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# **Report Of The Task Force On Third-Party Real Estate Brokerage Operations**

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**General Assembly of the Commonwealth of Pennsylvania**  
**Joint State Government Commission**  
September 1985

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**General Assembly of the Commonwealth of Pennsylvania  
Joint State Government Commission**

**108 Finance Building  
Harrisburg, Pennsylvania**

**September 1985**

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The Joint State Government Commission was created by act of 1937, July 1, P.L. 2460, as amended, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

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# Joint State Government Commission, 1985-86

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# Third-Party Real Estate Brokerage Operations

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Secretary  
Department of Banking

Honorable Richard Anderson  
Commissioner  
Bureau of Professional and Occupational Affairs  
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Pennsylvania Securities Commission



GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA  
JOINT STATE GOVERNMENT COMMISSION

ROOM 108 - FINANCE BUILDING  
HARRISBURG 17120

September 17, 1985

TO THE MEMBERS OF THE GENERAL ASSEMBLY:

The Joint State Government Commission is pleased to present this report containing the findings and recommendations of the Task Force on Third-Party Real Estate Brokerage Operations. This study was authorized by 1984 Senate Resolution 107.

The Commission recognizes with gratitude the dedicated work of the task force members, under the capable leadership of Senator F. Joseph Loeper, as well as of the advisors to the task force who provided valuable assistance.

Respectfully submitted,

A handwritten signature in cursive script that reads "Roger A. Madigan".

ROGER A. MADIGAN  
CHAIRMAN

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## I. Introduction

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The General Assembly of Pennsylvania in 1984 Senate Resolution No. 107 directs the Joint State Government Commission to organize a legislative task force "to undertake a study of the establishment of third-party brokerage operations by entities of a public or private nature and their holding companies, service corporations or subsidiaries and whether existing law and regulations affecting these entities adequately safeguard the interests of the citizens of the Commonwealth for available competitive housing financing." Pursuant to the authorizing resolution, a task force chaired by Senator F. Joseph Loeper was appointed. The Secretary of Banking, the Commissioner of Professional and Occupational Affairs and the Chairman of the Pennsylvania Securities Commission served as advisors to the task force.

This resolution is the product of various events that have occurred in the financial services industry at the federal and Commonwealth levels over the past four years. These events can be chronologically summarized as follows:



On May 1, 1981, the Federal Home Loan Bank Board (FHLBB) amended its regulations governing service corporation investments of federal savings and loan associations. In the accompanying commentary to the regulations, the board announced that it would consider applications for service corporations to provide third-party real estate brokerage services on a case-by-case basis. Any applicant would have to demonstrate that the services would not conflict with sound underwriting practices. The board further stated that it had been its policy to approve such activities only if the interests of the association and service corporation were substantially identical and that such policy would be continued in order to avoid potential conflicts of interest.<sup>1</sup>

On October 20, 1981, the Pennsylvania Department of Banking approved its first application from a State-chartered savings and loan association for authorization to invest in a service corporation providing third-party real estate brokerage services. (Pursuant to Section 701(a)(22) of the Savings Association Code of 1967, which was amended in 1982 to read:

Notwithstanding any other provision of this act, associations shall have all powers granted to Federal savings and loan associations. Associations may invest in such bonds, capital stock obligations, and other securities that qualify for investment for

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<sup>1</sup>46 Fed. Reg. 24526.

any purposes by Federal savings and loan associations.)

The FHLBB issued proposed regulations on March 8, 1982 that would have made third-party real estate brokerage operations a preapproved activity for savings and loan association service corporations. (See FHLBB resolution 82-136, adopted February 25, 1982). The resolution sought public comment concerning expansion of investment authority and preapproved activities for service corporations of federal savings and loan associations.<sup>2</sup>

Between March 16 and May 12, 1982, five savings and loan associations received approval to engage in third-party real estate brokerage activities from the Pennsylvania Department of Banking.

On August 3, 1982, the Pennsylvania Association of Realtors (PAR) filed an administrative complaint with the Department of Banking alleging that the department did not have the statutory authority to grant permission to the first six savings and loan associations to invest in third-party real estate service corporations.<sup>3</sup>

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<sup>2</sup>47 Fed. Reg. 9855.

<sup>3</sup>Miller v. Department of Banking, Dept. of Banking Docket No. 82-001.

The Department of Banking received two applications for authorization to invest in third-party real estate service corporations in September and October of 1982.

On November 2, 1982, the FHLBB withdrew its proposed regulations of March 8.<sup>4</sup> Since that time, the FHLBB has not approved any applications by federally chartered savings and loan associations for authorization to invest in third-party real estate brokerage operations. (See appendix A).

A Department of Banking hearing examiner dismissed PAR's complaint on December 29, 1982, concluding that the department had acted within the scope of its authority.

On March 7, 1983, the Pennsylvania Department of Banking released internal guidelines for savings and loan service corporations operating as third-party real estate brokerage firms. These guidelines included compliance with the Real Estate Licensing and Registration Act, the federal Equal Credit Opportunity Act and nondiscriminatory loan underwriting standards. The service corporation would also be subject to examination by the department to the same extent as savings and loan associations.

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<sup>4</sup>47 Fed. Reg. 49,663.

