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*Counsel for Petitioners*

TO:

**Bureau of Professional and Occupational Affairs,  
Real Estate Commission**  
2525 N. 7th St.  
Harrisburg, PA 17110

**Pennsylvania Office of Attorney General**  
Strawberry Square  
Harrisburg, PA 17120

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**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

KEVIN GAUGHEN AND KEVIN GAUGHEN No. \_\_\_\_\_  
REALTY LLC, D/B/A GAUGHEN HOME REALTY,

Petitioners,

v.

BUREAU OF PROFESSIONAL AND  
OCCUPATIONAL AFFAIRS, REAL ESTATE  
COMMISSION OF THE COMMONWEALTH OF  
PENNSYLVANIA,

Respondent.

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## NOTICE

You have been sued. If you do not file a written response to the enclosed Petition for Review within thirty days of service, a judgment may be entered against you without further notice. You may lose important rights.

/s/ John DeSantis

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**PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

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**INTRODUCTION**

1. This is a constitutional challenge to Pennsylvania’s requirement that real estate brokers maintain a brick-and-mortar office, even when neither they nor their clients have any use or need for it.

2. Petitioner Kevin Gaughen is one of those brokers. He does not use his office to conduct any real estate business. Instead, using his phone and computer, he works wherever is most convenient for his client: at home, on the road, or at the properties he helps buy and sell.

3. But under Pennsylvania's outdated requirement, Kevin and brokers throughout the Commonwealth must maintain offices that could otherwise be used as housing or used more productively. And they must pay tens of thousands of dollars each year in rent, taxes, insurance, utilities, and repairs.

4. Under Article I, Section 1 of the Pennsylvania Constitution, restrictions on inherent rights, including the right to earn a living, must bear a real and substantial relationship to the government's alleged interest, and they must not otherwise be unreasonable, unduly burdensome, or patently beyond the necessities of the case.

5. Pennsylvania's real estate office requirement fails this meaningful test. There is no evidence that requiring real estate brokers to spend tens of thousands of dollars to maintain an unused property protects their clients from actual harm. Instead, the real estate office requirement serves only to protect larger, established real estate firms from having to compete with out-of-state brokers and smaller, independent brokers like Kevin.

6. Even if there were evidence that a brick-and-mortar office protects buyers and sellers of real estate, the burden of maintaining an office vastly outweighs this perceived benefit.

### **JURISDICTION**

7. Petitioners are suing under the Pennsylvania Constitution and the Declaratory Judgments Act, 42 Pa.C.S. § 7532.

8. Petitioners seek declaratory and injunctive relief against enforcement of Pennsylvania's real estate office requirement, 63 P.S. § 455.601, and Respondent's rules, regulations, policies, and practices implementing it, *e.g.*, 49 Pa. Code §§ 35.241–.246.

9. This Court has original jurisdiction under 42 Pa.C.S. § 761(a)(1) because Petitioners are suing a Commonwealth agency.

### **PARTIES**

10. Petitioner Kevin Gaughen is a Pennsylvania-licensed real estate broker and the broker-of-record for Kevin Gaughen Realty LLC. He resides in Silver Spring Township, Pennsylvania.

11. Petitioner Kevin Gaughen Realty LLC (d/b/a Gaughen Home Realty) is a Pennsylvania limited liability company owned and operated exclusively by Petitioner Kevin Gaughen. It has a separate broker's license (standard—corp. LLC partner). It is based in Lemoyne, Pennsylvania.

12. Respondent, the Bureau of Professional and Occupational Affairs, Real Estate Commission, is the Commonwealth agency that regulates the practice of real estate. *See* 63 P.S. §§ 455.401–.408. In particular, the Commission enforces Pennsylvania's real estate office requirement through rulemaking and inspections. 49 Pa. Code §§ 35.241–.246. The Commission is in Harrisburg, Pennsylvania.

## STATEMENT OF FACTS

### Kevin's Real Estate Brokerage

13. Kevin Gaughen has worked in the Pennsylvania real estate industry for twenty years. He obtained his real estate salesperson license in 2006, and he obtained his real estate broker's license (standard—multi-licensee) in 2011. He is a third-generation broker, following in the footsteps of his father and grandfather.

14. Kevin does not hold a real estate license from any other state.

15. Between 2006 and 2011, Kevin worked as a real estate salesperson at two brokerages: Jack Gaughen Realtor ERA and Keller Williams of Central PA.

