Contents

INFORMATION ABOUT THE STATE REAL ESTATE RESIDENTIAL LEASING AGENT EXAM

PSI provides a candidate's handbook that contains your exam application. It is available at realestateschoolchicago.com/candidate and provides you with specific information regarding your state exam. Please read it carefully. This guide was written to be a streamlined review of the material presented in the classroom. More in-depth information about each subject is contained in the textbook.

The Illinois Residential Leasing Agent exam has 50 questions. You will have 120 minutes to take the exam and a 74% is needed to pass

EFFECTIVE LEARNING METHODS UTILIZING THIS BOOK AND ONLINE RESOURCES

Bold Type — Take Notes

Key information is highlighted in bold type. As a key learning tool, write these items down in your personal learning notebook.

Underlined Bold Type — Highlight Notes

Underlined and bold items are likely to be subjects of questions in the State Exam. Highlight these items in your personal learning notebook. Spend time at each chapter, making sure that you understand these concepts.

Bold and Underlined Bold Information — Say Aloud

It is a fact that in addition to seeing the information on your screen, writing down notes, and hearing the material (your own voice is fine) enhances learning and memory.

Summary

The more senses you involve in learning, the better you will learn the material, and you will retain it longer.

Utilizing three senses — visual, aural, and touch — will guarantee that you are maximizing your learning experience. Faithfully following these learning techniques will enable you to pass the Illinois Real Estate Leasing Agent Exam.

Learning Procedure

1. Read the chapter quickly to see what is being covered.
2. Read over the chapter slowly, taking notes and speaking key sentences and phrases out loud, so you can hear them.
3. Lookup any words you don't understand in the glossary at the back of the book.

4. Re-read the sections of the chapter that pertains to any concept or State Study Point that you cannot remember or that you don't quite understand.
5. Take the chapter quiz at the end of each chapter.
6. Mark the questions down on your notes that you got wrong. (You will be studying this material again at the end of the course and taking the sample test to make sure that you get them right at that time).
7. Proceed to the next chapter.

Other Study Tips

- Ask friends and family to allow you some space and privacy to study this material. It will take a commitment from you and them to find time and privacy to study.
- Make a commitment and stick with it. Too many distractions will take you away from the work you need to put in to obtain your goal - a Real Estate Leasing Agent License. In fact, make out a little sign with your goal of completing this course and obtaining your license and mount it within eyesight where you study or someplace where you can see it each day. The sign should read "Real Estate Broker's License by July 20" or whatever date that might be your goal.

Although some teens can study with the TV blasting or listening to loud music, for most people, especially those out of their teens, learning and retention require a quiet space to concentrate on the material to be mastered. You may need to study in a library, the basement, the attic, a coffee shop that is not noisy, or some other quiet and subdued place out of your home.

Testing Knowledge Through Questions

Taking in the information, understanding it, and remembering it is only part of what you have to do to prepare for the State Real Estate Exam. You also have to have some experience of how the state will test this knowledge. They will test your knowledge through QUESTIONS.

The material you learn will be re-worked by a test developer, to come at the knowledge from several different angles. Some students will be able to anticipate these twists and turns, and others cannot.

The best way to gain a skill of anticipating how the basic material you learn will be presented in a different manner of questions is to practice answering questions about the material you have learned. The more questions you try to answer, the better you will be able to answer them in the state exam.

Also, it is recommended that you purchase the sample test from AMP, which is available at www.realestateschoolchicago.com/amp-test, to get a better feel of the way the questions are stated in the state exam.

GENERAL STRUCTURE OF THE QUESTIONS

Multiple Choice Questions

The questions on the exam for the Illinois Real Estate Broker License are multiple-choice. This is an advantage for the person taking the exam because the answer is provided for each question. As a result, reasonably intense study will provide enough familiarity with this material to answer a large number of questions without having to commit all the material to memory. The answer will be available in the list of possible answers.

Memory

Tests knowledge of definitions, the meaning of words and phrases used in Real Estate. This material has to be memorized. Shortlists are prime targets for this type of question, so they should be memorized. Definitions of concepts that can result in a single word or phrase answer are also prime targets. These questions should be answered in the first read-through of the state exam.

Analysis

These are more complicated questions. They involve relating several concepts to come up with an answer. They should be done only in the second or third read-through of the state exam. They should be read slowly and carefully when answering the questions at the end of each chapter of this book and while taking the state exam.

Application

They will take a word or phrase and ask where it is used, or how it is used in real estate transactions. They may also ask where the concept is carried out in real-life.

Common Traps

Many students read the questions too quickly and do not notice some keywords which change the meaning of the question radically. Here are a few examples:

- **Except**
- **Not**
- **Several answers seem alike, but only a word or two differentiate them. • Best Answer —** several answers seem to be applicable, but one is the best **• Which is True?**
- **Which is False?**
- **"Which of the following is *TRUE?"*** means there are three wrong answers and one true answer.
- **What is the difference?**
- **What do they have in common?**
- **Most Likely**

In all of these situations, it takes a **careful and slow reading** of the question to spot the traps or items that have to be taken into consideration, which are not apparent in a quick reading of the question. These questions should never be answered in the first sweep through the exam.

The state broker exam is designed for the average person to pass.

The state spends considerable time developing questions that are not too hard or too simple. Some questions do not count toward your score but are being evaluated for use in future exams. Since there is no way to know which questions are not counted, it is important to answer every question on the exam.

CHAPTER 1: INTRODUCTION TO REAL ESTATE AND REAL PROPERTY

The words “Real Estate” have a generally broad definition when used in everyday language. However, in relation to Real Estate transactions, “Real Estate” has to be more specifically defined. There are several concepts included in “Real Estate” or “Real Property” which are defined below. A *Leasing Agent* should have a basic understanding of these terms.

LAND, REAL ESTATE, AND REAL PROPERTY

Land is defined as **the earth's surface extending downward to the center of the earth and upward to infinity.**

Land includes not only the surface of the earth but also the underlying soil. Land also refers to objects that are naturally attached to the earth's surface, such as boulders and plants. Land includes the minerals and substances that lie far below the earth's surface *(subsurface).* It even includes the air above the earth, all the way up into space *(airspace).*

Real Estate is defined as **land at, above, and below the earth's surface, plus all things permanently attached to it.**

The term **Real Estate** is similar to the term **land**, but it means much more. **Real Estate includes natural land, along with all human-made improvements.** An improvement is any artificial addition to land, such as a building or a fence. The term **improvement,** as used in the Real Estate industry, refers to any addition to the land. Land also may be improved by streets, utilities, sewers, and other additions that make it suitable for building.

An apartment building would be considered an *improvement*, along with any landscaping, fencing, sidewalks, or sewer utility lines running to the building from the street or nearest utility distribution point, if located in the suburbs.

Real Property is defined as the *interests, benefits, and rights* that are included in the Ownership of land and Real Estate.

Real property includes the surface, subsurface, airspace, any improvements, and The **Bundle of Legal Rights**—the legal rights of Ownership that attach to the Ownership of a parcel of Real Estate.

When consumers talk about buying, selling, or leasing homes, office buildings, apartment buildings and land, they often will call all of these properties *Real Estate*. For practical purposes, the term is synonymous with *real property* as defined here. In everyday usage, then, remember that *Real Estate* has come to include the **legal rights of Ownership** specified in the formal definition of *real property.*

The concept of **Real Property** is important for Leasing Agents because later on we will see that when an Owner leases property to a Tenant, he is passing over several rights associated with Real Estate, to the Tenant, on a **temporary basis**. Because the law recognizes the rights included in the "Bundle of Rights", the **ability of an Owner to transfer some or all of these rights on a permanent basis,** this provides the legal basis for the ability of a Landlord to **lease or rent a property to a Tenant for a period of time, without losing those rights.**

Land: no improvements

Real Estate: land with improvements

Real Property: land with improvements plus bundle of rights

Bundle of Legal Rights
Traditionally, Ownership of real property is described as a bundle of legal rights. In other words, **a purchaser of Real Estate actually buys the rights of Ownership held by the seller.** These rights include:
possession
control
enjoyment
exclusion
disposition

An important decision between Real Estate and personal property is that **personal property is movable**. Items of personal property, also referred to as **chattels**, include such tangibles as chairs, tables, clothing, money, bonds, and bank accounts. **Trade fixtures** are included in this category. They, too, are frequently referred to as *chattels*.

An item of **real property can become personal by severance.** For example, a growing tree is *Real Estate* until the Owner cuts it down, *severing* it from the property. Similarly, an apple becomes personal property once it is picked from the tree, and a wheat crop becomes personal property once harvested.

It is also possible to **change personal property into real property through annexation.** For example, a Landowner buys cement, stones, and sand, mixes them into concrete, and constructs a sidewalk across the land. This Landowner has effectively converted personal property (cement, stones, and sand) into real property (a sidewalk, permanently attached to the land).

Licensees need to know whether property is real or personal for many reasons. An important distinction arises, for instance, when the property is transferred from one Owner to another.

Real property is conveyed by deed.

Personal property is conveyed by a bill of sale.

Classifications of Fixtures

In considering the differences between real and personal property, it is necessary to distinguish between a **fixture and personal property.**

Fixtures Almost any item that has been **added as a permanent part of a building** is considered a fixture. During the course of time, the same materials may be both real and personal property, depending on their use and location.

Legal tests of a fixture

1. Method of attachment
2. Adoption to *Real Estate*
3. **Agreement between the parties**

Trade fixtures

A special category of *fixture* includes **personal property used in the course of business.** This personal property, **when attached to rented space** or building or used in conducting a business is **personal property that remains the personal property of the Renter.**

Trade fixtures **must be removed on or before the last day the property is rented.** The Tenant is responsible for any **damage** caused by the removal of the trade fixture. **Trade fixtures that are NOT removed become the real property of the Landlord.**

Types of Real Property

There are different types of property in which to specialize. Real Estate can be classified as:
Residential – property used for single-family or multifamily housing (1 – 4 units, Owner occupied)
Commercial – any multifamily building over 4 units, as well as business property, including office space, shopping centers, stores, hotels, and theaters.
Industrial – warehouses, factories, land in industrial districts
Agricultural – farms, timberland, ranches, and orchards
Special purpose – churches, schools, cemeteries, and government-held lands

SUPPLY AND DEMAND

The forces of supply and demand in the market determine how prices for goods and services are set. Greater supply means producers need to attract more buyers, so they lower prices. Greater demand means producers can raise their prices because buyers compete for the product.

Supply and demand in the Real Estate market

Two characteristics of Real Estate govern the way the market reacts to the pressures of supply and demand: **uniqueness and immobility.**

Uniqueness means that no matter how similar two parcels of Real Estate may appear, they are never *exactly* alike. Each occupies its own unique geographic location, and two properties are never exactly the same inside.

Immobility refers to the fact that property cannot be relocated to satisfy demand where supply is low. Nor do buyers necessarily make relocation decisions based on greater housing supply in a certain locale. For these reasons, Real Estate markets are *local markets.*

When supply increases and demand remains stable, prices go down.
When demand increases and supply remains stable, prices go up.

FACTORS AFFECTING SUPPLY

Labor force and construction costs

A shortage of skilled labor or building materials or an increase in the cost of materials can decrease the amount of new construction. Construction permit fees and high property transfer costs can also discourage development. An attempt may be made to pass increased construction costs along to buyers and Tenants in the form of **higher prices and increased rents**, which can further **slow the market**.

Government Controls

Local governments also can influence supply. Land-use controls, building codes, and zoning ordinances help shape the character of a community and control the use of land. **These local controls usually add costs** to the development and maintenance of buildings and property in the form of fees, etc.

Governmental Financial Policies

The government's **monetary policy** can have a substantial impact on the Real Estate market.

Governmental agencies, such as the **Federal Housing Administration (FHA)** and the **Department of Veterans Affairs (VA),** also have an impact on the rental market through their Voucher (Section 8) and various subsidized rental programs. Additionally, State and Municipal programs are available to aid Renters.

Taxation

Policies on the **taxation** of Real Estate can have both significant and complex effects on the Real Estate market. Real Estate taxation is a necessary source of revenue for local governments. High taxes may deter investors but may be necessary to maintain continued economic growth within the community. Tax incentives can attract new businesses and industries. **Of course, one of the largest expenses in an operating budget for an apartment building is Real Estate taxes.** This expense has a **very important effect on the rend**, which a Landlord has to charge to earn a return on his investment.

FACTORS AFFECTING DEMAND

Population Shelter is a basic human need, so the demand for housing grows with the population. Although the total population of the country continues to rise, the demand for Real Estate increases at a faster rate in some areas than in others. In some locations, growth has ceased altogether as the population has declined. This may be due to economic changes (e.g., high unemployment), social concerns (e.g., going green), or population changes (e.g., shifts from colder to warmer climates). The result can be a drop in demand for Real Estate in one area matched by an increased demand elsewhere. **Normally the area in which a Leasing Agent is interested in is limited to a neighborhood or suburban community.**

Demographics is the study and description of the population. The population of a community is a major factor in determining the quantity and type of housing in that community. **Family size, the ratio of adults to children, the ages of children, the number of retirees, family income, lifestyle, and the growing number of single-parent and empty nester households are all demographic factors that contribute to the amount and type of housing needed.** In setting up a Business Plan for an apartment building, the Property Manager or leasing Manager attempts to obtain as much information about the demographics of the area or neighborhood in which the building is located, to determine what a Renter may be able to afford, the marketing approaches to be utilized, and the building amenities to be stressed to appeal to the local target audience.

Employment and Wage levels Decisions about whether to buy or rent and how much to spend on housing are closely related to income. When job opportunities are scarce or wage levels low, demand for Real Estate usually drops. **In the case of rental properties, several factors may operate in poor economic times:**

1. **Homeowner** who can **no longer afford** their homes may **switch to rental housing**, increasing demand
2. **Young people** who would normally enter the rental market **may remain with their parents**, decreasing demand
3. **Renters who have lost jobs or can only get a lower paying job** may no longer be able to afford their apartment rent, resulting in **evictions and empty apartments**

4. **Current Renters may downgrade** their apartment on renewal to a 1 bedroom from a 2 bedroom, from a 1 bedroom to a studio, etc., leaving the higher priced apartments only
5. **Competition for Renters may drive rents down or increase incentives** to attract a smaller rental audience

CHAPTER 2: REAL ESTATE AGENCY

INTRODUCTION TO REAL ESTATE AGENCY

Illinois no longer recognizes common law agency. Additionally, Illinois no longer allows the use of sub-agency in Real Estate transactions, where the representative of the buyer was a sub-agent of the seller. Illinois now recognizes both a seller agency agreement and a buyer agency agreement whereby one Agent has a fiduciary relationship with the seller and another Agent has a fiduciary relationship with the buyer.

Agency relationships in Illinois are governed under statutory law. The body of law on which Illinois agency is based in Article 15 of the Real Estate License Act of 2000**.**

Law Of Agency

In Illinois, the law of agency defines the rights and duties of the principal and the Agent. It applies to a variety of business transactions.

Both contract law and Real Estate licensing laws — in addition to the law of agency— interpret the relationship between Real Estate Licensees and their clients.

In Illinois, *the Real Estate License Act of 2000 is given precedence* in defining legal Real Estate agency concepts. Insofar as Real Estate is considered, Illinois is a statutory agency state that has replaced common-law duties with statutory duties.

Definitions

Legally, *agency* refers to a **strict, defined legal relationship.** In the case of **Real Estate, agency is a relationship that a Broker, Managing Broker, or residential Leasing Agent (representing the Sponsoring Broker) may have with buyers, sellers, Landlords, or Tenants.**

Those who hire are ***clients,*** and those who are hired are **Agents.**

A Real Estate Licensee becomes an Agent, through a contractual agreement, whether expressed or implied. At this point, the Real Estate Licensee actually becomes a legal, loyal Agent obligated to work for the client's best interests at all times, so long as those interests are within the law.

Definitions - Statutory (Real Estate License Act of 2000)

Key terms of the law of agency under Article 15 of the Real Estate License Act of 2000 are defined as follows:

- **Agent -** The individual who is authorized and consents to represent the interests of another person. In the Real Estate business, **a firm's Sponsoring Broker is the Agent** and **shares this responsibility with the Licensees who work for them**.
- **Agency -** A relationship in which a consumer has given consent (express or implied) to a Real Estate Licensee to represent the consumer in a real property transaction. Consent may be given to a Licensee directly or through an affiliated Licensee.
- **Brokerage agreement -** An agreement, made verbally or set out in writing, for an Agent or firm to provide brokerage services to a consumer and to receive compensation for providing those services.
- **Client –** The person or entity that a Licensee represents in a real property transaction.
- **Compensation -** Payment (monetary or otherwise) made to a person or entity for executing services for a client or customer.
- **Consumer -** A person or entity for whom an Agent provides services, which are only to be provided by a Licensee, or a person or entity who seeks such services from a Licensee.
- **Confidential information - Information given by a client to a Licensee during the term of a brokerage agreement that:**
  1. **the client requests (in writing or verbally) the Licensee keep in confidence,**
  2. **relates to the client's negotiating position,**
  3. **could do damage to the client's negotiating position if disclosed.**

This information must not be shared *unless:*

- the client gives authorization for the Licensee to share the information,
- the information must be shared by law, or
- the information is revealed by some person or entity other than the Licensee.

CONFIDENTIAL INFORMATION MUST BE KEPT CONFIDENTIAL FOREVER, AFTER THE AGENCY RELATIONSHIP WITH THE CLIENT HAS BEEN COMPLETED.

- **Customer –** A person or entity for whom a Licensee is providing services (excluding ministerial acts) but who is **not represented** by the Licensee in an agency relationship
- **Ministerial Acts –** informative or clerical service provided by a Licensee to a consumer. Providing ministerial acts is **not equivalent to active representation.**

LICENSEE/CLIENT RELATIONSHIP

The client is the principal to whom her Agent gives advice and counsel. The Agent is entrusted with certain confidential information and has fiduciary responsibilities (sometimes called statutory responsibilities) to the principal.

LICENSEE/CUSTOMER RELATIONSHIP

In contrast, the customer is entitled to factual information and honest dealings as a consumer but never receives advice and counsel or confidential information about the principal. The Real Estate Licensee may provide ministerial acts to the customer but, as an Agent, *works for* the client.

CONSENSUAL RELATIONSHIP BETWEEN LICENSEE & CLIENT REQUIRED

The relationship between the principal and Agent must be consensual; that is, the principal delegates authority and the Agent consents to the act. The parties must agree to form the relationship.

CLIENT/PRINCIPAL DUTIES TO LICENSEE

Just as the Agent owes certain duties to the principal, the principal has responsibilities toward the Agent. **The principal's primary duties are to comply with the brokerage agreement and cooperate with the Agent**. The principal must not hinder the Agent and must deal with the Agent in good faith. The principal also must compensate the Agent according to the terms of the brokerage agreement, which in most cases will be a written one, with Sponsoring Broker designation of the Licensee handling the Landlord or Tenant or seller or buyer.