Miller v. Department of Banking was appealed to Commonwealth Court on May 18, 1983 (Docket No. 1317-1983).

In June 1983, two more savings and loan associations applied to the Department of Banking for authorization to engage in third-party real estate brokerage activities.

In September 1983, several legislative attempts were made to deal with the growing concern over the overlapping of the mortgage and real estate industries. Senate Bill 973 (1983), introduced by Senator Ralph W. Hess, amended the Savings Association Code of 1967 to prohibit savings and loan associations or their service corporations from acting in the capacity of a real estate broker. The bill was not reported out of the Senate Banking and Insurance Committee. House Bill 1448 (1983), introduced by Representative Thomas J. Murphy Jr., amended the Real Estate Licensing and Registration Act. Representative Murphy presented an amendment to the bill on the floor of the House which would have established an ad hoc committee to study third-party real estate brokerage operations. Although the amendment passed the House by a vote of 182-17, the provisions regarding the committee were deleted from the bill while in the Senate Appropriations Committee. Representative Peter J. Daley also proposed an amendment to House Bill 1448 which prohibited savings and loan associations, their service corporations, subsidiaries or affiliates from being licensed

under the Real Estate Licensing and Registration Act. The amendment was defeated by a vote of 117-81. Senate Bill 988 (1983), introduced by Senator Clarence D. Bell, amended the Real Estate Licensing and Registration Act to prohibit the licensing of savings and loan associations' service corporations as real estate brokers. The bill was reported out of the Senate Consumer Protection and Professional Licensure Committee, as amended, considered, recommitted to committee, rereported as amended and recommitted a second time to committee, where it remained to the end of the session.

On November 28, 1983, hearings were held by the Department of Banking on the last four remaining savings and loan applications, and on March 28, 1984, those applications were approved.

The Department of Banking issued proposed regulations governing third-party real estate brokerage operations of savings and loan association service corporations on November 24, 1984. These proposed regulations can be found in appendix B. The House Business and Commerce Committee disapproved the proposed regulations on November 27, 1984, pending conclusion of the task force's study. On December 5, at the department's request, the Independent Regulatory Review Commission disapproved those regulations and granted

an extension for resubmission of regulations to June 13, 1985. At the department's request, a further extension was granted to November 14, 1985.

The Commonwealth Court, in Miller v. Dept. of Banking, 487 A.2d 1059 (Pa. Commonwealth Ct. 1985) reversed the Department of Banking and remanded the applications of the first six savings and loan associations to the department in order for the department to complete a proper investigation of each institution's financial and regulatory records before authorizing investment in third-party real estate brokerage service corporations. However, the court held that the department has statutory authority to authorize such investments and was not required to promulgate regulations before making such authorizations. On March 18, 1985, the Pennsylvania Association of Realtors appealed the case to the Pennsylvania Supreme Court; their Petition for Allowance of Appeal was denied August 22, 1985.

While the savings and loan industry was attempting to expand into the real estate brokerage industry, the real estate brokerage industry was also in the process of expanding its services. The growth of electronic mortgage network services has allowed realtors nationwide access to mortgage lenders. Most of these networks are owned by financial intermediaries such as First Boston Capital Group, Inc., which owns Shelternet; however, there is also the

Realtors National Mortgage Access, a service of the National Association of Realtors. These electronic networks permit a realtor to find a mortgage lender for a buyer in a minimal amount of time, simply by sitting down at a computer terminal in his office. While some only provide loan information and prequalification services, other networks can take a buyer through loan application, origination, processing and closing.<sup>5</sup> Still other organizations, such as Sears Financial Network, which sells securities through Dean Witter, insurance through Allstate and real estate through Coldwell Banker, have attempted to become one-stop financial services shopping centers.<sup>6</sup>

Recent congressional efforts to legislate in the financial services area have not resulted in any clear resolution of the debate between those who would further regulate the industry and those who would deregulate.

During the 98th Congress, 2nd Session, several bills were introduced that would have either further regulated or deregulated the thrift industry. H.R. 5881 and H.R. 5916 both sought to restrict the business activities of savings and loan holding companies and their subsidiaries. H.R. 5881 (introduced by Representative Timothy E. Wirth) passed the House Energy and

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<sup>5</sup>Allen, Pat, "Realty Brokers, Lenders Raid Each Other's Nest," Savings Institutions, 54, 60-61 (May 1984).

<sup>6</sup>Taylor, Alexander L., III, "Scrambling for New Customers," Time, 58, May 2, 1983.

Commerce Subcommittee on Telecommunications, Consumer Protection and Finance, but was not considered by the full committee. A very similar bill, H.R. 5916 (introduced by Representatives Fernand J. St. Germain and Chalmers P. Wylie) was approved by the House Banking, Finance and Urban Affairs Committee by a vote of 32-16, but was not presented on the floor of the House. S. 2181 (introduced by Senator Jake Garn) was a comprehensive bill designed to expand the authority of depository institution holding companies to engage in various financial activities, including insurance brokerage, real estate development and brokerage and dealing in securities. The bill was amended in the Senate banking committee, deleting those provisions that would have permitted bank and thrift holding companies to engage in insurance and real estate brokerage activities. This revised bill (S. 2851) passed the Senate, but was stalled in the House of Representatives.