16. After working as a real estate salesperson, Kevin decided to start his own brokerage. His plan was to manage a small, client-focused practice. By having his own company, Kevin could keep what he earned rather than pay a large portion of each commission to another “supervising” broker.

17. In 2011, the same year that Kevin obtained his broker's license, he founded Kevin Gaughen Realty LLC (d/b/a Gaughen Home Realty) (“GHR”), a small, independent brokerage outside Harrisburg. He is the broker of record at GHR.

18. At GHR, Kevin offers residential and commercial real estate services throughout the Greater Harrisburg area. Most of his practice involves buying, selling and leasing residential properties, though he does some commercial sales and leases, too.

19. Kevin's practice has always been small. At its peak, Kevin supervised about five agents.

20. Kevin grew his practice by bulk mail advertising, social media, and word-of-mouth.

21. In recent years, Kevin has reduced his workload. He only helps clients buy or sell a few properties a year, and he personally manages two rental units in the same building as his real estate office.

22. Kevin does not currently manage any real estate properties other than the two rental units above (which he owns).

23. Although he has in the past, Kevin does not currently supervise any real estate agents, salespersons, or associate brokers.

24. Kevin prefers to keep his brokerage small because he can provide better quality services and more attention to each client than larger brokerages can.

25. In his twenty-year career, Kevin has never been subject to any license disciplinary actions. To his knowledge, he has never been the subject of any investigations by the Commission.

26. In his twenty-year career, Kevin estimates that he has helped clients buy, sell, or lease several hundred properties.

27. Across Google, Facebook, Zillow, and Realtor.com, Kevin and GHR have exclusively five-star reviews.

28. Kevin is a member of the National Association of Realtors, Pennsylvania Association of Realtors, Greater Harrisburg Association of Realtors, and Bright MLS.

### **Kevin's Office**

#### *Kevin's Office Space*

29. Because it is required under Pennsylvania law, Kevin has continuously maintained a real estate office since opening his brokerage in 2011.

30. Kevin moved to his current office in 2017. It is located at 116 S 3rd St, Lemoyne, PA 17043.

31. Kevin's current office is one of three units in a multi-family property he purchased in 2010. Between 2010 and 2017, all three units were continuously rented to tenants.

32. He converted the 116 S 3rd St unit from a residential space into an office space to comply with Pennsylvania law. The other two units—112 S 3rd St and 114 S 3rd St—are actively rented to residential tenants today.

33. Because the office is a converted residential rental unit, it retains many of the features of a standard apartment. It has a fully-equipped kitchen, two bedrooms, a bathroom, and two open, adjoining living areas.

34. Kevin's office is approximately 1,000 square feet. Most of the space is empty.

35. Though mostly empty, Kevin’s office complies with the Commission’s legal specifications for a real estate broker’s office.

36. One bedroom contains a desk. The other bedroom contains a filing cabinet for retaining duplicate, physical copies of real estate records. *See* 49 Pa. Code § 35.286.

37. The office has a bulletin board that displays Kevin’s and Kevin Gaughen Realty LLC’s licenses, the office’s zoning permit, and the office’s certificate of occupancy. *See id.* § 35.245.

38. The office has two separate entrances. It is arranged to permit business to be conducted in privacy. *See id.* § 35.342(a)–(b).

39. Outside the office, Kevin installed (and maintains) a permanent sign that prominently displays “Gaughen Home Realty,” his office phone number, and his office website. *See* 63 P.S. § 455.601(a).

*Kevin and His Clients Do Not Use His Office*

40. Though Kevin’s office is arranged to permit real estate activity as required under Pennsylvania law, in practice, he does not conduct any real estate activity there.

41. Like other real estate brokers, Kevin does his job from wherever it makes the most sense: at home, on the road, or at the properties he helps buy and sell.

42. Like other real estate brokers, it would be impractical and harmful to his business for Kevin to work exclusively, or even primarily, from the office.

43. Kevin's job duties require that he travel to properties to meet clients, participate in showings and open houses, attend inspections and walkthroughs, coordinate repairs, and meet appraisers, contractors, builders, and insurance representatives. He must also travel to title agencies, lawyers' offices, and (less frequently) banks or other locations for closings and settlements.

44. When he is not at properties, Kevin can use the full array of modern technologies to work at home or on the road, using his phone or computer. He conducts real estate activity remotely using multiple listing services, online scheduling tools (e.g., Qualia), video conferencing technologies, digital recordkeeping systems, virtual showings and 3D walkthroughs, and electronic signatures.

