact "agents" for a particular multifamily residential building violate the RELRA. Complaints about such unlicensed persons filed with the Commission likely will be investigated, and those individuals and their employers may be penalized for violating the rules. With the new penalty provisions applicable under the Act, each such individual and employer could be assessed up to $10,000, plus investigative costs, per violation. In a multifamily residential building of any significant size, the penalties potentially assessable for the violations could be draconian.

Real estate management company executives, along with real estate owners who self-manage one or more properties, should review their internal customs and practices concerning the showing and leasing of apartments in multifamily residential buildings with an eye to potentially restructuring to avoid violating the RELRA.

If you would like our assistance in conducting such a review, or if you would like our evaluation of your overall operations for compliance with all applicable laws and regulations, please contact Dan Schulder at 717.703.5905 or dschulder@cozen.com.

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