In May 1985, Chairman Edwin J. Gray of the Federal Home Loan Bank Board submitted several legislative proposals to the chairmen of the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Banking, Finance and Urban Affairs. The proposals were to supplement the board's omnibus bill (S. 759). One of the proposals would restrict the investments of state-chartered savings and loan associations that are federally insured to those investments authorized for federally chartered savings and loan associations. Chairman Gray's proposal would affect the 104 Pennsylvania-chartered savings and loan associations that are



insured by the Federal Savings and Loan Insurance Corporation. (See appendix C)

At a public hearing on S. 759 held May 14, 1985, Chairman Gray defended his proposals in testimony presented to the Senate banking committee. He asserted that his proposals, which also include a supplemental risk premium to be assessed against insured institutions who engage in activities beyond those authorized for federally chartered savings and loan associations, are aimed solely at protecting the federal deposit insurance system from potential heavy drains caused by state-chartered savings and loans engaging in risky investments. As of this writing, Senator Garn's committee has not acted on Chairman Gray's proposals.

The House of Representatives has also been active in the area of financial services this session. H.R. 2707, which deals with permitting nationwide banking in five years, was sponsored by Representative St. Germain and passed the House Banking, Finance and Urban Affairs Committee on June 12 by a vote of 31-18. Another bill introduced by Representative St. Germain, H.R. 20, also passed the House banking committee on June 12 by a voice vote. H.R. 20, which deals primarily with closing the "nonbank bank loophole" was amended during markup to add other related provisions.

Included in those amendments was Chairman Gray's proposal authorizing the Federal Home Loan Bank Board to enumerate prohibited nonfinancial activities for state-chartered, federally insured

savings and loans. Introduced by Representative Frank Annunzio, it was passed by voice vote.

Since these bills were approved by the banking committees, Senator Garn has announced that his committee would begin July 23 to study whether FDIC and FSLIC sufficiently examine the firms they regulate. Representative St. Germain has also announced that his committee will soon begin studies on how to stop the drain on the FDIC and FSLIC insurance funds.

The combination of all of these activities has produced considerable uncertainty as to what are acceptable investments for savings and loan associations. It was in light of these conflicting developments that the task force conducted its study.

## II. Summary of Task Force Activities

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On Wednesday, May 29, 1985, the task force and its advisors held its organizational meeting. The members were briefed on the background and purpose of their study, and agreed that a public hearing would be useful to the task force's deliberations.

A public hearing was held on Thursday, June 13, 1985. In addition to the task force members and advisors, approximately 40 others observed the proceedings, including members of the public, press and legislative staffs.

The following individuals testified:

Mr. Frederick C. Brown  
Director of Governmental Relations  
Pennsylvania Association of Realtors

Mr. Thaddeus K. Stevens  
Immediate Past President  
Pennsylvania Association of Realtors

Lawrence Young, Esquire  
York County Bar Association

Ronald Perry, Esquire  
York County Bar Association

Mr. Barry N. Franciscus  
Vice President  
Homestead Savings Association  
and  
Immediate Past President  
Pennsylvania Association of Savings Institutions

Mr. James H. Stoup  
Vice President - Government Affairs  
Pennsylvania Association of Savings Institutions

Mr. Robert Basile  
First Vice President  
Pennsylvania Builders Association

Mr. David Reel  
Director of Government Affairs  
Pennsylvania Builders Association

Mr. William J. Beatty  
Deputy Secretary  
Department of Banking

Mr. Brown, testifying on behalf of Pennsylvania's realtors, stated the primary objections of those realtors to the third-party real estate brokerage activities of savings and loan associations. He expressed concern that deregulation of the thrift industry would threaten the safety and soundness of the depository system. In particular, he said that he was alarmed by the potential risks to consumers' savings that could arise should depository institutions be allowed to invest in the highly volatile real estate brokerage industry. He also pointed out the possibility of anticompetitive activities on the part of savings and loan institutions owning their own real estate brokerage firms.

Mr. Stevens reiterated Mr. Brown's concerns, and elaborated on the potential for unfair competition and conflicts of interest. His primary concerns included mortgage "tie-ins" to brokerage operations, deceptive advertising, federal deposit insurance, favorable tax treatment and access to special credit.

Attorneys Young and Perry addressed their comments to settlement practices of out-of-state lenders, and suggested that restrictions be imposed upon methods of settlement in order to protect consumers.

Messrs. Franciscus and Stoup detailed the savings and loan associations' position. They maintained that the savings and loans could justify their entry into the real estate brokerage market as a response to ventures into the mortgage industry by realtors. They contended that in order to compete with the realtors' new-found ability to locate mortgage lenders for buyers from a nationwide pool, local savings and loans, the traditional source of home mortgage funds, needed to expand their services.

Mr. Franciscus, as vice president of Homestead Savings Association, the largest of two savings and loan associations in Pennsylvania owning a third-party real estate brokerage operation, used the experience of Homestead Savings and The Homestead Group (its realty subsidiary) to respond to concerns of unfair competition and conflict of interest. He stated that the number of real estate sales of the subsidiary that were financed by the parent amounted to 12 percent of the subsidiary's total sales in 1984 and added that at no time had that number risen above 17 percent. It was requested that Mr. Franciscus supply data showing the percentage of total mortgages granted by the parent to buyers of property through the subsidiary for 1984. That information was supplied to the task force by Mr. Franciscus, and can be found in appendix D.