45. Kevin keeps all his real estate records in both electronic and physical form.

46. Likewise, Kevin's clients do not come to, or need, his office. In Kevin's experience, his clients prefer communicating by phone, text message, email, or in person at the subject property. The same is true for the buyer or seller on the other side of the transaction and his or her real estate agent.

47. Nor do Kevin's clients find GHR because of his physical office. They discover his practice online, in advertisements, or from speaking with Kevin's prior clients. If a potential client knocked on GHR's office door, no one would answer.

48. When Kevin supervised agents, they also did not use the office. Like Kevin, GHR's agents worked on their phones, on their computers, or at the properties they helped buy and sell.

49. Kevin supervised GHR's agents remotely, with platforms like DocuSign and ZipForms, along with processes and procedures that Kevin created and implemented himself. For new agents, Kevin attended their first showings and continued training them throughout their development as agents.

50. To further supervise his agents, Kevin created checklists for each stage of the real estate transaction—from listing the property to actions post-settlement. Each checklist required Kevin's review and signature, and each had a separate column for Kevin to mark off individual items as "OK" or "incomplete."

51. In reality, the only people that require Kevin's office are the Commission's inspectors.

52. From Kevin's experience, inspectors visit the property unannounced once every two years or so. Because Kevin is not at his office, they post a notice on one of his office's entrances directing him to contact them within ten business days to schedule an inspection.

53. From Kevin’s experience, during the inspections, inspectors check to see that he has a room for private real estate business, a conference table, a filing cabinet, a landline phone, a bulletin board with displayed licenses, bank statements, and an outdoor sign. They also examine a few random real estate records (though he’s permitted to show them the records electronically).

54. From Kevin’s experience, inspectors do not check whether any real estate activity is actually conducted on the premises.

55. In his twenty-year career, Kevin has never been fined for real estate office violations.

### **Pennsylvania’s Real Estate Office Requirement**

56. Pennsylvania licenses and regulates the practice of real estate within the Commonwealth. These requirements are primarily set forth in its “Real Estate Licensing and Registration Act” (RELRA). 63 P.S. §§ 455.101 *et seq.*

57. RELRA places general and ethical duties on the licensee. *See id.* §§ 455.606a–606d. The Commission prescribes additional standards of conduct and ethical responsibilities. *See* 49 Pa. Code §§ 35.281–.340.

58. RELRA defines a real estate broker broadly to include any person who, for a fee, “negotiates with or aids any person in locating or obtaining for purchase, lease or an acquisition of interest in any real estate”; “negotiates the listing, sale, purchase, exchange, lease, time share and similarly designated interests, financing

or option for any real estate”; “manages any real estate”; “undertakes to promote the sale, exchange, purchase or rental of real estate” (unless that person’s main business consists of “advertising, promotion or public relations”); or “attempts to perform any of the above acts.” 63 P.S. § 455.201.

59. It is unlawful for an individual or corporation to perform work falling under this definition without either (1) obtaining a broker’s license or (2) obtaining a real estate salesperson’s license and working under—and surrendering a large portion of each commission to—a broker. *Id.* §§ 455.201, .301.

60. To obtain and keep this license, real estate brokers are required to maintain a physical office in the Commonwealth. *Id.* §§ 455.601(a), 455.512(b). The broker must also maintain a sign outside the office listing the brokerage’s name. *Id.* § 455.601(a).

61. Under its rulemaking authority, the Commission provides the following office specifications:

- a. The office must “be devoted to the transaction of real estate business and be arranged to permit business to be conducted in privacy.” 49 Pa. Code § 35.242(a).
- b. The office must display the licenses of the broker(s) and his or her employees. *Id.* § 35.245.

c. The broker's name must be "prominently" displayed outside the office.

*Id.* § 35.242(c).

62. Pennsylvania law does not require any real estate activity to be conducted in the office.

63. To enforce its office requirement, the Commission or its authorized representative may inspect "all areas of the office." The inspector can examine real estate records and interview the broker and his or her employees. *Id.* § 35.246. These records are also available upon written request. *Id.* § 35.286.

64. The inspector can issue fines for violations of the office requirement, starting at \$250 for the first violation. *Id.* § 43b.3, .8.

65. After a hearing, the Commission may suspend or revoke a broker's license, or issue a penalty up to \$1,000, for violating the office requirement. 63 P.S. §§ 455.305, 455.604(15).