LICENSEE DUTIES TO CLIENT/PRINCIPAL – FIDUCIARY

The agency agreement usually authorizes the Real Estate Licensee to act for the principal. The Agent's fiduciary relationship of trust and confidence means that the Real Estate Licensee owes the principal certain duties. These duties were not simply moral or ethical; the formed the common law of agency and now are the basis for statutory laws governing Real Estate transactions. *Under the common law of agency, an Agent owes the principal the duties of care, obedience, loyalty, disclosure, accounting, and confidentiality.*

The six common-law fiduciary duties may be remembered by the acronym COLD AC: Care, Obedience, Loyalty, Disclosure, Accounting, and Confidentiality

Care – Agents must exercise a reasonable degree of care while transacting the business entrusted to them by the principal. Principals expect the Agent's skill and expertise in Real Estate matters to be superior to that of the average person. The Agent should know all facts

pertinent to the principal's affairs, such as the physical characteristics of the property being leased if representing a Landlord and the type of property being sought, rent, size of unit, etc. if representing a Renter or Tenant.

If the Agent represents the Landlord, care and skill include helping the Landlord arrive at an appropriate rental price, discovering and disclosing facts that affect the Landlord, and properly presenting the contracts (leases) that the Landlord may sign. Tt also means properly marketing the property and helping the Landlord evaluate the terms and conditions of any changes in the lease requested by the Renter, incentives given to the Renter, move in or move out dates, security deposit terms, etc.

An Agent who represents the Renter or Tenant is expected to help the Renter or Tenant locate suitable property and evaluate property values, neighborhoods and property conditions, rent comparisons and Landlord negotiations with the Renter/Tenant's interest in mind.

An Agent who does not make a reasonable effort to properly represent the interests of the principle could be found by a court who have been negligent. The Agent is liable to the principle for any loss resulting from the Agent's negligence or carelessness. The standard of care will vary from market to market and depends on the expected behavior for a particular type of transaction in a particular area.

Obedience – The fiduciary relationship obligates the Agent to act in good faith at all times, obeying the principles instructions in accordance with the contract. However, that obedience is not absolute. The Agent may not obey instructions that are unlawful or unethical. On the other hand, an Agent who exceeds the authority assigned in the contract will be liable for any losses that the principal suffers as a result.

However, if the principal wants to discriminate on the basis of race, which is always illegal, the Agent must not follow the principles instructions and should withdraw from the agency. Violating fair housing laws is illegal, and an Agent has the duty of obedience to his or her client. So, the Agent can neither obey the client nor break the law. In effect, the Agent cannot carry out his or her legal duties to the client.

Loyalty – The principal's interests come first, even above the self-interest of the Agent. Agents must **not** consider how the result of negotiations will serve **their own interests** (for instance, by **providing the Agent with a higher commission**). Each Agent must perform all services with the goal of **promoting the principal's best interests.**

Illinois license law prohibits an Agent from acting as a dual Agent in any transaction to which the Agent is a party. Also, **undisclosed dual agency is prohibited** by the Licensing Law under penalty of loss of license. **In the case where the Leasing Agent is representing the Landlord, the Leasing Agent should make it clear to the potential Renter that he or she is the representative of the Landlord and provide the Renter with a "No Agency" disclosure form.** See "Dual Agency" below.

Disclosure – **It is the Agent's duty to keep the principal informed of all facts or information that could affect a transaction.** Duty of disclosure includes disclosure of relevant information or material facts that the Agent knows or should have known.

The **Agent is obligated to discover facts** that a reasonable person would feel are **important in choosing a course of action,** regardless of whether those facts are favorable or unfavorable to the principal's position. The Agent may be held liable later for a mistake on these issues. **There are certain disclosures which must be made by the Landlord to potential Renters/Tenants.** These disclosures will be discussed in a future chapter.

Disclosure forms are usually completed or distributed by the Leasing Agent to potential Renters before or at the time of giving a copy of the lease to the potential Renter to sign. Regardless of the Landlord, Property Manager, or Leasing Agent completion of the disclosure form, the **Landlord's Agent is required to disclose all material defects known to her,** including in cases where the Agent knows that the Landlord has *misrepresented* the extent or existence of property defects or has not fully disclosed them. ***An Agent for a Renter/Tenant must disclose deficiencies of a property as well.***

Accounting – Illinois State license laws require that Agents **periodically report status of all funds or property received from or on behalf of the principal.** Similarly, Illinois State license laws require that **Licensees give accurate copies of all documents to all affected parties** and keep copies on file for a period of time (5 years for all Real Estate Documents).

Illinois *Licensees are required to deliver true copies of all executed leasing contracts to the people who signed them within 24 hours.* In Illinois, **all funds entrusted to a Licensee** (generally security deposits in the case of some residential leases) **must be deposited in a special escrow account by the next business day** following the signing of a sales contract or lease. **Commingling such monies with the Licensee's personal or general business funds is illegal. Conversion, the practice of using those escrow funds as the Licensee's own money, is illegal as well.** Licensees should be aware that records of escrow account transactions and reconciliations must be kept on file for at least *five* years.

Confidentiality – A key element of fiduciary duties. Client information obtained during the term of the brokerage agreement, **and forever afterward,** must be kept confidential. For example, when the principal in an agency agreement is the Landlord, the designated Agent may **never** reveal such things as the principal's willingness to accept less than the rental price or urgency to rent, *unless* the principal has authorized the disclosure. If the principal in an agency agreement is the Renter, the Agent may **not** disclose that the Renter will pay a higher price, is under a tight moving schedule, or other facts that might harm the Renter's bargaining position.

These statutory duties, based on (but replacing) common-law duties, are set forth in Article 15 of the Real Estate License Act of 2000, as amended in 2020. According to this statute, the Agent must:

- Perform the terms of the brokerage agreement between a Sponsoring Broker and the client.
- Promote the best interests of the client by:
    - Seeking a transaction at the price and terms stated in the brokerage agreement or at a price and terms otherwise acceptable to the client.
    - Presenting all offers to and from the client on a timely basis, unless the client has waived this duty.
    - Disclosing to the client material facts concerning the transaction of which the Licensee has actual knowledge, unless that information is confidential information.
    - On a timely basis, accounting for all money and property received in which the client has, may have, or should have had an interest.
    - Obeying specific directions of the client that are not otherwise contrary to applicable statutes, ordinances, or rules, and
    - Acting in a manner consistent with promoting the client's best interests as opposed to a Licensee's or any other person's self-interest.
- Exercises reasonable skill and care in the performance of brokerage services.
- Keep confidential all confidential information received from the client; and
- Comply with all the requirements of the Act and all applicable statutes and regulations, including fair housing and civil rights.

An Agent may not disclose personal, confidential information about her principal. However, known material facts about the property's physical condition or its environs must always be disclosed. A material fact is any fact that, if known, might reasonably be expected to affect the course of events.

Under Section 1545(2)(C) of the Act, **material facts do not include the following, when located on or related to Real Estate that is not the subject of the transaction:**

- Physical conditions that **do not have a substantial adverse effect on the value** of the Real Estate
- Fact situations
- Occurrences

OPINION VS FACT

Real Estate Licensees and other staff members must always be careful about the statements they make. They must be sure that the customer understands whether the statement is an opinion or fact. Statements of *opinion* are permissible only as long as they are offered as opinions and without any intention to deceive.

Statements of *fact* must be accurate. If not, this is a violation of Illinois Licensing Law.

Exaggeration of a property's benefits is called ***puffing*** **and is legal.** While puffing is legal, Licensees must ensure that none of their statements can be interpreted as fraudulent. **Fraud** is the **intentional misrepresentation of a material fact** in such a way as to **harm or take advantage of another person.** That includes not only **making false statements** about a property but also intentionally **concealing or failing to disclose important facts.**

The misrepresentation or omission does not have to be intentional to result in Licensee liability. A ***negligent misrepresentation*** occurs when the Licensee **should have known that a statement about a material fact was false.** If the Renter relies on the Licensee's statements, the Licensee is liable for any damages that result. Similarly, a Licensee who accidentally fails to perform some act – for instance, forgetting to deposit a security deposit check – may be **liable for damages** that result from such a ***negligent omission.***

If a lease to rent Real Estate is obtained as a result of *fraudulent misstatements,* the lease may be disaffirmed or renounced by the Renter. In such a case, the **Licensee not only loses a commission** but can be **liable for damages** if either party suffers loss because of the misrepresentation. If the Licensee's misstatements were **based on the Owner's own inaccurate statements** and the Licensee had no independent duty to investigate their accuracy, the Licensee **would not be liable for any damages.**

LATENT DEFECTS

The Landlord has a duty to disclose any known latent defects that threaten structural soundness or personal safety, such as the existence of lead paint in the building. A structural

defect that would *not* normally be uncovered over the course of an ordinary inspection (due to placement or type of defect, for instance) is referred to as a *latent defect*. The courts have decided in **favor of the Renter when the Landlord neglected to reveal violations of zoning or building codes.**

In addition to the Landlord's duty to disclose latent defects, the **Landlord's licensed Real Estate Agent** has an **independent duty to conduct a reasonably competent and diligent inspection of the property.** It is the Licensee's duty to discover any material facts that may affect the property's value or desirability, regardless of if they are known to or disclosed by the Landlord. The Licensee should immediately inform the Landlord of such defects when they become known, and the Licensee's obligation to disclose them. **Any such material facts discovered by the Licensee must be disclosed to the prospective Renters.**

STIGMATIZED PROPERTIES

Stigmatized properties are those **properties that society has branded undesirable because of events that occurred there.** Stigma is the continuing negative association with or feeling about the property. Typically, the stigma is a criminal event such as homicide, gang-related activity, or a tragedy such as suicide. Properties have even been stigmatized by rumors that they are haunted. Because of the potential liability to a Licensee for inadequately researching and disclosing material facts concerning a property's condition, Licensees should seek legal counsel when dealing with a stigmatized property.

Article 15 of the Real Estate License Act of 2000 states that in dealing with specific situations related to disclosure:

- **"No cause of action shall arise against a Licensee for the failure to disclose that an occupant of that property was afflicted with HIV or any other medical condition or that the property was the site of an act or occurrence which had no effect on the physical condition of the property or its environment or the structures located thereon."**
- **"No cause of action shall arise against a Licensee for the failure to disclose a fact situation on property that is not the subject of the transaction."**
- **"No cause of action shall arise against a Licensee for the failure to disclose physical conditions, located on property that are not the subject of the transaction, or do not have a substantial adverse effect on the value of the Real Estate that is the subject of the transaction."**

PRICING – LEASING AGENT

The **Renter's Agent** is the one to **suggest the *highest* range of prices** the Renter should consider, based on comparable values and current market. The Agent's aim is to help the Renter get the ***lowest* price possible**, given all other Renter/Tenant concerns and needs. **The Renter's Agent discloses information about vacancy rates, etc. about a building.**

MEGAN'S LAW

At the state level, Megan's Law is a general name for laws requiring law enforcement authorities to make information available to the public regarding registered sex offenders.

As noted, Article 15, Section 15-20 of the Act states, "No cause of action shall arise against a Licensee for the failure to disclose … fact situations on property that is not the subject of the transaction …"

Leasing Agents have no legal duty to disclose that a known sex offender resides in a property near a property being leased by the Managing Broker, Broker, or Leasing Agent.

CREATION OF AGENCY

An agency relationship may be based on a formal agreement between the parties, an express agency, or it may result from the parties' behavior, an implied agency.

Express Agency - The **principal (Landlord) and Agent (Sponsoring Broker)** may enter into a **contract, or an express agreement,** in which the parties formally express their **intention to establish an agency** and **state its terms and conditions. The agreement may be either oral or written.** An agency relationship between a **property Owner and a Sponsoring Broker** generally is created by a **written employment contract**, commonly referred to as a P**roperty Management Agreement,** which authorizes the Sponsoring Broker (or their designated Licensees) to find a Tenant for the Owner's property.

An express agency relationship between a **Tenant and a Sponsoring Broker** is created by a **Renter Agency Agreement.** Similar to a Property Management Agreement, it **stipulates the activities and responsibilities** the Renter expects from the Sponsoring Broker (or their designated Licensees) in finding the appropriate property for rent.

The Real Estate License Act of 2000 requires that all exclusive brokerage agreements must be in writing.

Implied Agency - An agency may also be created by **implied agreement.** This occurs when the **actions of the parties indicate that they have mutually consented to an agency relationship.** A Licensee acts on behalf of another as Agent. Even though the Licensee may not have consciously planned to create an agency relationship, **the parties can create an agency relationship unintentionally, inadvertently, or accidentally by their actions.**

Compensation - The source of compensation does not determine agency. A Real Estate Agent does not necessarily represent the person who pays her compensation. In fact, agency can exist even if no fee is involved: It is called a gratuitous agency. The written Property Management Agreement should state how the Sponsoring Broker is being compensated and explain all the alternatives available.

In Illinois, compensation does not determine the agency relationship. Both buyer's and seller's Real Estate Agents are often paid by the seller in a cooperative commission arrangement. **In the case where the Leasing Agent is an employee of the Sponsoring Broker who has signed the Property Management Agreement with the Landlord, the Landlord pays the Sponsoring Broker according to the terms of the Property Management Agreement and the Sponsoring Broker pays the Leasing Agent working for the Sponsoring Broker, according to the compensation terms outlined in the Employment Agreement between the Sponsoring Broker and the Leasing Agent.**

TERMINATION OF AGENCY

An agency may be terminated for any of the following reasons:

- Death or *incapacity* of either party
- Destruction or condemnation of the property
- Expiration of the terms of the agency
- Mutual agreement by all parties to the contract
- Breach by one of the parties, in which case the breaching party might be liable for damages
- By operation of law, as in bankruptcy of the principal (bankruptcy terminates the agency contract, and title to the property transfers to a court-appointed receiver)
- Completion, performance, or fulfillment of the purpose for which the agency was created

In Illinois, a definite termination date must be included in a brokerage agreement.
Automatic extension clauses are illegal under Illinois law.

TYPES OF AGENCY RELATIONSHIPS

What an Agent may do as the principal's representative depends solely on what the principal authorizes the Agent to do.

A **universal Agent** is a person **empowered to do anything the principal could do personally.** The universal Agent's authority to act on behalf of the principal is ***virtually unlimited***. In Illinois, a written **power of attorney** is required to create a universal agency.

A **general Agent** may represent the principal in a broad range of matters related to a particular business or activity. The general Agent may, for example, bind the principal to any contract within the scope of the Agent's authority. **A Property Manager is typically considered a general Agent to the property Owner.** Brokers and Managing Brokers are *general Agents* to their Sponsoring Broker.

The **Property Management Agreement spells out the various contracts and documents which the Sponsoring Broker is empowered to sign for the Landlord.** The Sponsoring Broker, in turn, can designate what contracts or documents the Listing Agent can sign for the Sponsoring Broker, which, in effect is signing for the Property Owner. So, the Agreement between the Property Owner and the Sponsoring Broker is a General Agency, usually with some limitations.

A **special Agent** is authorized to represent the principal in **one specific act or business transaction only**, under detailed instructions. **As a special Agent, the Licensee may not bind the principal to a contract.** The principal makes all contractually related decisions and will sign on her own. A *special power of attorney* is another legal means of authorizing an Agent to carry out only a specified act or acts.

A **designated Agent** is a person **authorized by the Sponsoring Broker to act as the Agent of a specific principal. A designated Agent is the only Licensee in the company who has a fiduciary responsibility toward that principal, through the Sponsoring Broker.** When one Licensee in the company is a designated Agent, the others are free to act as Agents for the other party in a transaction. In this way, two Licensees from the same Real Estate company may represent opposite sides in a transaction without entering dual agency.

Designated agency is recognized in Illinois. **A Sponsoring Broker** entering into a brokerage agreement (Property Management Agreement) **may specifically designate those Licensees** employed by or affiliated with the Sponsoring Broker **to act as legal Agents of that client (Property Owner)** to the **exclusion of all other Licensees employed by or affiliated with the Sponsoring Broker.** Relating to Property Management, the Designated Agency operation may occur when the **Sponsoring Broker designates Leasing Agents or Brokers to lease units in a**

specific property or properties (acting as Agent for the Landlord) and **designates other Leasing Agents or Brokers to handle clients who are looking for rental units (acting as Agents for Renters).**

The Sponsoring Broker must take care to protect confidential information disclosed by a client to his or her Designated Agent. A Designated Agent may disclose to her Sponsoring Broker or persons specified by the Sponsoring Broker confidential information of a client for the purpose of seeking advice or assistance for the benefit of the client regarding a possible transaction. The Sponsoring Broker cannot disclose confidential information unless otherwise required by this act or requested or permitted by the client who originally disclosed the confidential information.

When an Agent or firm represents only one party (Buyer, Seller, Landlord, or Tenant) exclusively in a Real Estate transaction, this relationship is referred to as *Single Agency*. The Agent and firm's fiduciary and statutory duties are provided only to that one party (the principal).

While a single agency Licensee may represent either Sellers or Buyers, that Licensee cannot represent both in the *same transaction*. This avoids conflict and results in client-based service and loyalty to *only* one client. Representing both sides of a transaction requires disclosure to both parties, two times, and the Agent becomes a facilitator – no legal agency relationship is established between the Agent and both parties.

BUYER/RENTER AGENCY

Many Licensees involved with residential property are discovering opportunities for **Buyer/Renter Agency.** Some Licensees have become specialists in the emerging field of Buyer/Renter Agency, even representing Buyers/Renters exclusively. This practice has been utilized in the commercial Real Estate field for many years. With the introduction of Statutory Buyer/Renter Agency in Illinois, this type of relationship is now available to Managing Brokers, Brokers, and Leasing Agents in the Residential field.

A *Buyer Agency relationship* is established in the same way as any other agency relationship: by contract, agreement, or implication. The Buyer/Renter Agent may receive a fee from the Buyer/Renter directly or share in the Landlord-paid commission to the listing Sponsoring Broker or both, depending on the terms of the agency agreement.

In Illinois, it is common for the Sponsoring Broker representing the Property Owner to split the rental commission with the Renter's/Tenants Sponsoring Broker.

PROPERTY MANAGEMENT AGENCY

An Owner may employ a Sponsoring Broker to market, lease, maintain, or manage the Owner's property. Such an arrangement is known as *property management*. The Sponsoring Broker is made the Agent of the property Owner through a Property Management Agreement. As in any other agency relationship, the Sponsoring Broker has a fiduciary responsibility to the Client-Owner.

DUAL AGENCY

In dual agency, the **Agent represents two principals in the same transaction. Dual agency requires equal loyalty to two separate principals at the same time, which in impossible.** As a result, the **Dual Agency Disclosure Form** informs both parties to the transaction that the **Licensee is acting as a <u>FACILITATOR NOT AS A LEGAL AGENT</u>**.