Messrs. Basile and Reel expressed the sentiment of the Pennsylvania builders. They said the builders' primary concern is that the unfair competitive advantages that savings and loan associations would have in the realty market would result in a decrease in the number of brokers available, ultimately reducing marketing opportunities for consumers.

Mr. Beatty related the Department of Banking's position with regard to savings and loan associations operating in the business of selling real estate. He detailed the review procedure for considering applications for authorization to engage in third-party real estate brokerage operations. He further stated that the department would monitor the operations of any real estate brokerage service corporation. Mr. Beatty opined that the two percent statutory limit on the amount of savings and loan association assets that may be invested in service corporations would preserve the safety and soundness of those associations. He concluded that the savings institutions enjoyed no unfair advantages over real estate brokers.

Additional testimony was submitted at the hearing. Senator John Heinz submitted a statement setting forth his position that the purpose of banking regulation is to protect depositors and suggesting that any deregulation to be made should be accomplished in keeping with that purpose. Coldwell Banker Real Estate Group, Inc., submitted testimony that concluded that adequate statutory

protection for consumers is currently in place and that market entry should not be denied to diversified entities.

Mr. Paul Adams, formerly chief counsel to the Department of Banking, submitted testimony in his capacity as a professor of banking law and of money, banking and financial institutions. Mr. Adams detailed the historical development of the financial services industry, pointing out recent changes in the way home mortgages are financed. It was his conclusion that these changes have increased competition in both the real estate brokerage and savings and loan industries. He stated that the real area of concern should be that real estate brokers continue to maintain their fiduciary duties to their real estate clients.

Commission staff was directed by the task force to compile information on mortgage origination in Pennsylvania in order to determine the amount of total mortgages granted that were originated in savings and loan associations. Also, the task force directed staff to obtain information relative to the number of brokers licensed in each of the past 10 years in order to determine if there has been an increase or decrease in licensing. This information is compiled in appendix E.

Subsequent to the hearing, Senator Heinz submitted another statement to the task force expressing his opposition to the expansion of powers for savings and loan associations. He concluded that there is sufficient competition in the realty market in Pennsylvania, that although consumers would benefit from greater

competition, potential conflicts of interest outweigh those benefits, and that savings and loan associations enjoy federally granted advantages over other businesses and industries.

William E. Iorio, director and general counsel for Merrill Lynch Realty, Inc., also submitted a written statement following the hearing, which can be summarized as follows: (1) diversified entities should have free access to the real estate and mortgage markets; (2) current law adequately protects consumers; and (3) the Legislature should address only the infrequent actual abuses of the affiliations between mortgage lenders and realty companies rather than artificially restricting competition in the marketplace.

The task force held meetings on August 19 and September 17, 1985 to discuss its recommendations in this matter. During their deliberations, the task force reviewed the history of this debate, the testimony presented to it, State and federal statutes and regulations governing realtors and savings and loan associations, proposed changes in federal statutory and regulatory law and commentary in various trade journals. Because of the three-month deadline imposed by the General Assembly in the resolution directing the task force's study, September 17 was the last day the task force was empowered to act.



### III. Findings and Recommendations

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In accordance with the directive of Senate Resolution 107, the task force undertook a study of existing law and regulations governing third-party real estate brokerage operations in order to determine if they "adequately safeguard the interests of the citizens of the Commonwealth for available competitive housing financing." After lengthy deliberations, and a thorough review of the testimony submitted, it became apparent that many interrelated concerns exist in this area, some conflicting and others supported by all parties involved. Although expressed in various forms, these concerns ultimately return to one overriding principle: protection of the interests of the home-buying citizens of this Commonwealth.

A prime concern of the task force is to preserve the safety and soundness of Pennsylvania's savings and loan associations. The recent failures of savings institutions in Ohio and Maryland have raised questions about the stability of depository institutions in general. However, in Pennsylvania, there are statutory and regulatory provisions which limit the amounts that may be loaned or invested by savings and loan associations. Only ten percent of the savings deposited in an association may be loaned to any one

borrower, and only two percent of an association's assets may be invested in service corporations. The Department of Banking has authority to increase the percentage of service corporation investment by regulation, but such increase would be subject to the Independent Regulatory Review Act. Furthermore, types of loans and investments are statutorily defined, while proper activities for service corporations are established by the Department of Banking.

Questions regarding the potential for anticompetitive activities were also emphasized during the task force's deliberations. Many actions have the possibility of creating an anticompetitive climate. To prohibit savings and loan associations from investing in third-party real estate brokerage service, corporations would restrict the number of competitors in the realty industry. In light of recent developments in the financial services industry, including deregulation of other entities in the market, the growth of the secondary mortgage market and the use by realtors of computer networks to link up buyers with distant lenders, arguments were made for the expansion of authorized investments for savings and loan associations in order to permit them to remain competitive.

The counter-argument is that savings and loan associations enjoy competitive advantages over other realtors in the realty brokerage business. Potential conflicts of interest, opportunities for self-dealing and deceptive advertising were presented as justifications for restricting activities in this area.