66. The core office requirement has remained unchanged since 1929. Act of May 1, 1929, P.L. 1216 § 9(a) (formerly codified in 63 P.S. § 439).

### **Injury to Petitioners**

67. Kevin does not need or use his real estate office. But for the office requirement, he would close his office and rent it out just like his two other units in the multi-family building.

68. Kevin approximates that he could generate \$1,500 to \$2,000 in monthly rental income but for the office requirement. This is money he must forgo by keeping the unit as an office space. Kevin Gaughen Realty LLC pays the LLC that owns the building a commercially reasonable rent.

69. Instead, every year, Kevin incurs tens of thousands of dollars in expenses to maintain the unused commercial space. Costs include:

- a. Office rent;
- b. Property taxes;
- c. School taxes;
- d. Hazard insurance;
- e. Maintenance and repairs;
- f. Office furnishings;
- g. Security system;
- h. Pest control;
- i. Landscaping;
- j. Utilities—electric;
- k. Utilities—gas;
- l. Utilities—internet and landline;
- m. Utilities—sewer;
- n. Utilities—trash; and

o. Utilities—water.

70. Kevin must either absorb these costs, pass them along to his clients, or both.

71. As a small, independent broker, these recurring costs make it difficult for Kevin to compete with larger, established real estate firms, with greater annual revenue and the ability to spread out the fixed costs. In other words, the office requirement protects established brokerages from honest competition.

72. Because of the office requirement, Kevin must regularly commute twenty to thirty minutes to the office (depending on traffic) to check that there is no notice of inspection posted to one of his office's entrances. He must be present during any inspections to answer interview questions, and he must ensure the space is always prepared for real estate activity (even though no activity is done there).

73. Kevin cannot open a home office. Though Pennsylvania law technically permits home offices, 49 Pa. Code § 35.242(b), in practice, he cannot open one. He does not have a space in his home that would permit real estate activity to be conducted in privacy. He would also need to construct a separate entrance into his home for the office.

74. Even if Kevin could open a home office, he would have to grant the Commission's inspectors access to his private residence for up to four unannounced inspections per year. *See* 49 Pa. Code § 35.286.

75. The inspections alone are unacceptable to Kevin in considering a home office. Although inspectors have not visited his current office at the same frequency as the law provides, he is not willing to forgo his Fourth Amendment rights simply to engage in his chosen profession—especially for an office space that benefits neither him nor his clients.

76. For a home office, Kevin would also need to obtain a discretionary, conditional use permit from Silver Spring Township, satisfying requirements directly at odds with the Commission’s office specifications. To obtain this permit, Kevin would have to file a 16-set application showing, among other objective and subjective criteria, that GHR (1) is “clearly incidental” to the use of the home as a residence, (2) is not part of an “accessory building or structure,” (3) has one additional parking space per potential client, (4) has no more than one sign that is neither illuminated nor greater than four square feet, and (5) takes up less than 25% of the floor area and is less than 500 square feet. *See* Silver Spring Township Zoning Code §§ 415-425, 415-804.

77. Kevin cannot avoid the office requirement by working as a real estate salesperson employed by another broker. Doing so would require him to surrender his independence, operate under another broker’s processes and procedures, give up a substantial portion of the commissions he earns to a competitor, and abandon the brokerage—and reputation in the community—that he spent years building.

78. Kevin has already minimized his costs by moving the office to a small, two-bedroom unit that is part of a building he already owns and that satisfies the Commission’s office specifications.

79. Kevin is subject to ongoing enforcement of the office requirement. Failure to maintain a compliant office may result in civil penalties and disciplinary action, including suspension or revocation of his broker’s license.

80. The office requirement forces Kevin to structure his business around maintaining a physical location that he does not use, rather than operating in the manner that best serves his clients.

81. The office requirement prevents Kevin from making the office unit available for residential rental, thereby reducing available housing in his community.

**CONSTITUTIONAL VIOLATION**  
**(Pa. Const. art. I, § 1—Inherent Rights Claim)**

82. Petitioners incorporate by reference the allegations set forth in ¶¶ 1 through 81 of this complaint as though fully set forth herein.

83. Article I, Section 1 of the Pennsylvania Constitution provides “[a]ll men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.” Pa. Const. art. I, § 1.