Disclosed dual agency Real Estate licensing laws permit dual agency only if the Renter and Landlord are informed and consent to the Licensee's representation of both parties in the same transaction. Since there is no agency involved in a Disclosed Dual Agency arrangement, the Agent only acts as a Facilitator, the name of the arrangement should be Dual Facilitator, not Dual Agency. The disclosure alerts the principals that **they will have to assume greater responsibility for protecting their interests than they would if each had an independent Agent looking out for their individual interests.** The form informs both parties that the **Agent is <u>acting as a facilitator</u> and <u>cannot negotiate for either party</u> nor <u>act as a true Agent for either party</u>.**

In the case of a Leasing Agent working in a building leasing office, that Leasing Agent or Agents have been designated by the Sponsoring Broker as Designated Agents for the Landlord. The Leasing Agent, by law, has to give the potential renter a "No Agency" disclosure form and review it with the potential renter, informing the renter that the Leasing Agent is an Agent of the Landlord. The Leasing Agent and potential renter sign the form, and both get a copy

Where a Leasing Agent operates out of a Sponsoring Broker office and has been designated as a Landlord Agent by the Sponsoring Broker, **the Leasing Agent should make clear to the potential renter that he or she is representing the Landlord in the transaction.** A Sponsoring Broker may, by the Property Management Agreement with the Property Owner, or by an internal office policy, designate a Leasing Agent to represent the Landlord. **The Leasing Agent would then provide the renter with the "No Agency" form which both the Leasing Agent and Renter would sign.** The Leasing Agent representing the Landlord would then **arrange with the Sponsoring Broker to have another Agent designated to handle the Renter.**

Designated agency is a process that avoids dual agency that may occur during an *in-house* transaction in which two different Agents are involved. **Under designated agency, the Sponsoring Broker designates one Agent to represent the Landlord and one Agent to represent the Renter.** Designated agency is legal in Illinois.

UNDISCLOSED DUAL AGENCY

A Licensee may **not intend to create a dual agency – it may occur unintentionally or inadvertently.** Some Leasing Agents lose sight of legal obligations when they focus intensely on bringing Renters and Landlords together. For example, a Licensee representing the Landlord might tell a buyer that the Landlord will accept less than the stated rent to entice the Renter into leasing the property. When an Agent for the Landlord gives a Renter any specific advice on how much to offer can lead the Renter to believe that the Leasing Agent represents the Buyer's interests and is acting as the Renter's Agent. The Leasing Agent is representing the Landlord then is involved in an **UNDISCLOSED DUAL AGENCY, WHICH IS ILLEGAL.**

Any of these actions create an *implied agency* with the Renter and violates the duties of loyalty and confidentiality to the principal – Landlord. Because neither party has been informed of that situation and been given the opportunity to seek separate representation, the interests of both are jeopardized. This undisclosed dual agency is a violation of licensing laws. It can result in rescission of the lease, forfeiture of commission, or filing of a suit for damages.

DISCLOSURE OF AGENCY

Licensees are considered to be representing the consumer they are working with as the consumer's designated Agent. unless there is a written agreement between them specifying a different relationship or if the Licensee is performing only ministerial acts on the consumers behalf.

Ministerial acts are defined as **acts performed for a consumer that are informative or clerical in nature** and **do NOT rise to the level of creation of an agency relationship on behalf of a consumer.**

Examples of ministerial acts include:

- Responding to phone inquiries by consumers as to the availability and pricing of brokerage services
- Responding to phone inquiries from a consumer concerning the price or location of property
- Attending an open house and responding to questions about the property from a consumer
- Setting an appointment to view property

- Responding to questions of consumers walking into a Licensee's office, concerning brokerage services offered or particular properties
- Accompanying an Appraiser, Inspector, Contractor, or similar third party on a visit to a property
- Describing a property or the property's condition in response to a consumer inquiry
- Completing business or factual information for a consumer on an offer or contract to purchase on behalf of a client
- Showing a client through a property being sold by an Owner on her own behalf
- Referring to another Broker or service provider

"NO AGENCY" DISCLOSURE FORM

Article 15, Section 15-35 discusses **agency relationship disclosure.** It requires that a **Renter be advised in writing that no agency relationship exists between the Leasing Agent and the Renter,** unless there is a written agreement between the Sponsoring Broker and the Renter, providing for a different brokerage relationship. **This must occur no later than when a Renter asks the Leasing Agent to help the Renter in locating and renting an apartment**. The Leasing Agent must explain the form and then the Leasing Agent and Renter sign the "No Agency" Disclosure Form. A copy of the "No Agency" Disclosure Form is retained by the Renter and Leasing Agent.

CUSTOMER-LEVEL SERVICES

Even through an Agent's primary responsibility is to the principal, **the Leasing Agent also has duties to third parties.** Any time a Licensee works with a third party or a customer, the **Licensee is responsible for adhering to state and federal consumer protection laws** as well as to the **ethical requirements imposed by professional associations and state regulators.** However, Illinois license law does set forth the duties that Licensees owe to third-party customers (Buyers/Renters/Tenants or Sellers/Landlords/Property Owners). **Licensees are to treat all customers honestly.** They cannot negligently or knowingly give false information.

Finally, Licensees must disclose all material adverse facts about the physical condition of the property to the customer that are actually known by the Licensee and that could not be discovered by a reasonably diligent inspection of the property by the customer.

Liability may be imposed when the Licensee is aware of facts that tend to indicate she is making a false statement. For instance, if the Landlord tells his Agent/Licensee that "the roof was replaced last year" and the **Agent has good reason to believe that statement is untrue, the Licensee should attempt to ascertain the truth and pass the correct information on to the**

Renter. However, if the client provided the false information and the Licensee did not have knowledge that the information was false, the Licensee will not be held liable to the customer.

CHAPTER 3: CONTRACTS

DEFINITION OF A CONTRACT

A contract is a voluntary agreement or promise between legally competent parties, supported by legal consideration, to perform (or refrain from performing) some legal act. That definition may be easier to understand if its various parts are examined separately. A contract must be:

- **Voluntary** – no one may be forced into a contract
- **An agreement or a promise** – a contract is essentially a legally enforceable promise
- **Legally competent parties** – the parties must be viewed by the law as capable of making a legally binding promise
- **Legal consideration** – a contract must be supported by something of value that induces a party to enter the contract, and that something must be legally sufficient to support a contract
- **Legal act** – no one may legally contract to do something illegal

EXPRESS AND IMPLIED CONTRACTS

Depending on how a contract is created. It is either express or implied. **An express contract exists when the parties state the terms and show their intentions in words.** An express contract may be **oral or written. Under the statute of frauds, certain types of contracts (including those for the rental of real property) must be in writing to be enforceable in a course of law.**

Enforceable means that the parties may be forced to comply with the contract's terms and conditions. Enforceable between the parties is one method of enforcement. Enforcement in course is the other method of enforcement. Certain contracts are only enforceable between the parties and are not able to be enforced in court. In an implied contract, the agreement of the parties is demonstrated by their acts and conduct.

The Illinois Statute of Frauds requires that any contracts for the sale of land, or for **leases that will not be fulfilled within one year from the date they entered into, must be in writing to be enforceable in court.** The Illinois Real Estate License Act of 2000 also indicates that certain contracts must be in writing, such as employment agreements between Sponsoring Brokers and their sponsored Licensees.

BILATERAL AND UNILATERAL CONTRACTS

Contracts may be classified as either ***bilateral or unilateral*. In a bilateral contract, both parties promise to do something; one promise is given in exchange for another.** A Real Estate lease is

a bilateral contract because the Landlord provides temporary shelter to a Renter in exchange for rent.

A unilateral contract, on the other hand, is a one-sided agreement. One party makes a promise to induce a second party to do something. If you wash dishes, I will give you $5.00. The second party is not legally obligated to act. **However, if the second party does comply – washes the dishes – the first party is then obligated to keep the promise – pay the $5.00.** An option contract to retain an exclusive right to possibly make a purchase later is an example of a unilateral contract. The Optioner (Owner) does not have the right to act. Only the Optionee (buyer) has the right to agree to buy the property or not.

EXECUTED AND EXECUTORY CONTRACTS

A contract may be classified as either **executed** or **executory**, depending on whether the agreement is performed. **An executed contract is one in which all parties have fulfilled their promises**: the contract has been performed. This sometimes can be confused with the word *execute*, which refers to the act of signing a contract. **An executory contract exists when one or both parties still have an act to perform.** A lease contract is an executory contract from the time it is signed until move-in tenancy has not yet changed hands, and the Renter has not taken possession of the premises. At move-in, the lease contract is executed.

ESSENTIAL ELEMENTS OF A VALID CONTRACT

A contract must meet certain minimum requirements to be considered legally valid. The follow are the basic essential elements of a contract.

Offer and acceptance (mutual assent)

There must be an offer by one part that is accepted by the other. The person who makes the offer is the *offeror*. The person who accepts the offer is the *offeree*. This requirement also is called *mutual assent*. It means that there must be a **meeting of the minds,** or **complete agreement about the purpose and terms of the contract. In cases where the statute of frauds applies, specifically leases of one year or longer, the offer and acceptance must be in writing.** The wording of the contract must express all the agreed-on terms and must be clearly understood by the parties.

An *offer* is a promise made by one party, requesting something in exchange for that promise. The offer is made with the intention that the offeror will be bound to the terms if the offer is accepted. The terms of the offer must be definite and specific and must be communicated to the offeree.

Proposing any deviation from the terms of the offer constitutes a rejection of the original offer and creates a new offer. The original offer ceases to exist because the Landlord has

rejected it. The Renter may accept or reject the Landlord's counteroffer. **Any change in the last offer may result in a counteroffer until either party reached an agreement or one-party walks away.**

Any offer or counteroffer may be withdrawn at any time before it has been accepted, even if the person making the offer or counteroffer agreed to keep the offer open for a set period of time. **After the offer has been accepted, it can be withdrawn any time before the other party has been notified of the acceptance (Notice of Acceptance).**

Acceptance

An offer is not considered accepted until the person making the offer has been notified of the other party's acceptance. When the parties communicate through a Licensee or at a distance, questions may arise regarding whether an acceptance, rejection, or counteroffer has occurred. Though current technology allows for fast communication, a signed agreement that is faxed, for instance, would not necessarily constitute adequate communication. **The Licensee must transmit all offers, acceptances, or other responses as soon as possible to avoid questions of proper communication.**

Besides being terminated by a counteroffer, an offer may be terminated by the offeree's outright rejection of it. Alternatively, **an offeree may fail to accept the offer before it expires** if a time frame was attached to the offer. **The offeror may revoke the offer at any time before receiving the acceptance.** This **revocation must be communicated to the offeree by the offeror, either directly or through the Licensees who are the parties' Agents.** The offer also is considered revoked if the offeree learns of the revocation and observes the offeror acting in a manner that indicates that the offer no longer exists.

Consideration

The contract must be based on consideration. Consideration is something of legal value offered by one party and accepted by another as an inducement to perform or to refrain from performing some act. There must be a **definite statement of consideration in a contract** to show that something of value was given (or promised) in exchange for the other party's promise.

Consideration must be good *and* valuable between the parties. The courts do not inquire into the adequacy of consideration. Adequate consideration ranges from as little as a **promise of "love and affection" (good consideration), to a substantial sum of money (valuable consideration).** Anything that has been bargained for and exchanged is legally sufficient to satisfy the requirement for consideration. The only requirements are that the parties agreed to the consideration and that no undue influence or fraud occurred.

Reality of Consent

Under the doctrine of reality of consent, a contract must be entered into as the free and voluntary act of each party. Each party must be able to make a prudent and knowledgeable decision without undue influence. A mistake, misrepresentation, fraud, undue influence or duress deprives a person of that ability. If any of these circumstances is present, the contract is voidable by the injured party. If the other party were to sue for breach, as a defense, the injured party could say the agreement lacks reality of consent.

Legal Purpose

A contract must be for a legal purpose – that is, even with all the other elements (consent, competent parties, consideration, and offer and acceptance), a contract for an illegal purpose or an act against public policies is not a valid contract.

Legally Competent Parties

All parties to the contract must have legal capacity. That is, they must be legal age and have enough mental capacity to understand the nature or consequences of their actions in the contract. In most states, 18 is the legal age of contractual capacity.

VALIDITY OF CONTRACTS

A contract can be described at *valid, void, voidable, or unenforceable*, depending on the circumstances. A contract is **valid** when it meets all the essential elements that make it legally sufficient or enforceable.

Void Contract

A contract is void when it has no legal force or effect because it lacks some or all of the essential elements of a contract.

Voidable Contract

A contract that is voidable **appears on the surface to be valid but may be rescinded or disaffirmed by one or both parties based on some legal principle.** If it is not disaffirmed, a voidable contract may nevertheless end up being executed. A voidable contract is considered by the courts to be valid if the party who has the option to disaffirm the agreement does not do so within a period of time prescribed by state law.

A contract entered into under duress or intoxication or as a result of fraud, mistake, or misrepresentation is always voidable by the compelled or defrauded party. A contract with a minor is also voidable: minors are permitted to disaffirm Real Estate contracts at any time while underage and for a certain period of time after reaching majority age. A contract entered into by a mentally ill person usually is voidable *during* the mental illness and for a reasonable period after recovery. On the other hand, a contract made by a person who has

been adjudicated **insane (that is, found to be insane by a court) is void at the outset based on insanity judgements being a matter of public record.**

Illinois law provides that all persons come of "legal age" on their 18th birthday. Contracts entered into by a minor in Illinois are voidable until the minor reaches majority and for a reasonable time afterward. There is no statutory period within which a person may void a contract after reaching majority in Illinois. What is considered "reasonable" depends on the circumstances of each case, although the courts tend to allow a maximum of 6 months.

Contracts made by a minor for what the law terms **necessaries** are **generally enforceable. "Necessaries" include items such as food, clothing, shelter, and medical expenses.** While a Real Estate sales contract with a minor probably would not be enforceable in Illinois, **leases or rental agreements signed by minors generally are enforceable because short-term housing is usually considered a necessity.**

An **unenforceable (in court) contract** may seem valid on the surface; however, **neither party can sue the other to force performance (Oral Contract).** A contract may be unenforceable because it is not in writing, as may be required under the statute of frauds.

Summary

Valid – has all legal elements and is fully enforceable in court and between the parties
Void – lacks one or all legal elements
Voidable – has all legal elements but may be rescinded or disaffirmed
Unenforceable – has all legal elements and is not enforceable in court but only between the parties

DISCHARGE OF A CONTRACT

A *contract is discharged* when the agreement is terminated. The most desirable case is when a contract terminates because it has been completely performed, with all its terms carried out. However, a contract may be terminated for other reasons, such as a party's breach or default.

PERFORMANCE OF A CONTRACT

Each party has certain rights and duties to fulfill. The question of when a contract must be performed is an important factor. Many contracts call for a specific time by which the agreed-on acts must be completely performed. In addition, many contracts provide that **time is of the essence.** This means that the contract must be performed within the time limit specified. A party who fails to meet the deadlines specified in the contract is liable for breach of contract.

When a contract does not specify a date for performance, the acts it requires should be performed within a reasonable time. The interpretation of what constitutes a reasonable time

depends on the situation. Generally, unless the parties agree otherwise, if the act can be done immediately, it should be performed immediately. **Courts sometimes have declared contracts to be invalid because they did not contain a time or date for performance.**

In Illinois, a deed or contract executed on a Sunday or legal holiday is valid and enforceable. However, when the last day on which a deed or contract must be executed is a holiday or Sunday, the deed or contract **may be executed on the next regular business day.**

ASSIGNMENT

Assignment is a transfer of rights or duties under a contract. Rights may be assigned to a **third party (called the assignee)** unless the contract forbids it. **Obligations also may be assigned (or delegated),** but the original party remains primarily liable unless specifically released. **An assignment may be made without the consent of the other party** unless the contract includes a clause that permits or forbids assignment.

NOVATION

Substitution of a <u>new contract</u> for an <u>existing contract</u> is called *novation*. The new agreement may be between the same parties, or a new party may be substituted for (this is *novation of the parties*). **The parties' intent must be to discharge the old obligation.**

Assignment – substitution of parties
Novation – substitution of contracts

BREACH OF CONTRACT

A contract may be **terminated if it is breached by one of the parties.** A breach of contract is a violation of any of the terms or conditions of a contract without legal excuse. For instance, a seller who fails to deliver title to the buyer breaches a sales contract. The breaching or defaulting party assumes certain burdens, and the non-defaulting party has certain remedies.

In Illinois, the statute of limitations for <u>oral contracts is five years</u> and for <u>written contracts, ten years</u>. Any rights not enforced within the applicable time period are lost.

Specific remedies for a breach of a lease, for the Landlord/Property Owner and Renter/Tenant are covered in Chapter 4.

OTHER REASONS FOR TERMINATION

Contracts may also be discharged or terminated when any of the following occurs:

- **Partial performance** of the terms, along with a written acceptance by the other party
- **Substantial performance** in which one party has **substantially performed on the contract** but **does not complete all the details** exactly as the contract requires. Such

performance may be enough to force payment, with certain adjustments for any damages suffered by the other party. For instance, if a newly constructed addition to a home were finished except for polishing the brass doorknobs, the contractor would be entitled to the final payment.

- **Impossibility of performance** in which an act required by the contract cannot be legally accomplished.
- **Mutual agreement** of the parties to cancel.
- **Operation of Law** – such as in the voiding of a contract by a minor, or as a result of fraud, due to the expiration of the statute of limitations, or because a contract was altered without the *written consent of all parties involved.*
- **Rescission** – one party may cancel or terminate the contract as if it had never been made.
- **Cancellation terminated a contract without a return to the original position**. **Rescission, however, returns the parties to their original positions before the contract,** so any monies that have been exchanged must be returned. **Rescission is normally a contractual remedy for a breach**, but a contract may also be rescinded by the mutual agreement of the parties.

CONTRACTS USED IN THE REAL ESTATE BUSINESS

The written agreements most commonly used by Brokers and Managing Brokers are:

- Listing agreements and buyer agency agreements
- Real Estate sales contracts
- Options agreements
- Escrow agreements
- Land contracts or contracts for deed
- Leases

REAL ESTATE CONTRACTS & LICENSEES

The 1966 Illinois Supreme Court decision in the case of *Chicago Bar Association, et al v. Quinlan and Tyson, Inc.* placed certain limitations on Real Estate Licensees in drafting a contract. The court ruled that **Licensees are authorized to fill in the blanks on printed form contracts that are customarily used in the Real Estate community.** Real Estate sales contracts that fit the "customarily used" requirement typically have been drafted by local bar associations and approved by the local REALTOR® associations.

All insertions and deletions must be at the direction of the principals; based on the negotiations.

Advising a Buyer or Seller of the legal significance of any part of the contract or **writing any change to the form language** constitutes the unauthorized practice of law by a Licensee.

A Licensee may not request or encourage a party to sign a contract or document that contains blank spaces to be "filled in later" nor can the Licensee make changes to a signed contract without the written consent of the parties. If changes are made by the agreement of all the principals, the Buyers and Sellers must initial any changes they agree to add. All Licensees are required to give each person signing or initialing the contract an original "true copy" within 24 hours of the time of signing.

A Licensee also must not prepare or complete any document subsequent to the contract or related to its implementation, such as a deed, bill of sale, affidavit of title, note, mortgage, or other legal instrument.