An additional concern is the integrity of the dual banking system. Presently at the federal level, proponents of alternative policies are attempting to change the law governing federal deposit insurance. One would deregulate the financial services industry, while the other would further regulate the field. Should either view prevail, Pennsylvania's ability to independently govern its State-chartered savings institutions would be affected.

Therefore, in order to safeguard the interests of the home-buying public, maximize fair competition, avoid potential conflicts of interest and maintain the integrity of the real estate and thrift industries, the task force adopted the following recommendation to the General Assembly by an 11-6 vote with one abstention:

The task force recommends that the General Assembly consider imposing additional statutory limitations on the third-party real estate brokerage activities engaged in by savings associations or their service corporations and consider statutory limitations on mortgage lending activities of real estate brokers.

The task force recommends that the General Assembly consider granting the Department of Banking statutory authority to regulate mortgage banking operations carried out by nonbanking corporations.

APPENDIX A

Conference Report on H.R. 6267, Net Worth Guarantee Act (Garn-St. Germain Depository Institutions Act of 1982, P.L. 97-320, 96 Stat. 1469)

Joint Explanatory Statement of the Committee of Conference

\* \* \*

The managers want to stress that by specifically approving certain expanded powers and activities for thrift institutions and by not authorizing the Federal Home Loan Bank Board to permit service corporations to engage in any new activities not previously authorized, the managers intend that henceforth the FHLBB should not approve, in the absence of clear and specific Congressional authorization, any new regulation expanding activities of service corporations other than to permit service corporations to engage in activities permitted for federal thrift institutions. The conferees are aware that the Bank Board presently is considering proposed regulations that would expand significantly the permitted range of activities for service corporations. In light of specific additional powers authorized for savings and loan institutions in this bill, the conferees intend that the Board shall withdraw and take no further action on the proposed regulations. Of course, the House and Senate conferees reserve the right of their respective banking committees to review activities previously authorized by the Bank Board.

\* \* \*

(128 Cong. Rec. H 8120 (1982))

# Proposed Rulemaking

## DEPARTMENT OF BANKING

### SAVINGS ASSOCIATION BUREAU

[10 PA. CODE CH. 37]

#### Service Corporations

Notice is hereby given that the Department of Banking, under the authority contained in sections 103(a)(8) and 922(n) of the act of December 14, 1967 (P. L. 746, No. 345) (7 P. S. §§ 6020-3(a)(8) and 162(n)), proposes to issue new regulations which set forth the application procedure for a savings and loan to be authorized to operate a service corporation engaged in the third party real estate brokerage business. In addition, the proposed regulations include standards for the operation of the third party real estate brokerage business.

By way of background and history to this proposal, the Department became involved with the subject of third party real estate brokerage when Departmental personnel learned that the Federal Home Loan Bank Board, on May 1, 1981, announced it would consider applications from Federal savings and loan associations to authorize service corporations to engage in the third party real estate brokerage business. The Department between October, 1981 and May, 1982, approved six applications filed by State-chartered savings and loans to authorize their respective service preparation, stock brokerage services, managing real estate, real estate development and the brokering of real estate owned by the savings and loan association. The third party real estate brokerage business is a business that offers professional assistance in buying or selling real estate not owned by the savings and loan association. In addition, the proposed regulation includes standards for the operation of the third party real estate brokerage business.

The Department began to deal with the subject of third party real estate

brokerage when Departmental personnel learned that the Federal Home Loan Bank Board, on May 1, 1981, announced it would consider applications from Federal savings and loan associations to authorize service corporations to engage in the third party real estate brokerage business. The Department, between October, 1981 and May, 1982, approved six applications filed by State-chartered savings and loans to authorize their respective service corporations to engage in the third party real estate brokerage business. In August, 1982, an administrative complaint (Docket No. 82-001), was filed by the Pennsylvania Association of Realtors alleging that the Department's actions were null and void as the approvals were not authorized by law, regulation or rule properly promulgated. The Secretary of Banking dismissed the complaint finding that all the applications were approved as authorized by 10 Pa. Code § 37.5. An appeal by the Pennsylvania Association of Realtors is currently pending before the Commonwealth Court (No. 1317 C. D. 1983).

During late 1982 and early 1983, the Department received four more applications. The Department published a notice of these filings in the *Pennsylvania Bulletin*. The Pennsylvania Association of Realtors filed a petition to intervene and an administrative hearing was held on November 28, 1983. In the interim between the first and second hearing, the Department formalized written internal guidelines to clarify how service corporations engaged in the third party real estate business would be supervised. These guidelines were forwarded to the four applicants. The Secretary of Banking approved the four applications, finding, *inter alia*, that each association had the financial strength, management, and necessary real estate brokerage expertise to engage in the business.

The General Assembly of Pennsylvania, on May 18, 1984, transmitted to the Joint State Government Commission Senate Resolution No. 107 Session of 1984, directing the Joint State Government Commission to organize a

task force to study the establishment of third party real estate brokerage operations by any entity and whether existing law and regulations affecting these entities adequately safeguard the interests of the citizens of the Commonwealth for available competitive housing financing.