84. Included in these inherent rights is the right to earn an honest living free from arbitrary, unnecessary, or protectionist legislation. This right has also been called an individual's right to pursue their chosen occupation.

85. Laws which burden an individual's right to pursue their chosen occupation are subject to meaningful scrutiny under the Pennsylvania Constitution. Those laws are unconstitutional if they are (1) "unreasonable, unduly oppressive, or patently beyond the necessities of the case" or (2) if they do not bear a "real and substantial relation to the public interest they seek to advance." *Ladd v. Real Est. Comm'n*, 230 A.3d 1096, 1109 (Pa. 2020) (cleaned up). Here, the office requirement independently fails both tests.

86. In *Ladd*, the Commission asserted that the purported public interest behind the relevant licensing requirements was to "protect the public from fraudulent practices by those engaged in the business of trading real estate." *Id.* at 1110 (cleaned up). Here, the brick-and-mortar office requirement bears no relationship—let alone a real and substantial one—to protecting the public from fraud.

87. Indeed, the office requirement does not advance *any* public interest.

88. The Commission has no evidence to support the notion that the office requirement advances any public interest.

89. Even if the office requirement had *some* marginal public benefits (which it does not), it imposes significant costs on brokers and on the public as a whole. Many of those costs are detailed in the factual allegations above.

90. The costs to brokers and the public are disproportionate to any public interest that the office requirement purportedly advances. Those costs are certainly disproportionate to the previously asserted governmental interest of safeguarding the public from fraudulent practices.

91. For these reasons, Pennsylvania's real estate office requirement violates Article I, Section 1 of the Pennsylvania Constitution facially and as-applied to Kevin because it is unreasonable, unduly oppressive, and patently beyond the necessities of the case.

92. For these reasons, Pennsylvania's real estate office requirement also violates Article I, Section 1 of the Pennsylvania Constitution facially and as-applied to Kevin because it does not bear a real and substantial relation to protecting the public from fraud (or any other public interest).

93. Unless Respondent is permanently enjoined from enforcing the real estate office requirement, Petitioners will suffer continuing and irreparable harm.

## REQUEST FOR RELIEF

Petitioners therefore respectfully request:

94. A judgment declaring that Pennsylvania's real estate office requirement, 63 P.S. § 455.601, and Respondent's rules, regulations, policies, and practices implementing it, *e.g.*, 49 Pa. Code §§ 35.241–.246, as applied to Kevin, violate his right to earn a living under Article I, Section 1 of the Pennsylvania Constitution.

95. A judgment declaring that Pennsylvania's real estate office requirement, 63 P.S. § 455.601, and Respondent's rules, regulations, policies, and practices implementing it, *e.g.*, 49 Pa. Code §§ 35.241–.246, facially violate the right to earn a living under Article I, Section 1 of the Pennsylvania Constitution.

96. An order permanently enjoining Respondent from enforcing Pennsylvania's real estate office requirement as applied to Kevin.

97. An order permanently enjoining Respondent from enforcing Pennsylvania's real estate office requirement facially as to all licensed real estate brokers.

98. An award of attorneys' fees, costs, and expenses.

99. Any further legal and equitable relief the Court deems just and proper.

Dated: May 20, 2026

Respectfully submitted,

/s/ John DeSantis

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rflaherty@ij.org

\*Pro hac vice motions to be filed

*Counsel for Petitioners*

## CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2026, I am sending the foregoing  
Petition for Review to a third-party process server for service upon the persons  
and in the manner indicated below, which satisfies the requirements of  
Pa.R.A.P. 121:

**Bureau of Professional and Occupational Affairs,  
Real Estate Commission**  
2525 N. 7th St.  
Harrisburg, PA 17110

**Pennsylvania Office of Attorney General**  
Strawberry Square  
Harrisburg, PA 17120

/s/ John DeSantis  
John DeSantis  
*Counsel for Petitioners*

## CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

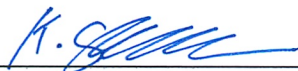
Dated: May 20, 2026

/s/ John DeSantis  
John DeSantis  
(Attorney ID No. 314417)  
*Counsel for Petitioners*

## VERIFICATION

I, Kevin Gaughen, hereby state that:

1. I am a petitioner in this action;
2. The statements made in the foregoing Petition for Review are true and correct to the best of my knowledge, information, and belief, and I expect to be able to prove the same; and
3. I understand that the statements in the Petition for Review are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Signed: 

Dated: 5/20/2026