PROPERTY MANAGEMENT (LISTING) AND RENTER/TENANT (BUYER) AGENCY AGREEMENTS

Property Management (Listing) and Renter/Tenant (Buyer) Agency Agreements are **employment contracts.** A Property Management Agreement (Listing) establishes the rights and obligations of the **Sponsoring Broker as Agent** and the **Landlord as principal.**

OPTIONS

An **option** is a contract by which an **optionor (generally an Owner gives an optionee (a prospective purchaser or lessee) the right to buy or lease the Owner's property at a fixed price within a certain period of time.** The optionee pays a fee (agreed-on consideration) for this option right. The optionee has no other obligation until he decides to either exercise the option right or allow the option to expire. **An option is enforceable by only one party – the optionee.**

An option contract is NOT a sales contract or a lease. At the time the option is signed by the parties, the Owner does not sell or lease and the optionee does not buy or rent. The parties merely agree that the optionee has the right to buy or rent and the Owner is obligated to sell or lease if the optionee decides to exercise his right of option. Options must contain all the terms and provisions required for a valid contract.

The option agreement (which is a *unilateral contract*) requires that the optionor act only after the optionee gives notice that he elects to execute the option. If the option is not exercised within the time specified in the contract, both the optionor's obligation and the optionee's right expire. An option contract may provide for renewal, which often requires additional consideration. The optionee cannot recover the consideration paid for the option right. The contract may state whether the money paid for the option is to be applied to the purchase price or rent of the Real Estate if the option is exercised.

A common application of an option is a lease that includes an option for the Tenant to purchase the property, extend the lease, or perhaps lease additional or adjoining space. Options on commercial Real Estate frequently depend on some specific conditions being fulfilled, such as obtaining a zoning change or a building permit. The optionee may be obligated to exercise the option if the conditions are met.

CHAPTER 4: PROPERTY MANAGEMENT

THE MANAGEMENT PROFESSION

Most metropolitan areas have local associations of building and property Owners and Managers that are affiliates of regional and national associations. All these professional organizations provide information and contacts for all aspects of property management. Here is a list of some well-known associations:

- Building Owners and Managers Association International (BOMA): commercial Real Estate
- Building Owners and Managers Institute International (BOMI): education programs for commercial property and facility management industries
- Community Associations Institute (CAI): Homeowners' associations, condominiums, and other planned communities
- Institute of Real Estate Management (IREM): multifamily and commercial Real Estate designation
- International Council of Shopping Centers (ICSC): shopping centers worldwide
- National Apartment Association (NAA): multifamily housing industry
- National Association of Home Builders (NAHB): all aspects of home building
- National Association of Residential Property Managers (NARPM): single-family and small residential properties.

THE PROPERTY MANAGER

In addition to leasing, managing, marketing, and overall maintenance of Real Estate owned by others, it is also expected that a Property Manager function as a market analyst, residential leasing Agent, accountant, advertising specialist, and maintenance person all in the same day. In addition, the Property Manager frequently interacts with people in various professions, including lawyers, environmental engineers, and accountants.

The Property Manager has three principal responsibilities:

- Achieve the objectives of the property Owners
- Generate income for the Owners
- Preserve and/or increase the value of the investment property

The Property Manager carries out the goals of the property Owners by making sure the property earns income. This can be done in several ways. The physical property must be maintained in good condition. Suitable Tenants must be found, rent must be collected, and employees must be hired and supervised. The Property Manager is responsible for budgeting and controlling expenses, keeping proper accounts, and making periodic reports to the Owner.

In all of these activities, the Manager's primary goal is to operate and maintain the physical property in such a way as to **preserve and enhance the Owner's capital investment**.

Some Property Managers work for property management companies. These firms manage properties for a number of Owners under management agreements (discussed later). Other Property Managers are independent. The Property Manager has an agency relationship with the Owner, which involves greater authority and discretion over management decisions than an employee would have. **Illinois Property Managers must be licensed managing brokers,** under a Sponsoring Broker, because they engage in collecting rent, negotiating leases and rentals, and procuring Tenants, among other functions.

However, the Illinois Real Estate License Act of 2000 specifically exempts resident Managers of apartment buildings, duplexes, and apartment complexes from licensure requirements when their primary residence is on the premises being managed.

Illinois permits individuals whose Real Estate practice is limited to leasing or renting residential property, collecting rent, negotiating leases, and similar activities to obtain a residential leasing-Agent license instead of the broader-scope broker or managing broker license. An individual with a residential leasing-Agent license must be sponsored by a Sponsoring Broker.

Securing Management Business

Possible sources of a property management business include:

- Corporate Owners,
- Apartment buildings,
- Owners of small rental residential properties,
- Homeowners' associations,
- Investment syndicates,
- Trusts, and
- Owners of office buildings.

THE MANAGEMENT AGREEMENT

The first step in taking over the management of any property is to enter into a Management Agreement with the Owner. This agreement creates a general agency relationship between the Owner and the Property Manager. It defines the duties and responsibilities of each party. It is also a guide used in operating the property as well as a reference in case of future disputes.

Like any other contract involving Real Estate, the management agreement should be in writing. It should include the following:

- **Description of the property** – This should include the street address of the property, as well as the legal description.

- **Time period the agreement covers** – This would include specific provisions for termination.
- **Definition of the Property Manager's responsibilities** – All the Manager's duties should be specifically stated in the contract. Any limitations or restrictions on what the Manager may say or do should be included.
- **Statement of the Owner's purpose** – The Owner should clearly state what the Manager is to accomplish. One Owner may want to maximize net income, while another will want to increase the capital value of the investment. Long-term goals are often of key importance.
- **Extent of the Manager's authority** – This provision should state what authority the Manager is to have in matters such as hiring, firing, and supervising employees, fixing rental rates for space, and making expenditures and authorizing repairs.
- **Reporting** – The frequency and detail of the Manager's periodic reports on operations and financial position should be agreed on. These reports serve as a means for the Owner to monitor the Manager's work and operational trends. They form a basis for shaping management policy.
- **Management fee** – The fee may be based on a percentage of gross or net income, a fixed fee, or some combination of these and other factors. The fee must be negotiated between the Property Manager and the Principal. In addition, the Property Manager may be entitled to a commission on new rentals and renewed leases.
- **Allocation of costs** – The agreement should state which of the Property Manager's expenses, such as office rent, office help, telephone, advertising, and association fees, will be paid by the Manager. Other costs will be paid by the Owner.
- **Antitrust provisions** – Management fees are subject to the same antitrust considerations as sales commissions and cannot be standardized in the marketplace (e.g., price-fixing).
- **Equal opportunity statement** – Residential property management agreements should include a statement that the property will be shown, rented, and otherwise made available to all persons protected by state or federal law.

PROPERTY MANAGER'S RESPONSIBILITIES

Financial Reports

One of the primary responsibilities of a Property Manager is maintaining financial reports, including an operating budget, cash flow report, profit and loss statement, and budget comparison statement.

Operating budget

An operating budget is the **projection of income and expense for the operation of a property over a one-year period.** This budget, developed before attempting to rent property, is based on anticipated revenues and expenses and provides the Owner the amount of anticipated profit. The Property Manager and Owner use the operating budget as a guide for the property's financial performance in the present and future.

Income

Income includes gross rentals collected, delinquent rental payments, utilities, vending contracts, late fees, and storage charges. Any losses from uncollected rental payments or evictions are deducted from the total gross to arrive at the total adjusted income.

Expenses

Fixed and variable expenses include administrative costs (including building personnel), operating expenses, and maintenance costs. Fixed expenses that remain constant and do not change include employee wages, utilities, and other basic operating costs. Variable expenses may be recurring or nonrecurring and can include capital improvements, building repairs, and landscaping.

Cash flow report

A cash flow report is a monthly statement that details the financial status of the property. Sources of income and expenses are noted, as well as net operating income, and net cash flow. **The cash flow report is the most important financial report because it provides a picture of the current financial status of a property.**

The formula for arriving at cash flow is as follows:

- Gross rental income plus other income less losses incurred = **Total Income**
- Total income less operating expenses = **Net Operating Income before debt service** (e.g., mortgage payments)
- Net operating income before debt service less debt service less reserves = **Cash flow**

Profit and loss statement

This is a financial picture of the revenues and expenses used to determine whether the business has made money or suffered a loss. The statement is created from the monthly cash flow reports and does not include itemized information.

A formula for profit and loss statement looks like this:

Gross receipts, minus expenses, minus total mortgage payments (which includes Principal and Interest) = **net profits**

Budget comparison statement

The budget comparison statement compares the actual results with the original budget, often giving either percentages or a numerical variance of actual versus projected income and expenses.

RENTING THE PROPERTY

Effective rental of the property is essential to ensure the long-term financial health of the property. The Property Manager sometimes makes use of a Leasing Agent as one part of property management.

Setting Rental Rates

Rental rates are influenced primarily by supply and demand. **The Property Manager should conduce a detailed survey of the competitive space available in the neighborhood, emphasizing similar properties.** In establishing rental rates, the Property Manager has four long-term considerations:

- The rental income must be *sufficient* to cover the property's fixed charges and operating expenses.
- The rental income must *provide* a fair return on the Owner's investment.
- The rental rate should be *in line with prevailing rates* in comparable buildings in the area. It may be slightly higher or slightly lower, depending on the strength of the property.
- The *current vacancy rate* in the property is a good indicator of how much of a rent increase is advisable. A building with a low vacancy rate is a better candidate for an increase than one with a high vacancy rate.

A rental rate for **residential space** is usually stated as the **monthly rate per unit. Commercial leases** (office, retail, and industrial space rentals) are usually according to **annual rate per square foot.**

A high level of vacancy may indicate poor management or a defective or an undesirable property. On the other hand, a **high occupancy rate may mean that rental rates are too low.** Whenever the occupancy level of an apartment, house, or office building exceeds 95 percent, consideration should be given to raising rents. First, however, the Manager should investigate the rental market to determine whether a rent increase is warranted.

Selecting Tenants

Proper selection is the first step in establishing and maintaining sound, long-term relationships with Tenants. The Manager should be sure that the premises are suitable for a Tenant in size, location, and amenities and that the Tenant is able to pay for the space.

The residential Property Manager and any Leasing Agents employed by the Property Manager must always comply with fair housing laws in selecting Tenants. Although fair housing laws do not apply to commercial properties, commercial Property Managers need to be aware of federal, state, and local antidiscrimination and equal opportunity laws that may govern industrial or retail properties.

Collecting Rents

A Property Manager and any Leasing Agents employed by the Property Manager should **accept only those Tenants who can be expected to meet their financial obligations.** In addition to contacting credit bureaus, the selection process now involves criminal background checks, eviction history, calling financial references, and if possible, interviewing the former Landlord.

The terms of rental payment should be spelled out in the lease agreement, including:

- Time and place of payment
- Provisions and penalties for late payment and returned checks
- Provisions for cancelation and damages in case of nonpayment

The Property Manager should establish a firm and consistent collection plan. **The plan should include a system of notices and records that complies with state and local law.**

Every attempt must be made to collect rent **without resorting to legal action. Legal action is costly and time-consuming and does not contribute to good Tenant relations.** When it is unavoidable, legal action must be taken in cooperation with the Property Owner's or management firm's legal counsel. Specific legal procedures must be followed in taking legal action against a Tenant. In addition, it may be more efficient to utilize a separate lawyer, experienced in evictions, to minimize costs and time it takes to complete the process.

Security Deposits & Interest

Illinois law has specific provisions regarding the maintenance and payment of interest on security deposits. Additionally, local municipalities may have laws regarding interest on security deposits.

Property Managers (who must have Broker or Managing Broker licenses) must put security deposits in a special escrow account, in the same way that Real Estate licensees must handle earnest money.

The security deposits must be deposited in the escrow account by the next business day after a lease is signed.

The security deposit must be recorded in a journal, which contains a chronological record of all deposits and withdrawals of security deposit monies going into and out of the escrow account.

The security deposit must be also recorded in a ledger, which is set up for each lease, and contains the information about the security deposit, interest paid and how much and when the security deposit was returned at the end of the lease.

This escrow account is a non-interest-bearing account unless the property is residential with 25 or more units, in which case, interest must be paid to the Tenants.

The Property Manager must be able to handle residents who do not pay their rents on time or who break building regulations. **When one Tenant fails to follow the rules, the other Tenants often become frustrated and dissatisfied.** Careful record keeping shows whether rent is remitted promptly and in the proper amount. Records of all lease renewal dates should be kept so that the Manager can anticipate expiration and retain good Tenants who otherwise might move when their leases end.

Handling Environmental Concerns

Property Managers must be able to respond to a variety of environmental problems because they have become increasingly important issues. **Managers may manager structures containing asbestos or radon or be called on to arrange an environmental audit of a property.** Managers must see that any hazardous wastes produced by their employers or Tenants are properly disposed of.

Air quality issues are a key concern for those involved in property management and design. **Building related illness (BRI) and sick building syndrome (SBS)** are illnesses that are more prevalent today because of energy and efficiency standards used in construction that make buildings more airtight with less ventilation. SBS is more typical in an office building.

Lead-Based Paint

The 1996 federal Lead-Based Paint Hazard Reduction Act – Title X focused more strongly on disclosure and REALTOR® liability. This federal law supersedes any state laws that are not as strong. **Real Estate licensees leasing properties built before 1978 must ensure that Landlords disclose any possible lead-based paint or related hazards.** This disclosure form must be completed even in the case of an oral lease agreement. Once an offer for lease is received, the licensee representing the lessor (Landlord) must make certain a completed Disclosure of Information (from Landlord) and Acknowledgment Form (from Tenant) are attached to the lease, showing that the disclosure requirements were met. Finally, a **Federal Lead Hazard Information Pamphlet**, obtained through the National Lead Information Clearinghouse at 800-424-LEAD (5323), **must be distributed to the Tenant before leasing the property.**

The Illinois Lead Poisoning Prevention Act requires that the **Owner of any residential building cited by the state as a lead paint hazard give prospective Tenants written notice of the danger unless the Owners have a certificate of compliance.** This act is bolstered in its scope by the federal legislation noted earlier. **When a mitigation order is issued to an Owner of a building containing lead hazards, the Owner has 90 days to eliminate the hazard in a manner prescribed by state law, or 30 days if occupied by a child under the age of six or by a pregnant woman.**

RENTAL-FINDING SERVICES

Because of the nationwide demand for rental housing, caused in part by the increased mobility of the U.S. population, there has been a rapid growth in the rental-finding service industry.

In Illinois, a rental-finding service is any business that finds, attempts to find, or offers to find for any person for consideration, a unit of rental Real Estate or a lessee for a unit of rental Real Estate NOT owned or leased by the business. Any person or business entity that operates a rental-finding service must obtain a Real Estate license and comply with all provisions of the Illinois Real Estate License Act of 2000. General-circulation newspapers that advertise rental property and listing contracts between Owners or lessors of Real Estate and registrants are exempt from this requirement.

Rental-finding services are required to enter into written contracts with the parties for whom their services are to be performed. The contract must clearly disclose:

- The term of the contract
- The total amount to be paid for the services
- The service's policy regarding the refunding of fees paid in advance, and the conditions under which refunds may or may not be paid (printed in a larger typeface than the rest of the contract)
- The type of rental unit, geographic area, and price range the prospective Tenant desires
- A detailed statement of the services to be performed
- A statement that the contract shall be void, and all fees paid in advance shall be refunded, if the information provided regarding **possible rental units available is not current or accurate** (that is, if a rental unit is listed that has been rented more than 2 days ago)
- **A disclosure that information regarding possible rental units may be up to two days old**

With regard to any **individual rental unit**, a prospective Tenant must be provided with the name, address, and telephone number of the Owner, a description of the unit, monthly rent, and security deposit required, a description of the utilities available and included in the rent,

the occupancy date and lease term, a statement describing the source of the information, and any other information the prospective Tenant may reasonably be expected to need.

A rental-finding service may not list or advertise any rental unit without the express written authority of the unit's Owner or Agent.

A Real Estate licensee who violates any of these requirements will be construed to have demonstrated unworthiness or incompetence and will be subject to the appropriate disciplinary measures.

RISK MANAGEMENT

Enormous monetary losses can result from certain unexpected or catastrophic events. As a result, one of the **most critical areas of responsibility for a Property Manager is risk management.** Risk management involves answering the question, "What happens if something goes wrong?"

The perils of any risk must be evaluated in terms of options. In considering the possibility of a loss, the property manager must decide whether it is better to

- **Avoid** risk by removing the source of risk (for instance, a swimming pool may pose an unacceptable risk if a day care center is located in the building)
- **Control** risk by preparing for an emergency before it happens (installing sprinklers, fire doors, and security systems)
- **Transfer** risk by shifting the risk onto another party (by taking out an insurance policy)
- **Retain** risk by deciding that the chances of the event occurring are too small to justify the expense of any other response (an alternative might be to take out an insurance policy with a large deductible, which is usually considerably less expensive)

Types of Insurance

Insurance is one way to protect against losses. Many types of insurance are available. An insurance audit should be performed by a competent, reliable insurance agent who is familiar with insurance issues for the type of property involved. **The audit will indicate areas in which greater or less coverage is recommended and will highlight particular risks.** The final decision, however, must be made by the Property Owner.

Some common types of coverage available to income Property Owners and Managers include:

- **Fire and hazard** – fire insurance policies provide coverage against direct loss or damage to property from a fire on the premises. Standard fire coverage can be extended to include other hazards such as windstorm, hail, smoke damage, or civil insurrection.

- **Consequential loss, use, and occupancy** – consequential loss insurance covers the results, or consequences, of a disaster. Consequential loss can include the loss of rent or revenue to a business that occurs if the business's property cannot be used.
- **Contents and personal property** – this type of insurance covers building contents and personal property during periods when they are not actually located on the business premises.
- **Liability** – public liability insurance covers the risks an Owner assumes whenever the public enters the building. **A claim paid under this coverage is used for medical expenses by a person who is injured in the building as a result of the Owner's negligence.** Claims for those hurt in the course of their **employment** are covered by state laws known as **workers' compensation acts.** (A building Owner who is an employer must obtain a workers' compensation policy from a private insurance company).
- **Casualty** – casualty insurance policies include **coverage against theft, burglary, vandalism, and machinery damage as well as health and accident insurance.** Casualty policies are usually written on specific risks, such as theft, rather than being all-inclusive.
- **Surety bonds** – **surety bonds cover an Owner against financial losses resulting from employee's criminal acts or negligence while performing assigned duties.**

Many insurance companies offer **multi-peril policies for apartment and commercial buildings.** Such a policy offers the Property Manager a "package" of standard commercial coverages, such as **fire, hazard, public liability, and casualty.** Special coverage for earthquakes and floods is also available.

ESTABLISHING A SOUND LANDLORD-TENANT RELATIONSHIP

Landlords' and Tenants' interests are not mutually exclusive and the two do not need to be in constant conflict. The foundation for good Landlord-Tenant relations begins with a clear understanding of the rules and regulations and the move-in inspection. Effective servicing of the lease throughout the term of the lease further contributes to sound Landlord-Tenant relationships.