The proposed regulations incorporate the Department's guidelines for supervision that have been the standards for the Department's regulation ever since the Department approved the first application. They prohibit the parent savings and loan from deviating from the savings and loan's loan underwriting standards in granting mortgages to the customers of the service corporation. This, coupled with the requirement that savings and loan associations must comply with the Equal Credit Opportunity Act (Title V, P. L. 93-495) and its regulation, Regulation B (12 C.F.R. Part 202), mandates that all potential borrowers, irrespective of whether they obtain real estate brokerage services from the service corporation, will have equal access to the funds of the savings and loan association. The Department, on an annual basis, examines savings and loan associations, and their respective service and compliance with these standards are reviewed, 10 Pa. Code § 37.3.

The Department has proposed an additional standard to prevent potential conflicts of interest. Proposed § 37.7(c) establishes an affirmative duty on the employees of the service corporation to obtain financing that serves the interest of the client.

The Department has adopted its traditional methods of separating the service corporation from the parent savings and loan association. This includes a prohibition on the use of savings, savings and loan, or building and loan in the name of the service corporation. In addition, if the service corporation has office space in the same building as the savings and loan association, it must be office space definite and distinct from the savings and loan association.

In other jurisdictions, there are sev-

Material proposed to be added to an existing rule or regulation is printed in **bold face** and material proposed to be deleted from such a rule or regulation is enclosed in brackets [ ] and printed in **bold face**. Asterisks indicate ellipsis of *Pennsylvania Code* text retained without change. Proposed new or additional regulations are printed in standard type face.

For details relating to fiscal notes see the box at the bottom of the first page of the **Rules and Regulations** heading of the *Pennsylvania Bulletin*.

## PROPOSED RULEMAKING

eral approaches to authorizing savings and loan associations' service corporations to engage in the third party real estate brokerage business. For example, in six states, including the bordering states of Maryland and Ohio, third party real estate brokerage is a preapproved activity for savings and loan associations' service corporations. In seven states, including New Jersey, applications to authorize these service corporations to engage in the third party real estate brokerage business have been approved on a case by case basis. In eight states, including New York, the state supervisors of savings and loan associations have stated that their respective departments have the statutory authority to approve similar applications, if filed. The Federal Home Loan Bank Board, in adopting its expanded list of preapproved service corporation activities, stated that it would accept applications for third party real estate brokerage. (Fed. Reg. Vol. 46, No. 84, p. 24529, Friday, May 1, 1981.) There are several applications currently pending with the Federal Home Loan Bank Board.

The Department believes these proposed regulations meet the concerns addressed by the Legislature in directing the Joint State Government Commission to organize a Task Force to study the public policy issues.

The Department is interested in receiving comments on the following topics:

1. In light of the proposed regulations that address the potential conflicts of interest in the areas of equal access to funds and the separation of the service corporation from the parent corporation, are there other potential conflicts of interest not addressed by these proposed regulations when a savings and loan association owns a service corporation engaged in the third party real estate brokerage business?

2. Have any consumer complaints been filed against the service corporation or the employees of a savings and loan service corporation engaged in the third party real estate brokerage business, in connection with the obtaining of financing?

3. Do any third party real estate brokerage agencies affiliated with nondepository real estate lenders have programs that provide financing for their clients exclusively or primarily through the affiliated nondepository real estate lender?

4. Have savings and loans experienced a decrease in the number of mortgage applications brought to a savings and loan from real estate brok-

ers or salespersons who work for a third party real estate brokerage agency that is now affiliated with a nondepository real estate lender?

*Regulatory Review*

Under section 5(c) of the Regulatory Review Act of 1982 (P. L. 633, No. 181), a copy of this proposal was submitted on November 7, 1984 to the Independent Regulatory Review Commission and to the Chairmen of the standing House Business and Commerce and Senate Banking and Insurance Committees. In addition to this proposal, the Commission and the committees were provided with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request. The Department will consider any comments or suggestions received by the Commission and the committees, together with other public comments, prior to adopting a final regulation.

As provided by sections 5(c) and 6(a) of the Regulatory Review Act, the proposal will be deemed approved by the House Business and Commerce and Senate Banking and Insurance Committees on November 27, 1984, and by the Independent Regulatory Review Commission on December 7, 1984, unless the committees or the Commission recommend disapproval of the proposal before these dates. If either the committees or the Commission recommend disapproval of the proposal, the Regulatory Review Act specifies detailed procedures for the review by the Department, the Governor, and the General Assembly of objections raised.

*Fiscal Impact*

The Department of Banking has determined that there will be no fiscal impact upon the Commonwealth or other political subdivisions or to the private sector.

*Paperwork Requirements*

These regulations will not have any paperwork requirements for the Commonwealth or the financial institutions.

*Department of Aging Comments*

The regulations are not required to be submitted to the Department of Aging under Act 1978-70 (71 P. S. § 581.1 *et seq.*)

*Statutory Authority*

Sections 103(a)(8) and 922(n) of the act of December 14, 1967 (P. L. 746, No. 345) 7 P. S. §§ 6020-3(a)(8) and 162(n).

*Contact Person*

All interested persons are invited to submit their written comments, if any, within 30 days from the date of this publication, to Paul A. Adams, Chief Counsel, Department of Banking, Post Office Box 2155, Harrisburg, Pa. 17101-2290.

BEN McENTEER,  
*Secretary of Banking*

**Fiscal Note:** 3-20. (1) No fiscal impact; (8) recommends adoption. These regulations would allow savings and loan associations to sell real estate in the same manner as any legitimate real estate brokerage firm. Prior to engaging in this type of real estate business, a savings and loan association must fully comply with the regulations of the State Real Estate Commission. Heretofore, savings and loan associations were only permitted to engage in the selling of real estate as a result of foreclosure on a mortgage they carried.

## Annex A

TITLE 10. BANKS AND  
BANKINGPART III. SAVINGS  
ASSOCIATION BUREAUCHAPTER 37. SERVICE  
CORPORATIONS§ 37.7. Third party real estate brokerage  
service corporations.

(a) *Mortgage loans to customers of service corporation.*

(1) Loans granted by the association to persons purchasing real estate listed by its subsidiary corporation shall comply fully with the Equal Credit Opportunity Act (15 U.S.C.A. §§ 1601 — 1691f) and 12 C.F.R. Part 202 (relating to Equal Credit Opportunity)

(2) Loans granted by the association to persons purchasing real estate listed by the association's service corporation shall fully comply with the association's loan underwriting standards which identify type of loan, interest rate, finance charges and other terms.

(b) *Name of service corporation.* The name of the service corporation shall not include the words savings, savings and loan, or building and loan.

(c) *Duty to service corporation clients.*

(1) Employees, officers, or directors of the service corporation who represent a client purchasing or selling real estate and who assist the client in obtaining financing, shall have a duty to obtain financing that serves the interest of the client.

(2) In determining the interest of the client, such factors as the interest rate, the term of the mortgage, and adjustable rate features should be considered in light of the client's special needs or circumstances.

(d) *Location.* A third party real estate service corporation may have an office in the same building or structure as the parent association, if the office is definite and distinct from the association.

(e) *Pennsylvania Real Estate Commission.*

(1) The real estate brokerage subsidiary shall comply with all requirements of, and may exercise the privileges provided by, the Real Estate Licensing and Registration Act, 63 P. S. §§ 455.201 - 455.902 and 49 Pa. Code Chapter 35 (relating to State Real Estate Commission).

(2) The real estate brokers and salespersons employed by the subsidiary corporation shall be subject to the licensing requirements of the Commonwealth.

(f) *Application.* An association proposing to engage in the third party real estate brokerage business shall file an application on a form provided by the Department. In reviewing an application the Department will consider the financial condition of the parent savings and loan association, its management and the real estate brokerage expertise necessary to engage in the third party real estate brokerage business.

[Pa. B. Doc. No. 84-1590. Filed November 23, 1984.  
9:00 a.m.]



1700 G Street, N.W.  
Washington, D.C. 20552  
Federal Home Loan Bank System  
Federal Home Loan Mortgage Corporation  
Federal Savings and Loan Insurance Corporation

**Federal Home Loan Bank Board**

**EDWIN J. GRAY  
CHAIRMAN**

**May 3, 1985**

**Dear Mr. Chairman:**

I am attaching several additional legislative proposals which the Federal Home Loan Bank Board has developed for the Committee to consider in its pursuit of possible legislation regarding the financial structure and thrift institutions in particular.

On behalf of the Board, I am respectfully requesting that you introduce this package.

These proposals address several important issues not treated in our omnibus legislative package, S. 759, and are intended to supplement that bill. We look forward to working very closely with the Committee in its efforts to construct appropriate legislation.

We thank you for the opportunity to offer this package in the hope that it will assist the Committee in its deliberations.

**Sincerely,**

**Edwin J. Gray**

**The Honorable Jake Garn  
Chairman  
Committee on Banking, Housing  
and Urban Affairs  
United States Senate  
Washington, D.C. 20510**

**cc: Senator William Proxmire  
M. Danny Wall  
Kenneth McLean**

**NOTE:** A copy of this proposal was also sent to Representatives St Germain and Wylie and Dr. Paul Nelson and Greg Wilson



A BILL

To protect the Federal Savings and Loan Insurance Corporation.

Be it enacted by the Senate and House of Representatives of the United States of America assembled.

SEC. 1. This Act may be cited as the "Federal Savings and Loan Insurance Corporation Protection Act".

\* \* \*

SEC. 5. The National Housing Act, as amended herein, is further amended by adding, after section 408 (12 U.S.C. 1730a) a new section 408a to read as follows:

"SEC. 408a. No insured institution shall, directly or indirectly or through a subsidiary, commence or continue for more than three years after enactment of this amendment, any business activity other than:

- (1) loans, investments and activities to the same extent authorized to be made or engaged in by federal savings and loan associations, by legislation or regulation;
- (2) business activities which multiple savings and loan holding companies and their subsidiaries are authorized to engage in pursuant to section 408(c)(2) of this Act (12 U.S.C. 1730a(c)(2)) and regulations of the Corporation thereunder; and
- (3) furnishing or performing such other services as the Corporation may approve or may prescribe by regulation as being a proper incident to the operations of insured institutions and not detrimental to the interests of savings account holders therein.