Renewals are an important goal because they **save the Owner** refurbishing costs, vacancy losses, leasing commissions, and renewed concessions. Tenants who are given diligent, fair, and equitable service will **renew their leases** for an additional term. **These economic facts can be used to convince the Owner that it is economically more advantageous to provide good service to Tenants than to concentrate on short-term financial rewards.**

The Owners want a fair return on their investment in the property, based on current market conditions. Tenants, on the other hand, want the best value for their rental dollar and all the services promised during lease negotiations. Though the Manager's first responsibility is to the

Owner, **the successful Property Manager will encourage both parties to work together, because <u>good Tenants are an asset</u>.**

Move-in Inspections

At the beginning of the tenancy, the Manager should inspect the premises with the Tenant to determine if promised repairs or alterations have been made or are in progress. **Inspecting with the Tenant is a must,** especially in a residential tenancy. **At that time, the Manager and Tenant mutually agree to the condition of the premises and note any exceptions on a "move in/move out" checklist.** Both the Manager and Tenant should sign this form, and both should have copies. **The same form is then used at the time the Tenant leaves.** Putting it in writing helps avoid potential disagreements at the end of the lease.

Clear Understanding of Lease Terms

At the outset of each tenancy, the Manager should establish a basic understanding with the Tenant on **all matters relating to the lease terms.** A Tenant brochure that outlines all policies and procedures should be given to and reviewed with each new Tenant. The Tenant should also be told of the penalties for failure to comply with building regulations.

The following topics should be addressed:

- Building rules and regulations
- Handling maintenance requests
- Procedures for paying rent
- Penalties for late payments or no payments
- Terminating the tenancy
- Security deposits

Manager's Personal Efforts

The prerequisite for a sound Manager-Tenant relationship is **reciprocal communication.** No matter the management specialty, the Manager demonstrates goodwill and availability by communicating regularly with Tenants by telephone, e-mail, or in person. A newly appointed Manager must make a special effort to meet each Tenant personally as soon as possible.

Newsletters

Monthly newsletters or notices are an excellent way of educating occupants about current market conditions, improvements being made to the property, building activities, and other events, such as the appointment or promotion of management personnel. Newsletters can be printed or distributed via e-mail. They can be simple or elaborate, but they should always be timely, accurate, and professional.

Cultivating a Sense of Pride

The astute Property Manager – whether residential, industrial, or commercial – **cultivates pride and a sense of community among the Tenants.** Living and conducting business in the building can be made as pleasant as possible by offering both **tangible and intangible benefits**. Amenities such as conference rooms, employee lunchrooms, child-care facilities, game rooms, swimming pools, and tennis courts are useful in marketing the space and in cultivating a stable tenancy.

However, the Manager's **personal efforts** can generate friendliness and loyalty among the Tenant population, even more than the amenities themselves. A little extra effort and creativity on the part of the Manager can go a long way toward developing Tenant pride and interest in the building.

OCCUPANCY STANDARDS & REGULATIONS

The lease should set forth the **rights and responsibilities of the Landlord and the Tenant.** Briefly, the Landlord is obligated to provide the property and usually reserves the right to re-enter and to collect rents.

Tenants can expect quiet enjoyment of the rental unit and are obligated to pay rent, not damage the property, and to respect the rights of other Tenants.

Building Rules

Most leases for multiple-occupancy buildings (residential or commercial) have an **auxiliary section entitled "Building Rules."** These rules are usually **made part of the lease agreement** by reference and provide a more detailed treatment of day-to-day matters, such as the Tenants' use of common areas, parking spaces, and hours of building operations. They are designed to protect the condition, reputation, and safety of the property and to promote compatibility among the occupants.

Building rules apply **to all Tenants of the same type.** They cannot be arbitrarily or selectively enforced, although rules for upper-floor residential Tenants can differ from those for ground-floor commercial stores. The Property Owner reserves the right to add to or change these rules in a reasonable manner during the term of the lease, after giving proper notice. Many residential leases likewise will have a section entitled "Rules and Regulations" that contains guidelines for parking, housekeeping, guests, party noise, and other regulative terms.

Condemnation

Most lease forms also include a clause providing for equitable cancellation of the agreement in the event that the Tenant is denied use of the property because it has been either **appropriated or condemned by a government agency.**

Compliance Clause

All leases should include a compliance clause that identifies **which party is responsible for complying with any new local, state, or federal regulations.** All leases should now contain language that allocates **compliance with the Americans with Disabilities Act (ADA) between the parties.**

Assignment and Subletting Provisions

Provided that the terms of the lease do not prohibit such activity, a Tenant has the right to assign or sublet his or her interest in the property. Assignment of a lease transfers all of the Tenant's remaining right in the property **to a third party. Subletting transfers sonly some** of the Tenant's interest (transfer of part of the premises, transfer of the premises for part of the remaining term, or a combination of both). **Most leases prohibit the Tenant from assigning or subletting the rented space without the Owner's prior written approval.** This ensures that the Owner has stable and financially secure Tenants occupying the property. State statutes, however, have been passed in some jurisdictions modifying the unlimited right to prohibit assignment.

Fire and Casualty Damage

State statutes and lease provisions for fire loss, damage, and property restoration vary widely. When drafting a lease, the Manager should keep in mind the types and amounts of insurance to be carried on the property, who will pay the premium, and who will receive the proceeds if there is a loss.

When a multiple-Tenant property is damaged or destroyed to such an extent that enjoyment of the premises is impaired, the Tenant may vacate immediately and notify the Owner in writing of the intent to terminate the lease as of the date possession was surrendered. The Owner also may be given the option to repair the damage and make a rent allowance to the Tenant for a certain period of time. **If portions of the premises are still habitable, the Tenant can vacate the unusable area and reduce the rent proportionately.** If the destruction can be tied to negligence on the part of the Owner, some state statutes allow the Tenant to recover damages.

For the Owner's protection, the Manager should be certain the lease includes a clause stating that **damage caused by a Tenant will be repaired without a rent abatement and that the Owner may take legal action against a Tenant. Most leases permit the Owner to terminate the tenancy if fire completely destroys the property's usefulness.**

TENANT'S OBLIGATIONS

The Tenant is required to take good care of the rented space, repair any damage they directly or indirectly cause, and comply with all applicable rules and laws. The terms of the lease should

demand that Tenants use all plumbing fixtures, elevators, and other facilities in a reasonable manner. Tenants should be prohibited from willfully destroying or damaging the premises, or allowing others to do so, and from disturbing the quiet enjoyment of other Tenants.

Tenant Improvements

Tenants should not be allowed to make alterations without advance written consent from the Owner, who must be informed of such alterations and protected from all liabilities arising from them. Tenants are required by law to **comply with local building and housing code provisions** regarding health and safety. **In general, most Tenant improvements to property are classified as fixtures and become part of the Real Estate.**

Commercial Tenant Improvements – Trade Fixtures

However, a commercial or industrial Tenant may be given the right to install *trade* or *chattel fixtures* for business use. These are the personal property of the Tenant and may be removed before or upon expiration of the lease agreement, **provided that the building is restored to the condition it was in when the Tenant took possession. The wording of the clause that allows the Tenant to remove trade fixtures is crucial.** Some lease forms stipulate that the **property must be restored** to the condition it was in as of "the Tenant's taking of possession" whereas others require restoration only to the condition that prevailed "as of the beginning of the lease."

The minor difference in phraseology can have a major impact on the Owner. As an example, one long-term Tenant installed fixtures during the first lease and later removed them under the terms of the third lease, which required restoration only to the beginning of the lease. The Tenant was obligated to restore only those alterations made under the third lease. Alterations made under the first lease were not covered by the terms of the last lease, so the Owner had to bear the expenses for restoration.

Security Deposit

State laws vary regarding security deposits, particularly how they can be retained, what documentation is required, and the return within a certain period of time. While security deposits are not required by law, some states have imposed a maximum amount allowed for residential security deposits.

Prompted by the Uniform Residential Landlord and Tenant Act, Illinois has passed security deposit statutes. In Illinois, Landlords are required to keep security deposits in a federally insured financial institution. In buildings less than 25 units, the Landlord is not required to pay interest on the Security Deposit. The state does not regulate the amount of the security deposit, but some municipalities, such as Chicago, designate, on a year-to-year basis, what the minimum interest rate a Landlord has to pay.

The lease should also list the amount and kind of security deposit due from the Tenant, as well as the conditions under which it will be refunded. In Illinois, if the Owner or Manger retains any or all of the security deposit to cover damages, the Owner or Property Manager must provide a list of the damages and cost to repair to the Tenant within 30 days of the end of the lease. If the Landlord or Property Manager does not provide this list within 45 days, the full security deposit must be returned to the Tenant immediately.

Personal Property

A clause should be included that **obligates the Tenant to remove personal property from the premises and to clean the rented area at the termination of the lease (broom clean).** Any property left behind is considered abandoned and may be removed from the premises at the Tenant's expense.

PROPERTY OWNER'S OBLIGATIONS

The Landlord/Manager also has certain obligations. Unless a net lease is involved, the **Owner generally is responsible for maintaining the property and to provide certain services, such as snowplowing, groundskeeping, and cleaning certain public areas.**

Disclosure and Billing

On or before the beginning of a tenancy, the Owner should disclose in writing the **name and address of the Property Manager and of the person authorized to receive legal notice on behalf of the Owner.** The lease should provide that rent, bills, and other notices can be sent to the Tenant by registered mail, left at the premises, or delivered personally, as long as they are submitted at the appropriate times.

Quiet Enjoyment

The Owner or Property Manager grants the Tenant a covenant for quiet enjoyment as one of the major benefits in the lease. This right to use also implies a right to possession. Because the Tenant is thereby given the exclusive use and possession of the space, **the terms of the lease must limit the cases in which the Owner or Manager is allowed on the premises.** Most leases allow the Owner to enter in **emergencies and for necessary or agreed-upon repairs** and **to show the space to prospective Tenants** for a given period **near the end of the lease.** A clause should be included to permit showing prospective Buyers the property, in the event the property is place on the market for sale.

Agents managing residential properties should be familiar with the state and local **residential Landlord and Tenant law that may limit the Agent's ability to enter the residence at will.** The Manager should be aware of all applicable notice requirements.

Maintaining the Premises

The lease and state statutes often indicate that maintenance and repairs are the responsibility of the Owner. Most residential and commercial leases, and even some industrial leases, hold the Owner responsible for all repairs necessary to keep the premises fit for use. The Owner or Owner's Agent must comply with local building and housing codes by maintaining in good operating condition all elevators and other facilities, as well as electrical, heating, and plumbing systems.

Unless the property is very small or under a net lease, the **Owner tends to the upkeep of common areas, trash removal, window cleaning, and other services promised in the lease terms. Running water, a reasonable amount of hot water, and heat during the required season are usually supplied by the Owner unless the Tenant has exclusive control over these installations** or unless the building is not required by law to be equipped for these purposes.

Under some leases, the Owner must furnish utilities; in others, such as the triple net lease, the Tenant must pay for any or all utility services. If sub-metering is legal, the Owner may buy utilities such as electricity at a lower rate and resell them to the Tenants at the prevailing rate.

The Manager should try to draft a lease that relieves the Owner of responsibility for maintaining the premises and supplying service if compliance is prevented by conditions beyond his or her control. The lease should further state that if the property is sold, the obligations of the Owner cease as of the date of sale, except for the responsibility to return or transfer security deposits to the new Owner.

TENANT'S REMEDIES FOR NONCOMPLIANCE

Tenants have rights when the Landlord/Agent cannot fulfill the lease obligations.

Noncompliance with rental agreement

If the Owner or Property Manager fails to perform the required duties, the Tenant may sue for damages or terminate the lease, by giving the Owner the specified notice for breach of contract. Many leases require the termination proceedings to stop if the Owner or Property Manager begins a good faith effort to remedy the breach by the deadline stated in the termination notice. Remedies will vary depending on the lease. For example, under most residential leases, if the Owner or Property Manager fails to perform the required duties, the Tenant may sue for damages or terminate the lease by giving the Owner the specified notice for breach of contract. **The law may require the termination proceedings to stop if the Owner or Property Manager begins a good faith effort to remedy the breach by the deadline stated in the termination notice.**

If corrective action is not taken within the specified time, the Tenant can sue for damages, obtain a court injunction directing the Owner to remedy the breach, or terminate the tenancy. If the Owner's noncompliance is willful, the Tenant may also recover reasonable attorney's fees. Again, state statutes and the wording of the lease agreement in effect will affect the procedures and outcomes in any situation.

Failure to Deliver Premises

Some states require the Owner to convey only the right of possession of the leased premises to the Tenant. In others, the Owner must grant actual occupancy. If the right to possession or actual possession is not conveyed, the Tenant does not have to pay rent. The Tenant can terminate the rental agreement or sue for specific performance and thereby obtain possession, reasonable damages, and attorney's fees. **It is not uncommon for a Property Manager to be unable to deliver possession because the previous Tenant has not vacated the premises or because repairs and alterations have not been completed.**

Failure to Supply Essential Services

Constructive eviction occurs when the Tenant must **abandon the premises** due to **Owner's negligence in supplying essential services.** Examples of constructive eviction include **failure to supply heat or water, failure to repair premises, or other major defaults that render the premises unusable by the Tenant**. Constructive eviction is recognized by most state courts as the basis for termination of the lease, for an eviction to recover possession, or for a suit for damages. For the Owner's protection, the lease should require the **Tenant to give notice** for any failure and **all the Owner time to remedy the situation** before the Tenant claims constructive eviction. Some state statutes prohibit the cutoff of utilities to residential Tenants even if rent or utility payments are owed to the Owner.

OWNER'S REMEDIES FOR NONCOMPLIANCE

Tenants can lose their lease if they do not comply with the rental agreement, **such as not paying their rent on time or not at all, seriously damaging the property, annoying other Tenants by excessive sound, etc.**

Noncompliance with Rental Agreement

The Landlord is provided with certain remedies in case the Tenant fails to meet the terms of the lease. According to most leases, the Owner may deliver **written notice** to the Tenant within a specified period, stating the nature of the contract breach and calling for a good faith effort on the Tenant's part to **repair the breach within a reasonable time** to prevent termination of the lease. In Illinois, a **5-day notice applies to monetary breaches and a 10-day notice applies to non-monetary breaches** on the part of the Tenant.

The lease should further state that if the Tenant's noncompliance can be remedied by the repair or replacement of damaged items and the Tenant does not make such repairs within a reasonable time after the notice is given, the Owner or Owner's Agent may enter the premises and have the necessary work performed. An itemized bill for the actual and reasonable cost of the work then may be presented to the Tenant, due with the next rental payment. The lease also should provide that if the Owner chooses to terminate the lease, the bill comes due immediately on presentation.

Suit for Eviction

Eviction proceedings can be brought against a Tenant for several reasons:

- **Nonpayment of rent**
- **Illegal possession of the premises after termination of the lease**
- **Unlawful use of the premises**
- **Nonpayment of charges attributed to the Tenant under the terms of the lease**
- **Certain other breaches of the lease contract**

When a Tenant has failed to perform in one of these areas, the Owner may file a **court suit for recovery of the premises** after giving the Tenant required legal notice.

This proceeding is commonly known as a suit for eviction, a suit for possession, or a **forcible entry and detainer suit in Illinois.** If the court issues a judgment decree for possession in favor of the Owner, the Tenant must peaceably leave or the Owner can have the decree enforced by an officer of the court, who will then forcibly remove the Tenant and the Tenant's belongings. This process is known as actual eviction.

Default

Because statutes regarding a Tenant's default under the terms of the lease vary from state to state, the lease should include a clause to the effect that if the Tenant defaults on rent payments, the Owner or Manager can terminate the tenancy.

Bankruptcy

Because of changing federal bankruptcy laws and court decisions, Property Managers should review bankruptcy default clauses in leases with an attorney. Advice should be sought to determine proper procedures to follow if a Tenant declares bankruptcy.

Illegal Activities

Language in the lease should be very **clear prohibiting certain activities such as drug trafficking, felony crimes, or threatening other Tenants or the Manager.**

LEASE RENEWALS

Bargaining Factors

Market conditions at the time of expiration will exert a strong influence over the concessions or terms granted under the new lease. In general, bargaining will center on

- The length of the new lease term
- The extent of repairs, alterations, or redecorating to be done
- The amount of rent to be paid

Concessions

The actual negotiation of lease renewals follows the same basic pattern as that used to obtain the initial rental agreement. If the general economic trend is inflationary, the Manager should probably push for an increased rental rate and a short-term lease or for an escalation clause. During a deflationary trend the Manager should favor a longer-term lease to secure the current higher rental rate for as long as possible. **The Tenant usually will expect to receive a cheaper monthly rent in return for signing a longer lease at a fixed rent rate, in any type of economic conditions.**

Construction

The extent of repairs, alterations, or redecorating to be done will be influenced by market conditions, particularly by the competition in the market, and the Manager will have to be current on concessions being offered by competitors. If an alteration desired by a Tenant will become a permanent improvement to the property, the Manager may be able to charge it to a previously allocated fund, which could allow some flexibility in the rental rate.

Proper Notice

The Manager can avoid the irritation, inconvenience, and legal complications of a holdover tenancy by **communicating with the Tenant well before the lease expires** and discussing any changes desired by the Owner. Residential Tenants can be approached **about 90 days before lease expiration,** but commercial and industrial Tenants should be contacted from **six months to a year** before the expiration date.

RENT INCREASES

A 100-percent occupancy level may indicate that the rental schedule for the building is too low in comparison to the area market and that it is time for an increase. Before deciding on any increase, the Manager or Leasing Agent **should survey the market** to establish **a market rent schedule** for the property. Although it may be easier to communicate rent increases to Tenants based on increased expenses, ultimately the Tenant will tolerate the increase if pricing is competitive with the market.

TERMINATING THE TENANCY

Required Notice

Notice of intent to vacate must be given within a certain period, which should be specified in the terms of most lease agreements. A letter from the Manager outlining the procedures Tenants should follow when terminating their tenancy can avoid many misunderstandings. Sometimes Tenants are poorly informed as to the notice required and details they must follow when vacating their space. **The letter should include a checklist for the Tenant, detailing the expected cleaning, post-occupancy inspections, return of security deposit, etc.**

If a good Tenant decides to move, the Manager should contact him or her immediately to find out whether the decision was prompted by any oversight on the part of management. If so, the Manager should ascertain if the situation can be corrected, thereby retaining a valuable Tenant. Even if the Tenant's decision is irreversible, the Manager should note the reasons behind it and file them for future reference.

Exit Interview

An exit interview between Manager or Leasing Agent and Tenant should be made in person, if possible, and should be a routine procedure. **By analyzing the responses of all Tenants who have moved recently, the Manager can better understand the reasons behind the Tenant turnover**

Refusal To Renew

The manager may refuse to renew a lease by giving the Tenant appropriate notice of termination. This procedure can be used in lieu of the more expensive and time-consuming court eviction suit, provided the Tenant's conduct is not too destructive and the remaining lease term is short.

To stay on firm legal footing, **the Manager who does not renew a lease should have demonstrable proof of just cause for the refusal.** It is important for a Property Manager to document all events and situations which may, in the future, result in a decision to refuse to renew a lease or for use in court for an eviction case. Such termination may not be based on the Tenant's race, color, religion, national origin, sex, familial status, or handicap. Additionally, the Manager is prohibited from serving notice in retaliation for the Tenant's complaints to the authorities about building health and safety issues.

Inspection of the Premises

Whenever either party terminates a lease, the **Manager should inspect the space with the Tenant after the Tenant has removed all personal items and document the condition of the apartment through photos or videos.** Whenever possible, the Manager should **use the same form used for move-in**, the one that had been signed by both the Tenant and the Manager, to

determine if any damage has been done to the property and if the unit is being returned in reasonable condition. **The Tenant should also be required to sign the inspection checklist on move-out.** Any deductions to be made from the security or cleaning deposits can be calculated at this time, accompanied with pictures of the damage to be repaired.

Return of the Security Deposit

Typically, state and/or local laws provide a detailed procedure for returning a security deposit. Generally, the Landlord must account for how the security deposit is returned or retained within a certain period after the lease is terminated. Many states require that the reasons be documented in writing. A security deposit may usually be applied towards damages or required repairs to the property. In Illinois, the Landlord must provide the Tenant with the list of repairs and costs within 30 days of the end of the lease, if the Landlord is withholding the security deposit to pay for part or all these costs. If the Landlord does not provide this list and estimated costs by 45 days after the end of the lease, the Landlord must immediately return the security deposit to the Tenant at that time.

Retention for Damages

Acceptable grounds for keeping part or all of the security deposit typically include

- **Damages to the premises**
- **Unauthorized, non-standard, or irreversible decorating**
- **Excessive cleaning expenses**
- **Unauthorized alterations**

Charges made against the security deposit must be documented to establish the case against the Tenant. Other documentation may include pictures of the damage or contractors' bills to clean or repair the premises.

Last Month's Rent

In the past, residential Tenants sometimes used security deposits as the last month's rent, but current leases in Illinois forbid this practice. One Manager made the security deposit a different amount than the monthly rent and Tenants stopped thinking of it as rent. **Where Landlords do not utilize a security deposit, but instead require a non-refundable move-in fee, the Tenants do not have any invested money that they can utilize to cover the last month's rent.** A large number of Landlords in Illinois are now utilizing a move-in fee in place of security deposits. Security deposit legislation also covers the handling of security deposits when the Ownership of dwelling units changes. Under the law, the person holding a security deposit must either return the deposit to the Tenant or transfer it to the new Owner, while giving notice to the Tenant. Property Managers and Landlords are subject to the same escrow account regulations as Sponsoring Brokers who utilize an escrow account for sale transactions.

TERMINATING THE TENANCY IN COURT

Unfortunately, from time to time, Tenants violate the building rules or do not pay their rents. Sometimes they are involved with criminal activities on the property. In these cases, the Manager must take legal action on behalf of the Owner. Allowing nonpaying Tenants or Tenants involved in illegal activities to remain will only prolong the problem.

Reasons for Eviction

In addition to nonpayment of rent, other permissible grounds for eviction of a Tenant include breaches in the other terms of the lease agreement, as discussed in Chapter 5. If no written lease is in effect, ground for eviction usually include:

- **noncompliance with building rules**
- **misrepresentation or fraud**
- **violation of the law**
- **excessive occupants on the premises**
- **excessive use of utilities**
- **abuse of fixtures**
- **illegal drug activity**
- **unauthorized pets**

Notice Before Eviction Suit

If possible, before legal action can be taken, **the Tenant must always be given notice of the breach or improper conduct and an opportunity to rectify the situation.** There may be some situations where this in not possible, such as assigning or subletting without consent or if the breach violates the law, as in illegal drug usage. Then, if the Tenant fails to make a good faith effort to correct the situation, the Manager may initiate eviction proceedings and obtain a judgment decree for possession of the premises.

Note: The Federal Government and many states have passed laws regarding the seizure and forfeiture of properties that are the sites of illegal drug activities, whether the Owner knew of such activities. Special care should be taken when evicting Tenants for illegal drug activities; it would be wise to consult an attorney.

Notice in Illinois

5-day notice – for monetary breach of lease
10-day notice – for non-monetary breach of lease

Eviction Suit

The Manager should be aware of not only state statutes but also the local rules that may apply. Use of an experienced Eviction Lawyer can speed up the process and avoid delays associated

with filing the wrong forms, etc. State statutes dictate the minimum number of days before suit can be filed, what notice must be given, and the forms that must be filed. In many cases, a delinquent Tenant will accept the Landlord's notice to move from the rented premises, but **in the event the Tenant does not leave voluntarily, it will be necessary to file a legal action for possession.** Under most statutes, this action is filed in the court of lowest jurisdiction, such as small claims or magistrate's court.

Eviction Process

Notice of the filing of an eviction suit must be served on the Tenant, and service must be made according to applicable state law. If the Tenant fails to appear at the court hearing, a default judgment is given to the Landlord. If a Tenant appears in order to contest the notice, a trial must be held to determine the matter.

Actual Removal

Once the court gives a judgment returning possession to the Landlord, or the Landlord is successful at a trial, the Property Manager must determine whether the Tenant has physically left the premises. If the Tenant has moved out and left nothing of value behind, the Owner may take possession and re-rent the property. **If the Tenant refuses to vacate the property even after the court rules for the Landlord, the Landlord must secure a court order and the sheriff or constable serving the court will physically remove the Tenant from the property.**

CHAPTER 5: LEASES

LEASING AGENTS

The Illinois Real Estate License Act of 2000, Section 5-5 through Section 5-10, provides for a **limited-scope license for individuals who wish to engage *solely* in activities related to the leasing of residential real property.** For instance, the following activities would appropriately fall under this limited license, if the licensee did not engage in any other Real Estate activities (such as marketing single-family homes):

- leasing or renting residential real property
- collecting rent for residential real property
- Attempting, offering, or negotiating to lease, rent, or collect rent for the use of residential real property

The Act establishes specific qualifications and educational requirements for Leasing Agents, including a written examination.

LEASING REAL ESTATE

A lease is a contract between an Owner of Real Estate (the lessor) and a Tenant (the lessee). It is a contract to **transfer the lessor's rights to exclusive possession and use of the property to the Tenant for a specified period.** The lease establishes the **length of time** the contract is to run and the **amount** the lessee is to pay for use of the property. Other rights and obligations of the parties may be set forth as well.

In effect, the lease agreement combines 2 contracts:

1. **It is a conveyance of an interest in the Real Estate.**
2. **It is a contract to pay rent and assume other obligations.**

The lessor grants the lessee the right to occupy the Real Estate and use it for purposes stated in the lease. In return, the Landlord receives payment for use of the premises and retains a reversionary right to possession after the lease term expires. The lessor's interest is called a **leased fee estate plus reversionary right.**

The statute of frauds in Illinois requires that lease agreements be in writing to be enforceable in court if they are for more than one year. Written leases should be signed by both lessor and lessee.

ORAL LEASES OF LESS THAN ONE YEAR IN DURATION ARE ENFORCEABLE IN COURT. THIS IS THE ONLY EXCEPTION OF THE RULE THAT ALL REAL ESTATE CONTRACTS IN ILLINOIS MUST BE IN WRITING TO BE ENFORCEABLE IN COURT.

LEASEHOLD ESTATES

A Tenant's right to possess Real Estate for the term of the lease is called a leasehold (less-than-freehold) estate. **A leasehold is generally considered personal property.** Just as there are several types of freehold (Ownership) estates, there are different kinds of leasehold estates.

Estate for Years

An estate (tenancy) for years is a leasehold estate that continues for a *definite period of time.* That period may be **years, months, weeks, or even days.** And estate for years (sometimes referred to as fixed term tenancy) always has **specific beginning and ending dates.**

When the estate expires, the lessee is required to vacate the premises and surrender possession to the lessor. **No notice is required to terminate the estate for years** because the lease agreement states a **specific expiration date.** When the expiration date comes, the lease expires, and the Tenant's rights are extinguished.
If both parties agree, the estate for years **may be terminated** before the expiration date. **Otherwise, neither party may terminate without showing that the lease agreement has been breached.** Any extension of the tenancy requires that a new contract be negotiated.

As is characteristic of all leases, a tenancy for years gives the lessee the right to occupy and use the leased property according to the terms and covenants contained in the lease agreement. It must be remembered that a **lessee has the right to use the premises for the entire lease term.** That right is **unaffected by the original lessor's death or sale of the property,** unless the lease states otherwise.

Estate from Period to Period

An **estate from period to period, or *periodic tenancy,*** is created when the Landlord and Tenant enter into an agreement for an **indefinite time**. That is, the **lease does not contain a specific expiration date.** Such a tenancy is created for a specific payment period – for instance, month to month, week to week, or year to year – but **continues *indefinitely* until proper notice of termination is given**. Rent is payable at *definite* intervals. A periodic tenancy is characterized by continuity because it is ***automatically renewable under the original terms of the agreement until one of the parties gives notice to terminate.*** In effect, the **payment and acceptance of rent extend the lease for another period.**

An estate from period to period also might be created when a Tenant with an estate for years remains in possession, or hold over, after the lease term expires. If no new lease agreement has been made, a **holdover tenancy** is created. **The Landlord's acceptance of rent** usually is considered conclusive **proof of acceptance of the periodic (holdover) tenancy.** The courts customarily rule that a Tenant who holds over can do so for a **term equal to the term of the original lease,** provided the period is for **one year or less**. For example, a Tenant with a lease

for six months would be entitled to a new six-month tenancy. **However, if the original lease were for five years, the holdover tenancy could not exceed one year.** Some leases stipulate that in the absence of a renewal agreement, a Tenant who holds over does so as a **month-to-month** Tenant and can then be **terminated with a 30-day notice.**

Notice Required to Terminate Periodic Tenancy

The following notices are required by Illinois statute

- **Tenancy from year to year** – **At least 60 days' written notice** is required at any time within the four-month period prior to the last 60 days of the lease period.
- **Tenancy from month to month** – In *any* periodic estate having a term of less than year to year but greater than week to week, **30 days' written notice** is required.
- **Tenancy from week to week** – **7 days' written notice is required**

Estate at Will

An **estate** (tenancy) **at will** gives the Tenant the right to possess property *with the Landlord's consent* for an unspecified or uncertain term. An estate at will is a tenancy of indefinite duration: it continues until it is terminated by either party giving proper notice. No definite initial period is specified, as is the case in a periodic tenancy. An estate at will is automatically terminated by the death of either the Landlord or Tenant. It may be created by express agreement or by operation of law. During the existence of a tenancy at will, the Tenant has all the rights and obligations of a lessor-lessee relationship, including the duty to pay rent at regular intervals.

Estate at Sufferance

An **estate** (tenancy) **at sufferance** arises when a Tenant **who lawfully possessed real property continues in possession of the premises *without* the Landlord's consent after the rights expire.** This is also known as a **holdover**. This estate can arise when a **Tenant for years fails to surrender possession** at the lease's expiration and continues until the Landlord completes the eviction process. This estate can also arise when a **Tenant is in breach of the lease, has been informed of the breach, and has not *cured* the breach** within time limits specified by Illinois law.

In Illinois, a Landlord has the option of considering an **estate at sufferance** (a holdover Tenant's action) as being a **willful withholding of possessions,** in which case the Landlord is entitled to **charge double rent.**

QUALIFYING TENANTS

Lease Application

All interested prospects, whether residential, industrial, or commercial, should be required to complete a written lease application. The manager should retain these completed applications

for the term of the tenancy. **The forms should be saved even if the Tenant does not lease as they can provide written evidence that the Manager has accepted Tenants based on sound business reasons, and not in an illegal discriminatory way.** This is particularly important in residential leasing. The lease application form is critical as the Manager requires additional information before making a final decision to lease to this particular applicant. The form should be clear, concise, and consistent and cover as many topics as necessary for the **Manager and Owner to make an informed decision to accept or reject this applicant.** When dealing with a company or organization, the Manager should always attempt to work with the person who has authority to enter into contractual agreements on behalf of that company or organization.

A residential lease application gathers information and also includes **acknowledgment from the Tenant that the Landlord may verify all information found on the application.** The application includes **permission to verify not only rental history but also court and criminal records.**

All Tenants must be financially sound, but especially commercial and industrial Tenants because of the greater net worth of the lease. The application asks for business location, organizational structure, and banking references. Space requirements and any other special needs should be discussed before starting the lease application.

Evaluation of Data

Identity

It is important to verify the identity of a residential or commercial applicant. **At the very least, the prospect must provide some form of identification (individually or as a company or organization), a rental history, financial status, and several references.** Residential prospects can supply a government-issued picture ID. Business prospects may be asked for a summary of their long-range business objectives. Most lease applications include a request to allow the Manager to check not only the applicant's credit history but also their criminal history.

Rental History

The stability of the Tenant's rental history will influence the Manager's or Owner's final decision. Unless there are valid reasons for doing so, a family or a company moving frequently is often considered a poor rental risk. It is expensive to have a constantly changing pool of Tenants, so the **Manager should seek a family or company that will stay for a long time.**

Financial Status

It is in the Owner's best interests to verify references given on the application. The rationale behind validating a prospect's financial references is simple. Slow or erratic payers generally retain this pattern when making mortgage or rental payments, whereas prompt and steady payers are consistent in meeting their obligations. **A prospective Tenant with a history of erratic and delinquent payments should be turned down.** If there are only one or two lapses in

an otherwise satisfactory record, though, the prospect should be invited to explain these lapses before a final decision is made.

Residential
Brief phone calls to banking and employment references used to be sufficient, but today **most Managers rely on a credit report.** To avoid any appearance of any illegal discriminatory practices in violation of Fair Housing laws, the Manager must show consistency. In other words, the **Manager should require a credit report from every applicant if required of one.**

Credit Report
A credit report may be obtained legally **only with the applicant's consent** and is a history of how a person pays his or her bills. Therefore, the Property Manager must set up a procedure for obtaining permission (a permission form is usually completed as part of the application paperwork). **Many Managers charge a non-refundable "application fee" to help defray the costs involved in obtaining a credit report. If the fee is non-refundable, then this should be stated clearly on the application form.**

The credit bureau will send the Manager a report on the financial reliability of the prospect. This statement is an itemization of the status of the prospect's past and current accounts, usually identified by industry (e.g., bank and department store). The report will note bankruptcies, collections, charge-off accounts, and current obligations. The quantity and dates of all payments are listed on the report along with an indication of their regularity. The letter indicates the type of account (open, revolving, installment) and the number refers to the payment pattern.

Managers want to know even more about the prospect. **A number of companies specialize in searching public records on behalf of the Owner or Property Manager.** These searches can include **past rental performance history, nationwide credit reports, and outstanding bad check reports, as well as criminal history reports.** Rental performance histories contain information such as **evictions, past due balances, noise complaints, insufficient funds checks, and damages to the rental unit.**

LEASE AGREEMENTS

Requirements of a Valid Lease

A lease is a form of contract. To be valid, a lease must meet essentially the same requirements as any other contract:

- **Capacity to contract –** The parties must have the legal capacity to contract.
- **Legal objectives –** The objectives of the lease must be legal.
- **Offer and acceptance –** The parties must reach a mutual agreement on all the terms of the contract.

- **Consideration –** The lease must be supported by valid consideration.

Rent is the normal consideration given for the right to occupy the leased premises. However, the **payment of rent is not essential as long as consideration was granted in creating the lease itself.** Sometimes, for instance, this **consideration is labor performed on the property.**

Because a lease is a contract, it is not **subject to subsequent changes** in the rent or other terms unless these **changes are in writing and executed in the same manner as the original lease.**

The leased premises should be clearly described. If the lease is for part of a building, such as an apartment, the space itself or the apartment designation should be described specifically. If supplemental space is to be included, the lease should clearly identify it.

Possession of Premises

The lessor, as the Owner of the Real Estate, is usually **bound by the implied covenant of quiet enjoyment.** The covenant of quiet enjoyment is a presumed promise by the lessor that the lessee may take possession of the premises. **The Landlord further guarantees that he will not interfere in the Tenant's possession or use of the property.** The lease may allow the Landlord to enter the property to perform maintenance, to make repairs, or for other stated purposes. The Tenant's permission is usually required.

If the premises are occupied by a holdover Tenant or an adverse claimant at the beginning of the new lease period, the Landlord must initiate the eviction process to obtain possession in Illinois.

Use of Premises

A lessor may restrict a lessee's use of the premises through provisions included in the lease.

Use restrictions are particularly **common in leases for stores or commercial space.** For example, a lease may provide that the leased premises are to be used "only as a Real Estate office and for no other purpose." In the absence of such clear limitation, a lessee may use the premises for any lawful purpose.

Term of Lease

The term of a lease is the period for which the lease will run. It should be stated precisely, including the beginning and ending dates, together with a statement of the total period of the lease. For instance, a lease might run "for a term of 30 years beginning June 1, 2011, and ending May 31, 2041." A perpetual lease for an inordinate amount of time or an indefinite term usually will be ruled invalid.

Security Deposit

Most leases require that the Tenant provide some form of security deposit to be held by the Landlord during the lease term. **If the Tenant defaults on payment of rent or destroys the premises, the lessor may keep all or part of the deposit to compensate for the loss.** Some state laws set maximum amounts for security deposits and specify how they must be handled. Some prohibit security deposits from being used for both nonpayment of rent and property damage. Some require that lessees receive annual interest on their security deposits.

In Illinois, Landlords who receive security deposits on residential leases of units in properties containing *five or more units* may not withhold any part of a security deposit as compensation for property damage unless they give the Tenant an itemized statement listing the alleged damage. This statement must be delivered within 30 days of the date on which the premises are vacated.

If the statement is not furnished, the Landlord must return the entire security deposit within 45 days of the premises being vacated. Any Landlord who is found by a court to have failed to comply with this requirement, or who has done so in bad faith, must pay the Tenant double the security deposit due plus court costs and attorney's fees.

Illinois lessees are entitled to receive annual **interest on their security deposits.** Landlords who receive security deposits on **residential leases of units in properties of 25 or more units,** on deposits **held for more than six months,** are required to **pay interest from the date of the deposit** at a rate equal to the interest paid on a minimum deposit passbook savings account of the state's largest commercial bank (measured by total assets) with its main banking facilities located in Illinois. Any Landlord who is found by a court to have willfully withheld interest on a Tenant's security deposit must pay the Tenant an amount equal to the security deposit plus the Tenant's court costs and attorney's fees.

NOTE: CHICAGO'S SECURITY DEPOSIT RULES AND INTEREST RATES ARE GOVERNED BY THE CHICAGO RESIDENTIAL LANDLORD AND TENANT ORDINANCE.

A lease should specify whether a payment is a security deposit or an advance rental. If it is a security deposit, the Tenant is usually not entitled to apply it to the final month's rent. If it is an advance rental, the Landlord must treat it as income for tax purposes.