The Corporation may, upon a showing of good cause, extend such time from year to year, for an additional period not exceeding three years, if the Corporation finds such extension would not be detrimental to the public interest."

EXPLANATION  
Section-by-Section

\* \* \*

Section 5. This amendment prohibits state-chartered, FSLIC-insured institutions from engaging in activities not of the type or in excess of the level permitted for federally-chartered thrifts, for multiple savings and loan holding companies, or by the Corporation, by regulation.

APPENDIX D

1984 MORTGAGE ORIGINATION:  
 HOMESTEAD SAVINGS ASSOCIATION  
 (PARENT) AND THE HOMESTEAD GROUP (SUBSIDIARY)

Number of mortgages granted by parent	Number of mortgages granted by parent to customers of subsidiary	Percentage of mortgages granted by parent to customers of subsidiary
269	50	18.55%

\* \* \*

Value of mortgages granted by parent	Value of mortgages granted by parent to customers of subsidiary	Percentage value of mortgages granted by parent to customers of subsidiary
\$15,218,828.80	\$1,962,800.00	12.89%

SOURCE: Data for both tables supplied by Barry N. Franciscus, Vice President, Homestead Savings Association.

APPENDIX E

MORTGAGE ORIGINATION AND BROKERS LICENSES IN PENNSYLVANIA

PART I: MORTGAGE LOAN ORIGINATIONS  
IN THE UNITED STATES AND PENNSYLVANIA

Table 1 contains the available data for Pennsylvania on the total dollar volume of mortgage loan originations on 1-4 unit family homes and the portion attributable to savings and loan associations, by year from 1978 to 1983. The percentages of total home mortgage loans originated by specific other types of lenders are not available for Pennsylvania. For the United States, comparable data are available through 1984 and are presented in table 2, with a breakdown by all the major categories of lenders.

For both the United States and Pennsylvania, the total volume of 1-4 unit family home mortgage originations shows a similar pattern over time: a decline in 1980 from a previously steady high level, a further decline to a recession low in 1981, little change in 1982 and a full recovery to approximately previous levels in 1983.

In both 1979 and 1982, the share of total mortgage loans originated by savings and loan associations declined drastically. While the decline in Pennsylvania in 1979 was about the same magnitude as the decline in the U.S., the 1982 decline was more drastic in Pennsylvania.

The generally parallel movement of savings and loan market shares in both U.S. and Pennsylvania and the strong recovery in 1983 and 1984 to 1978 levels would appear to indicate that no permanent change has occurred in savings and loan associations' share of home mortgage loan originations.

Table 1

VALUE OF TOTAL PENNSYLVANIA 1-4 UNIT FAMILY HOME MORTGAGE  
 LOAN ORIGINATIONS AND VALUE OF ORIGINATIONS  
 BY PENNSYLVANIA'S STATE AND FEDERALLY CHARTERED  
 SAVINGS AND LOAN ASSOCIATIONS, 1978-83  
 (dollar amounts in millions)

	1978	1979	1980	1981	1982	1983
Mortgage loan originations for 1-4 unit family homes:						
Total Pennsylvania	\$7,184	\$7,073	\$4,910	\$3,401	\$3,589	\$6,591
Pennsylvania S & L associations	3,986	3,211	2,370	1,923	1,270	3,857
S & L originations as a percentage of total	55%	45%	48%	57%	35%	59%

SOURCES: U.S. Department of Housing and Urban Development, News Release, Survey of Mortgage Lending Activity, State Estimates, 1978-1983 and Commonwealth of Pennsylvania, Department of Banking.

Table 2

TOTAL AMOUNT AND MARKET SHARE OF ORIGINATIONS OF MORTGAGE  
LOANS FOR 1-4 UNIT FAMILY NONFARM HOMES BY MAJOR LENDERS  
UNITED STATES, 1978-84  
(dollar amounts in billions)

	1978	1979	1980	1981	1982	1983	1984
Total mortgage loans	\$185	\$187	\$134	\$97	\$97	\$202	\$202
Lender category:	<u>Percentage share of total amount</u>						
Commercial banks	24%	22%	22%	21%	26%	22%	20%
Mutual savings banks	5	5	4	4	4	5	6
Savings & loan associations	49	37	46	43	36	40	48
Mortgage companies	19	29	22	24	29	30	24
Life insurance companies	0	3	1	0	1	0	0
Federal credit agencies	3	3	3	5	4	2	2
State and local credit agencies	1	2	2	2	1	1	1

NOTE: Percentages may not add to 100 percent because of rounding.

SOURCE: U.S. Department of Housing and Urban Development, News Release, Survey of Mortgage Funding Activity, 1978-1984.

PART II: INITIAL REAL ESTATE BROKERS LICENSES ISSUED

Table 3

INITIAL REAL ESTATE BROKERS  
LICENSES ISSUED, 1976-85

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Year	No. issued
1976	448
1977	738
1978	453
1979	699
1980	736
1981	1333
1982	562
1983	1187
1984	637
1985 (to 6/27/85)	272

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NOTE: These numbers were compiled by taking the difference between beginning and ending license numbers for each year. Since some individuals hold multiple licenses they have been counted more than once.

SOURCE: Data supplied by the Bureau of Professional and Occupational Affairs, Department of State.