Improvements

Neither the Landlord nor the Tenant is required to make any improvements to the leased property. The Tenant may, however, make improvements with the Landlord's permission. In most residential properties, any alterations become the property of the Landlord. **However, in many commercial leases, Tenants are permitted to install trade fixtures,** those articles

attached to a rental space that are required by Tenants to conduct their businesses. **Trade fixtures may be removed before the lease expires, provided the Tenant restores the premises to their previous condition, with allowance for the wear and tear of normal use.**

Accessibility

The federal Fair Housing Act makes it illegal to discriminate against prospective Tenants on the basis of physical disability. **Tenants with disabilities must be permitted to make reasonable modifications to a property at their own expense.** However, if the modifications would interfere with a future Tenant's use, **the Landlord may require that the premises be restored to their original condition at the end of the lease term at the Tenant's expense. The Landlord can require that an amount to cover the restoration be held in an escrow account.**

Maintenance of Premises

Many states require a lessor of residential property to **maintain the dwelling units in a habitable condition.** Landlords must make any necessary repairs to common areas such as hallways, stairs, and elevators, and they must maintain safety features such as fire sprinklers and smoke alarms. The Tenant does not have to make any repairs but must return the premises in the same condition they were received, with allowances for ordinary wear and tear.

The Illinois Supreme Court first confirmed the concept of an implied warranty of habitability in residential tenancies in 1972. Since then, Illinois courts have repeatedly confirmed and amplified the warranty. A Landlord must deliver and maintain throughout the duration of the lease any residential leasehold free from defects that would render the use of the dwelling "unsafe or unsanitary" and unfit for human occupancy. Nothing may be present on the premises that could seriously endanger the life, health, or safety of the Tenant.

The conditions that violate the implied warranty of habitability vary depending on the state and jurisdiction where the premises are located. Generally, a Landlord can be in violation by failing to provide access to:

- Drinkable and hot water
- Heat during cold weather
- Working electricity
- A smoke detector
- A working bathroom and toilet
- Removal of rodent or insect infestation
- Building code violations

A Tenant must give the Landlord **notice of a defect and reasonable time in which to cure it.** As a **remedy**, the Tenant may choose to

- **Move out and terminate the lease** if repairs are not made within a reasonable time

- **Stay and repair the problem him/herself** and deduct the repair costs from the next month's rent (repair costs cannot exceed one month's rent)
- **Sue for any damages** resulting from the defective condition

The obligation to pay rent for damaged or destroyed premises differs depending on the type of property and the lease. Usually, residential Tenants are permitted to reduce their rent payments in proportion to the amount of space they are unable to use. Likewise, Tenants who lease only part of a building, such as office or commercial space, generally are not required to continue to pay rent after the leased premises are destroyed. In fact, in some states, if the property was destroyed as a result of the Landlord's negligence, the Tenant can recover damages.

Assignment and Subleasing

When a Tenant transfers all his leasehold interests by leasing them to another person, the lease has been *assigned*. The new Tenant is legally obligated for all the promises the original Tenant made in the lease.

When a Tenant transfers less than all the leasehold interests by leasing them to a new Tenant, the original Tenant has subleased (or sublet) the property. The original Tenant remains responsible for rent being paid by the new Tenant and for any damage done to the rental during the lease term. The new Tenant is responsible only to the original Tenant to pay the rent due. **Assignment and subleasing are only allowed when a lease specifically permits them.** In both assignments and subleases, details of the new arrangement should be in writing.

In most cases, the sublease or assignment of a lease does not relieve the original lessee of the obligation to pay rent. The Landlord may, however, agree to waive the former Tenant's liability. **Most leases prohibit a lessee from assigning or subletting without the lessor's consent.** This permits the lessor to retain control over the occupancy of the leased premises. As a rule, the lessor must not unreasonably withhold consent. **The sublessor's (original lessee) interest in the Real Estate is known as a sandwich lease.**

Non-Disturbance Clause

A non-disturbance clause is a **mortgage clause** in the Landlord's mortgage document, stating that the lender agrees **not to terminate the tenancies of lessees who pay their rent should the lender foreclose on the Landlord's building.**

Options

A lease may contain an **option that grants the lessee the privilege of renewing the lease (called a renewal option).** Some leases grant the lessee the **option to purchase** the leased premises (**called a purchase option**). This option normally allows the Tenant the right to

purchase the property at a pre-determined price (sometimes) within a certain time period, either during the lease or a short time after the lease has expired.

The lease might also contain a **right of first refusal clause,** allowing the Tenant the opportunity to buy the property **before the Owner accepts an offer from another party.** Although it is not required, the Owner may give the Tenant credit toward the purchase price for some percentage of the rent paid. The lease agreement is a primary contract over the option to purchase.

TYPES OF LEASES

The manner in which rent is determined indicates the type of lease that exists. There are three basic types of leases:

1. **Gross lease**
2. **Net lease**
3. **Percentage lease**

Gross Lease

In a gross lease, the Tenant pays a **fixed rent**, and the Landlord pays all taxes, insurance, repairs, utilities, etc., connected with the property (usually called *property charges* or *operating expenses*).

THIS IS TYPICALLY THE TYPE OF RENT STRUCTURE INVOLVED IN APARTMENT RENTALS.

Net Lease

In a net lease, the Tenant pays a base rent and **all or some of the property charges,** depending on whether they are a single Tenant in the building or one of many Tenants in a building. The monthly base rental is net income for the Landlord after operating costs have been paid by the Tenants, not including debt service. Leases for entire commercial or industrial buildings and the land on which they are located, ground leases, and long-term leases, are usually net leases.

In a triple-net lease, or net-net-net lease, the Tenant pays *all operating and other expenses* in addition to the base rent. These expenses include:

- CAM – common area maintenance and building operating expenses
- Taxes – usually property taxes but could be other taxes
- Insurance – casualty, liability, etc.

Percentage Lease

Either a gross lease or a net lease may be a **percentage lease.** The rent is based on a minimum **fixed rental fee – base rent – plus a *percentage* of the annual gross income received by the Tenant doing business on the leased property.** This type of lease is used for **retail businesses and restaurants**. The percentage charged is negotiable and varies depending on the nature of

the business, the location of the property, and general economic conditions. It is usually calculated at the end of the year and is payable in one payment.

Variable Lease

Several types of leases allow for increases in the base rent during the lease periods. One of the more common is the graduated lease, which provides for specified base rent increases at set future dates. Another is the index lease, which allows the base rent to be increased or decreased periodically, in relation to changes in the consumer price index or some other indicator.

Ground Lease

When a Landowner **leases unimproved land** to a Tenant who **agrees to erect a building** on the land, the lease is usually referred to as a ***ground lease.*** Ground leases usually **involve separate Ownership of the land and buildings.** These leases must be for a long enough term to make the transaction desirable to the Tenant investing in the building and often run for terms of 50 years up to 99 years. **Ground leases are generally net leases. The lessee must pay rent on the ground as well as Real Estate taxes, insurance, upkeep, and repairs.**

DISCHARGE OF LEASES

As with any contract, a lease is discharged when the contract terminates. Termination can occur when **all parties have fully performed their obligations** under the agreement. In addition, the parties may **agree to cancel the lease.** If the Tenant, for instance, offers to surrender the leasehold interest and the Landlord accepts the Tenant's offer, the lease is terminated. A Tenant who simply **abandons** leased property **remains liable for the terms of the lease – including the rent.** The terms of the lease will usually indicate **whether the Landlord is obligated to try to re-rent the space, which is the case in Illinois.** If the Landlord intends to sue for unpaid rent, Illinois requires an attempt to **mitigate damages by re-renting the premises to limit the amount owed.**

The lease does not terminate if the parties die or if the property is sold. There are two exceptions to this general rule:

- **Life estate –** a lease from the Owner of a *life estate* ends when the Tenant's life ends
- **Tenancy at Will –** the death of either party terminates a *tenancy at will*

In all other cases, the heirs of a deceased Landlord are bound by the terms of existing leases.

If leased Real Estate is sold or otherwise conveyed, the new Landlord takes the property subject to the rights of Tenants. A lease agreement may, however, contain language that permits a new Landlord to terminate existing leases. **The clause, commonly known as a sale clause, requires that the Tenants be given some period of notice before the termination.** Because the new Owner has taken title subject to the rights of the Tenants, the sale clause

enables the new Landlord to claim possession and negotiate new leases under his own terms and conditions. A tenancy may also be **terminated by operation of law, and in a bankruptcy or condemnation proceeding.**

Breach of Lease

When a Tenant breaches any lease provision, the Landlord may sue the Tenant to obtain a judgment to cover past-due rent, damages to the premises, or other defaults. When a Landlord breaches any lease provision, the Tenant is entitled to certain remedies. The right and responsibilities of the Landlord-Tenant relationship are usually governed by state law.
If a Tenant defaults on the payment of rent, the Landlord has two options:

- **Five Day Notice – Monetary Breach –** He may elect to serve the Tenant with **five days' written notice,** demanding **payment of the delinquent rent within five days after the notice is received.** If the Tenant fails to pay the rent, the Landlord may terminate the lease automatically and sue for possession, without further notice. If the Tenant pays the past-due rent, the lease continues in full force.
- **Ten Day Notice – Non-Monetary Breach –** Alternatively, (and in cases in which the Tenant's breach is **other than non-payment of rent**) the Landlord may terminate the tenancy by serving the Tenant with **ten days' notice,** including a demand for possession. After the ten-day period expires, the Landlord may sue for possession without further notice, even if the default is cured.

Landlord's Remedies – Actual Eviction

When a Tenant breaches a lease or improperly retains leased premises, **the Landlord may regain possession through a legal process known as actual eviction. The Landlord must serve notice on the Tenant before commencing the lawsuit.** Most lease terms require at least a ten-day notice in the case of default. In many states, however, only a five-day notice is necessary when the Tenant defaults in the payment of rent. When a course issues a judgment for possession to a Landlord, the Tenant must vacate the property. If the Tenant fails to leave, the Landlord can have the judgment enforced by a court officer, who forcibly removes the Tenant and the Tenant's possessions. In Illinois, this would be the Sheriff. The Landlord then has the right to re-enter and regain possession of the property.

In Illinois, a Landlord seeking actual eviction of a Tenant must file an action called a *forcible entry and detainer*. It can be used when a tenancy has expired by default, by its terms, by operation of law, or by proper notice. The suit should be files in the circuit court of the county in which the property is located.

If the court rules in favor of the Landlord, a **judgment for possession (and money damages in some cases, where the Landlord has a reasonable expectation to obtain the funds from the Tenant)** will be entered, and an **order of possession will be issues by the clerk of the court.** The

Tenant must then leave peaceably, removing all his property from the premises. Traditionally, however, if a residential Tenant personally appears in court and the Landlord prevails, the court will delay issuing the order for a reasonable period to allow the Tenant to find alternative housing.

When a Tenant refuses to vacate peaceably after a judgment for possession has been entered, the **Landlord must deliver the order to the sheriff, who will forcibly evict the Tenant.** The Landlord then has the right to re-enter and regain possession of the property.

Until a judgment for possession is issued, the Landlord must be careful NOT to harass the Tenant in any manner, such as locking the Tenant out of the property, impounding the Tenant's possessions, or disconnecting utilities (such as electricity and gas). Illinois Landlords have no right to self-help; that is, they may not forcibly remove a Tenant without following the proper legal procedures.

Tenants' Remedies – Constructive Eviction

If a Landlord breaches any clause of a lease agreement, the Tenant has the right to sue and recover damages against the Landlord. If the **leased premises become unusable** for the purpose stated in the lease, **the Tenant may have the right to abandon them.** This action, called **constructive eviction, terminates the lease agreement.** The Tenant must prove that the premises have become unusable because of the conscious neglect of the Landlord. **To claim constructive eviction, the Tenant must leave the premises** while the conditions that made the premises inhabitable exist.

CHAPTER 6: FAIR HOUSING

CIVIL RIGHTS LAWS

The fair housing and civil rights laws affect Landlords and Tenants just as they do seller and purchasers. **All persons must have access to housing of their choice without any differentiation in the terms and conditions because of their race, color, religion, familial status (the presence of children under the age of 18), disability, or gender.** State and local municipalities may have their own fair housing laws that add protected classes such as age and sexual orientation. Withholding an apartment that is available for rent, segregating certain persons in separate sections of an apartment complex or parts of a building, and charging different amounts for rent or security deposits to persons in the protected classes all constitute violations of the law.

It is important that Landlords realize that **changes in the laws stemming from the federal Fair Housing Amendments Act of 1988 significantly alter past practices, particularly as they affect individuals with disabilities and families with children.** The fair housing laws require that the same Tenant criteria be applied to families with children as they are applied to adults. **A Landlord cannot charge a different amount of rent or security deposit because of a child(ren) or a pregnant woman.** While Landlords have historically argued that children are noisy and destructive, the fact is that many adults are also noisy and destructive.

EQUAL OPPORTUNITY IN HOUSING

The civil rights laws that affect the real estate industry ensure that everyone has the opportunity to live where they choose. **Federal, state, and local fair housing or equal opportunity laws affect every phase of a real estate transaction, from listing to closing.** However, while the passage of laws may establish a code for public conduct, **damaging attitudes reinforced by centuries of discrimination are not so easily eliminated.**

Real estate licensees *must* eliminate actions or words that create discrimination (or the appearance of discrimination) if they wish to conduct an ethical and legal business. Real Estate Licensees are held to a higher standard in terms of discrimination than an average citizen. At times, restraints on information a licensee can provide a client may hint at or support steering, so licensees cannot provide that information, by law. Similarly, any discriminatory attitudes of Property Owners or property seekers *must* be addressed by the licensee if these attitudes affect compliance with fair housing laws.

The Illinois Real Estate License Act of 2000 and the general rules require that licensees fully adhere to the principles of equal housing opportunity. A licensee is prohibited from taking any listing or participating in any transaction in which the property Owner seeks to discriminate based on race, color, ancestry, religion, national origin, sex, handicap, or familial status.

Breaking fair housing laws in Illinois is a criminal act and grounds for discipline. Violating provisions or restrictions of the Illinois Real Estate License Act of 2000 (or the rules) **can result in suspension, nonrenewal, or revocation of the violator's license or censure, reprimand, or fine imposed by IDFPR.**

The Real Estate License Act of 2000 requires that when a judgment in either a civil or criminal proceeding has been made against a licensee for illegally discriminating, his license must be suspended or revoked unless an appeal is active. Finally, if there has already been an order by an administrative agency finding discrimination by a licensee, the **board must penalize the licensee.**

In addition to state and federal laws, many cities and villages in Illinois have their own fair housing laws. These laws are enforced on the local level and may take precedence over federal laws when the local law has been ruled substantially equivalent to the federal statute. Many local fair housing laws are stricter than state or federal laws. **The strictest law is the one that is enforced.** Licensees should be familiar with local regulations as well as with state and federal law.

FEDERAL LAWS

The federal government's effort to guarantee equal housing opportunities to all U.S. citizens began with the passage of the **Civil Rights Act of 1866**. This law prohibits any type of discrimination based on race.

The U.S. Supreme Court's 1896 decision in *Plessy v. Ferguson* established the "separate but equal" doctrine of "legalized" racial segregation. A series of court decisions and federal laws in the 20 years between 1948 and 1968 attempted to address housing inequities resulting from *Plessy.* Those efforts, however, often addressed only specific aspects of the housing market (such as federally funded housing programs). As a result, their impact was limited. **Title VIII of the Civil Rights Act of 1968, however, prohibited specific discriminatory practices throughout the real estate industry.**

Jones v. Mayer

In 1968, the Supreme Court heard the case of *Jones v. Alfred H. Mayer Company, 392 U.S. 409 (1968)*. In its decision, the court **upheld the Civil Rights Act of 1866.** This decision is important because although the federal law exempts individual Homeowners and certain groups, the 1866 law **prohibits all racial discrimination without exception**. A person who is discriminated against on the basis of race may still recover damages under the 1866 law. **Where race is involved, no exceptions apply.**

The U.S. Supreme Court has expanded the definition of the term race to include ancestral and ethnic characteristics, including certain physical, cultural, or linguistic characteristics that are

shared by a group with a common national origin. These rulings are significant because discrimination on the basis of race, as it is now defined, affords due process of complaints under the provisions of the Civil Rights Act of 1866.

Fair Housing Act

Title VIII of the Civil Rights Act of 1968 prohibits discrimination in housing based on race, color, religion, and national origin. It also threw out the "Separate but Equal" provision.

In **1974, the Housing and Community Development Act** added *sex* to the list of protected classes. In **1988, the Fair Housing Amendments Act** added *disability* and *familial status* (that is, the presence of children). Today, these laws together are known as the federal **Fair Housing Act.**

The **Fair Housing Act** prohibits discrimination on the basis of race, color, religion, sex, disability, familial status, or national origin. The act also prohibits discrimination against individuals because of their association with persons in the protected classes.

The **Department of Housing and Urban Development (HUD) administers the Fair Housing Act.** HUD has established rules and regulations that further interpret impacted housing practices. In addition, **HUD distributes the equal housing opportunity poster.** This poster declares that the office in which it is displayed **promises to adhere to the Fair Housing Act and pledges support for affirmative marketing and advertising programs.** The fair housing poster should be displayed in every real estate office.

In 1988, Congress passed the Fair Housing Amendments Act that expanded federal civil rights protections. In addition to race, color, religion, and national origin being protected classes, the act extended coverage to include families with children and persons with physical or mental disabilities. The act also made the penalties more severe and added damages for noneconomic injuries (e.g., humiliation, embarrassment, inconvenience, and mental anguish).

In **1995, Congress passed the Housing for Older Persons Act (HOPA), which repealed the requirement that 55-and-older housing have "significant facilities and services" designed for seniors.** HOPA still **requires that at least 80 percent of occupied units have one person aged 55 or older living there.** The act prohibits the awarding of monetary damages against those who, in good faith, reasonably believed that property designated as housing for older persons was exempt from familial status provisions of the Fair Housing Act.

IN PRACTICE

When HUD investigates a licensee for discriminatory practices, it may consider failure to prominently display the equal housing opportunity poster in the licensee's place of business as evidence of discrimination.

HUD Fair Housing Definitions

HUD's regulations provide specific definitions that clarify the scope of the Fair Housing Act.

Housing

The regulations define *housing* as **a dwelling that includes any building or part of a building designed for occupancy as a residence by one or more families**. A residential dwelling is defined as a 1-4 unit building where the Owner lives in the building.

Familial status

Familial status refers to **the presence of one or more individuals who have not reached the age of 18 and who live with either a parent or guardian**. In effect, the familial status reference means that the act's protections extend to families with children. The term includes a woman who is pregnant.

Unless a **property qualifies as housing for older persons, all properties must be made available to families with children under the same terms and conditions as to anyone else. It is illegal to advertise properties as being for "adults only"** or **to indicate preferred number of children.**

Occupancy standards (the number of persons permitted to reside in a property) must be **based on objective factors** such as sanitation or safety. **Landlords cannot restrict the number of occupants to eliminate families with children.**

Exemptions to the Fair Housing Act

The federal Fair Housing Act provides for **certain exemptions.** It is important for licensees to know in what situations the exemptions apply. However, licensees should be aware that no exemptions involve race, and no exemptions apply when a real estate licensee is involved in a transaction (including when selling or leasing his own property).

The Fair Housing Act exempts:

- Owner-occupied buildings with no more than four units
- single-family housing sold or rented without the use of a real estate licensee and housing operated by organizations and private clubs that limit occupancy to members

- The sale or rental of a single-family home is exempt when the home is owned by an individual who does not own more than three such homes at one time (and who does not sell more than one every two years)
- a real estate licensee is not involved in the transaction
- discriminatory advertising is not used

The rental of rooms or units is exempt in an Owner-occupied one to four-family dwelling.

Note that dwelling units owned by religious organizations may be restricted to people of the same religion if membership in the organization is not restricted on the basis of race, color, or national origin.

A private club that is not open to the public may restrict the rental or occupancy of lodgings that it owns to its members as long as the lodgings are not operated commercially.

The Fair Housing Act does not require that housing be made available to any individual whose tenancy would constitute a direct threat to the health or safety of other individuals or that would result in substantial physical damage to the property of others.

Housing for older persons

While the Fair Housing Act protects families with children, certain properties can be restricted to occupancy by elderly persons. Housing intended for persons aged 62 or older or housing occupied by at least one person 55 years of age or older (where 80 percent of the units are occupied by individuals 55 or older) is exempt from the familial status protection.

Disability

A *disability* is a **physical or mental impairment.** It is unlawful to discriminate against prospective Tenants on the basis of disability. The term includes **having a history of, or being regarded as having, an impairment that limits one or more of an individual's major life activities.** Persons who have **AIDS are protected by the fair housing laws under this classification.**

Landlords must make reasonable accommodations to existing policies, practices, or services to permit persons with disabilities to have equal enjoyment of the premises. **For instance, it would be reasonable for a Landlord to permit service animals (such as guide dogs) in a normally "no-pets" building or to provide designated parking spaces for persons with disabilities.**

People with **disabilities must be permitted to make reasonable modifications to the premises at their own expense**. Such modifications might include lowering door handles or installing bath rails for a person in a wheelchair. Failure to permit reasonable modification constitutes discrimination. However, the **law recognizes that certain reasonable modifications might make a rental property undesirable to the general population**. In such a case, the **Landlord is allowed to require that the property be restored to its previous condition when the lease period ends**.

However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, **the Landlord may negotiate as part of such a restoration agreement a provision requiring that the Tenant pay into an interest-bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The Landlord may not increase the customarily required security deposit for persons with disabilities.**

The law does not prohibit restricting occupancy to persons with disabilities in dwellings that are designed specifically for their accommodation.

In newly constructed multifamily buildings with an elevator and four or more units, the public and common areas must be accessible to persons with disabilities, and doors and hallways must be wide enough for wheelchairs. The entrance to each unit must be accessible, as well as the light switches, electrical outlets, thermostats, and other environmental controls. People in wheelchairs should be able to use the kitchen and bathrooms; bathroom walls should be reinforced to accommodate later installation of grab bars. Ground-floor units must meet these requirements in buildings that do not have an elevator. Licensees should be aware that state and local law may require stricter standards.

AMERICANS WITH DISABILITIES ACT

Although the **Americans with Disabilities Act (ADA)** is not a housing or credit law, it still has a significant effect on the real estate industry. The ADA is important to licensees because it **addresses the rights of individuals with disabilities in employment and public accommodations.** Real estate licensees are often employers, and real estate brokerage offices are public spaces. The ADA's goal is to enable individuals with disabilities to become part of the economic and social mainstream of society.

Title I of the ADA requires that **employers (including real estate licensees) make *reasonable accommodations* that enable an individual with a disability to perform essential job functions.** The provisions of ADA apply to any employer with 15 or more employees.

Title III of the ADA requires that **individuals with disabilities have full accessibility to businesses, goods, and public services.** While the federal civil rights laws have traditionally been seen as focused on residential housing, **business and commercial real estate are fully covered by Title III.** Because people with disabilities have the right to full and equal access to businesses and public services under the ADA, **building Owners and managers must ensure that any obstacle restricting this right is eliminated.** The Americans with Disabilities Act Accessibility Guidelines (ADAAG) contain **detailed specifications for designing parking spaces, curb ramps, elevators, drinking fountains, toilet facilities, and directional signs to ensure maximum accessibility.**

ADA and the Fair Housing Act

All properties have exemptions, whether the property falls under the Fair Housing Act or properties that are exempt from the Fair Housing Act.

Some properties are subject to both laws. For example, in an apartment complex, **the rental office is a place of public accommodation. As such, it is covered by the ADA and must be accessible to persons with disabilities.**

Individual rental units would be covered by the Fair Housing Act. A Tenant who wished to modify the unit to make it accessible would be responsible for the cost.

FAIR HOUSING PRACTICES

Blockbusting

Blockbusting is the act of encouraging people to sell or rent their homes by claiming that the entry of a protected class of people into the neighborhood will have some sort of negative impact on property values. Any message, however subtle or accidental, that property should be sold or rented because the neighborhood is "undergoing changes" is considered blockbusting.

It is illegal to suggest that the presence of certain persons will cause property values to decline, crime or antisocial behavior to increase, or the quality of schools to suffer.

A critical element in defining blockbusting, according to HUD, **is the profit motive.** A Property Owner may be intimidated into selling his property at a depressed price to the blockbuster, who in turn sells the property to another person at a higher price. Blockbusting is also called **panic selling.** To avoid accusations of blockbusting, licensees should use good judgment when choosing locations and methods for marketing their services and soliciting listings.

Steering

Steering is the **channeling of home-seekers to particular neighborhoods. It also includes discouraging potential buyers from considering some areas**. In either case, it is an illegal limitation of a purchaser's options.

In the rental process, steering occurs when the Landlord puts members of a protected class on a certain floor or building. Another form of steering occurs when the **Landlord tells a prospective Tenant that no vacancy exists when, in fact, there is a vacancy.** When the misstatement is made on the basis of a protected class, the prospect is steered away from that building.

Many cases of steering are subtle, motivated by assumptions or perceptions about a prospect's preferences, and based on some stereotype. Such **assumptions about a prospect's preferences may be legally dangerous.** The licensee should never assume that prospective Tenants "expect" to be directed to neighborhoods or properties. **Steering anyone is illegal.**

The **Illinois Real Estate License Act of 2000** expressly **prohibits** "Influencing or attempting to influence by any words or acts a prospective seller, purchaser, occupant, Landlord, or Tenant of real estate, in connection with viewing, buying or leasing of real estate, so as to promote, or tend to promote, the continuance or maintenance of racially and religiously segregated housing, or so as to retard, obstruct or discourage racially integrated housing on or in any street, block, neighborhood, or community."

Advertising

Advertisements of property for sale or rent may not include language indicating a preference or limitation. No exception to this rule exists, regardless of subtle or "accidental" wordings. HUD's regulations cite numerous examples that are considered discriminatory. However, an advertisement that is gender-specific, such as "female roommate sought," is allowed as long as the advertiser seeks to share living quarters with **someone of the same gender.**

The media used for promoting property or real estate services must not target any one population to the exclusion of others. **The use of media that targets only certain groups based on, for example, language or geography, is also viewed as being potentially discriminatory.** For instance, limiting advertising to a cable television channel viewed mostly by one demographic group might be construed as discriminatory. The best rule is never to advertise using only one group of narrowly focused media. Running ads in several locales or in general-circulation media as a standard rule is good practice.

Many licensees choose to run a small version of the equal housing opportunity symbol in all of the materials that represent them, along with the words "equal housing opportunity”

underneath. The fair housing symbol signals the world that one is open for business to anyone who is of age and financially able to purchase real estate.

Intent and Effect

If an Owner or real estate **licensee purposely sets out to engage in blockbusting, steering, or other unfair activities, the intent to discriminate is obvious.** However, Owners and licensees must examine their activities and policies carefully to determine whether they unintentionally appear to engage in discriminatory actions. **Whenever policies or practices result in unequal treatment of persons in a protected class, they are considered discriminatory, regardless of intent.** This "effects test" is applied by regulatory agencies to determine whether discrimination has occurred.

Response to Concerns of Terrorism

In response to the concern of future terrorist attacks, Landlords and property managers have been developing new security procedures. These procedures have focused on protecting buildings and residents. Landlords and property managers are also educating residents on signs of possible terrorist activity and how and where to report it. At the same time, Landlords and property managers need to ensure that their procedures and education do not infringe on the fair housing rights of others.

For screening and rental procedures, it is **unlawful to screen housing applicants on the basis of race, color, religion, sex, national origin, disability, or familial status.** According to HUD, Landlords and property managers have been inquiring about whether they can screen applicants on the basis of citizenship status. The Fair Housing Act does not specifically prohibit discrimination based solely on a person's citizenship status. **Therefore, asking applicants for citizenship documentation or immigration status papers during the screening process does not violate the Fair Housing Act.** For many years, the federal government has been asking for these documents in screening applicants for federally assisted housing. There is, however, a specific procedure for collecting and verifying citizenship papers provided by HUD.

ENFORCEMENT OF THE FAIR HOUSING ACT

The federal Fair Housing Act is administered by the Office of Fair Housing and Equal Opportunity (OFHEO) under the direction of the secretary of HUD. Any aggrieved person who believes illegal discrimination has occurred **may file a complaint with HUD within one year of the alleged act**. HUD may also initiate its own complaint. Complaints may be reported to the **Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC 20410**, or to the Office of Fair Housing and Equal Opportunity in care of the nearest HUD regional office.

Complaints may also be submitted directly to HUD using an online form available on the HUD Website.

On receiving a discrimination complaint:

- HUD initiates an investigation.
- Within 100 days of the filing of the complaint, HUD either determines that reasonable cause exists to bring a charge of illegal discrimination or dismisses the complaint.
- During this investigation period, HUD can attempt to resolve the dispute informally through conciliation. Conciliation is the resolution of a complaint by obtaining assurance that the person against whom the complaint was filed (the respondent) will remedy any violation that may have occurred.
- Once a formal charge of discrimination has been filed, a formal hearing is required.
- Either the complainant or the respondent may force the hearing to district court by means of what is called an election, which must be made within 20 days after charges are issued.
- If no election is made, the case will be heard before a U.S. administrative law judge (ALJ) who is an expert in housing discrimination.
- If either party prefers, then, by election, the case goes to a U.S. district court judge (no fair housing specialization, under the Department of Justice, and a jury trial may be requested).
- Cases under the ALJs normally proceed much more quickly than if they were heard in district court, and the fair housing expertise may be higher.
- The judge has the authority to award actual damages to the aggrieved person or persons and, if it is believed the public interest will be served, to impose monetary penalties. The penalties range from up to $16,000 for a first offense to $65,000 for a third violation within seven years.
- An ALJ also has the authority to issue an injunction to order the offender to either take action (such as rent an apartment to the complaining party) or refrain from an action (such as continuing to rent to only one group).
- The parties may elect civil action in federal court at any time within two years of the discriminatory act. For cases heard in federal court, unlimited punitive damages can be awarded in addition to actual damages. The court also can issue injunctions. **Errors and omissions insurance carried by licensees may not cover violations of the fair housing laws.**
- Whenever the attorney general has reasonable cause to believe that any person or group is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by the federal fair housing laws, he may file a civil action in any federal district court. The district court may award actual and punitive damages along with attorney's fees and costs.

Complaints brought under the Civil Rights Act of 1866 are taken directly to federal courts. The only time limit for action is a state's statute of limitations for torts.

THE ILLINOIS HUMAN RIGHTS ACT

The Illinois Real Estate License Act of 2000 **prohibits any action that constitutes a violation of the Illinois Human Rights Act.** This is **true regardless of whether a complaint has been filed with or adjudicated by the Human Rights Commission.** The Illinois Human Rights Act includes some prohibitions that also are specifically addressed by the Real Estate License Act of 2000.

Under the Illinois Human Rights Act, it is a civil rights violation for any licensee to engage in any of the following acts of discrimination based on:

- Race,
- Color,
- Religion,
- National origin,
- Ancestry,
- Age,
- Sex,
- Marital status,
- Physical or mental disability,
- Military service,
- Unfavorable discharge from military service,
- Familial status,
- Sexual orientation,
- Order of protection status in connection with employment
- Real estate transactions
- Access to financial credit
- Availability of public accommodations

Specific Acts of Discrimination which are prohibited:

- Refuse to engage in a real estate transaction with a person
- Alter the terms, conditions, or privileges of a real estate transaction
- Refuse to receive or fail to transmit an offer
- Refuse to negotiate
- Represent that real property is not available for inspection, sale, rental, or lease when in fact it is available; or fail to bring a property listing to an individual's attention; or refuse to permit him to inspect real estate
- Offer, solicit, accept, use, or retain a listing of real property with knowledge that unlawful discrimination is intended
- Publicize, through any means or use, an application form that indicates an intent to engage in unlawful discrimination

The Illinois Human Rights Act defines elderly person as "the chronological age of a person who is at least 40 years old."

It is a civil rights violation for the Owner or agent of any housing accommodation to engage in any of the following discriminatory acts **against children:**

- Require, as a condition to the rental of a housing accommodation, that the prospective Tenant shall **not have one or more children under 18 residing in his family at the time the application for rental is made**
- Insert a condition in any lease that **terminates the lease if one or more children younger than age 18 are ever in the family occupying the housing.** Any agreement or lease that contains a condition such as the above is "legally void as to that condition"; the **lease itself remains in force, but the clause is void and unenforceable**

It is also a civil rights violation in Illinois to discriminate against any person who is blind, hearing-impaired, or physically disabled in the terms, conditions, or privileges of sale or rental property.

Similarly, it is a civil rights violation to refuse to sell or rent to a prospective buyer or Tenant because he has a service animal. A seller or Landlord may not require the inclusion of any additional charge in a lease, rental agreement, or contract of purchase or sale because a person who is blind, hearing-impaired, or physically disabled and has a service animal. **Of course, the Tenant may be liable for any actual damage done to the premises by the animal.**

Exemptions:
Certain individuals, property types, and transactions are exempt from the anti-discriminatory provisions of the Illinois Human Rights Act:

- Private Owners of single-family homes if (1) they own fewer than three single-family homes (including beneficial interests); (2) they were (or a member of their family was) the last current resident of the home; (3) the home was sold without the use of a real estate licensee; and (4) the home was sold without the use of discriminatory advertising
- Owner-occupied apartment buildings of five units or less
- Private rooms in a private home occupied by an Owner or Owner's family member
- Reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling
- A religious organization, association, or society (or any nonprofit institution or organization operated, controlled, or supervised by or in conjunction with a religious organization, association, or society) may limit the sale, rental, or occupancy of dwellings owned or operated by it (for other than commercial reasons) to persons of the same religion or give

preference to persons of the same religion. This exemption is limited; it does not apply if membership in the religion is restricted on account of race, color, or national origin.

- Restricting the rental of rooms in a housing accommodation to persons of one sex
- Appraisers may take into consideration any factors other than those based on unlawful discrimination or familial status in furnishing appraisals.
- Individuals who have been convicted by any court of illegally manufacturing or distributing controlled substances.
- Housing for older persons on the basis of familial status.
- A child sex offender who owns residential real estate, in which the offender lives and rents, is exempt from renting a unit in that property to a person who is the parent or guardian of a child or children under 18 years of age. (**P.A. 95-42, eff. 8-10-07; 95-820, eff. 1-1-09**).

Illinois Sexual Harassment Law 775ILCS5/2-101(E)

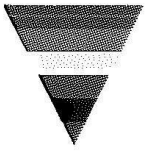
"Sexual harassment" means any unwelcome sexual advances or request for sexual favors or any conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment (2) submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of substantially interfering with an individual work performance or creating an intimidating hostile or offensive work environment.

What is considered sexual harassment?

1. Sexually charged comments, sexual innuendos, sexual jokes, comments about your physical appearance or specific body parts, professions of feelings, and being asked out on a date can all constitute sexual harassment. Of course, you would have to show that such comments and behavior was unwanted and that you were not a willing participant.
2. Unwanted physical contact such as touching, groping, hugging, grazing up against. Again, it is important to show that this type of physical contact was unwanted and made you feel uncomfortable.
3. Making any part of your job (such as wages, promotions, references or working conditions) any part of your housing (such as your rent, your security deposit or lease renewal), or any part of your educational performance (such as grades, honors, course work, or scholarships) contingent on submission to sexual behavior.
4. Sexual harassment can include the display of sexually suggestive objects, signs, magazines, or pictures, or the sending of sexually suggestive emails or text messages to persons who do not want this attention.

State of Illinois
Department of Human Rights

YOUR RIGHT TO EQUAL HOUSING



What is Housing Discrimination?
Housing discrimination occurs when the right to equal housing access is denied or when people are treated differently in housing based on a particular characteristic that is protected under the law.

Under the Illinois Human Rights Act, you are entitled to choose where to live and to fully enjoy the use of the facilities of the unit without unlawful discrimination. The Act also prohibits discrimination in the sale or rental of real property (including commercial property).

Types of Discrimination:
The Illinois Department of Human Rights investigates discrimination complaints in the following areas:

- Employment
- Real Estate Transactions
- Financial Credit
- Public Accommodations
- Sexual Harassment in Education

Under the Illinois Human Rights Act, it is illegal to discriminate on the basis of the following **protected classes:**

- Race, Color
- National Origin
- Religion
- Sex, Pregnancy
- Ancestry
- Sexual Harassment
- Age (Over 40)
- Marital Status
- Disability
- Military Status
- **Sexual Orientation (including gender-related identity)**
- Unfavorable Military Discharge
- Order of Protection Status
- Familial status (children under 18) in real estate transactions
- Arrest record, citizenship status and language (in employment)
- Coercion, intimidation and retaliation are also prohibited

Who Does the Law Apply To?
In real estate transactions, the law applies to owners, managers, salespersons, brokers, rental agents, or other agents or employees of the owner or the owner's agents. Newspapers and other publications that print discriminatory advertising can also be charged under the Act. Houses, apartments, condominiums, mobile home parks, vacant land, offices, stores and other types of residential and commercial property are covered.

Prohibited Activity:
The following are examples of housing discrimination based on sexual orientation or gender identity:

- Refusal to engage in a real estate transaction:
  Refusing to rent or refusing an offer to buy because someone is gay; or taking the property in question off the market so that a gay couple is not able to buy or rent it.
- Misrepresenting the availability of real property:
  Lying about the availability of property that is up for inspection, sale, rental, or lease when the property owner finds out the applicant is lesbian.
- Failure to make property listings available:
  Failing to tell someone about available property because the real estate agent believes the applicant is transgender.
- Publication of intent:
  Publishing or displaying an ad expressing intent to engage in unlawful discrimination, such as saying that children are not allowed or straight couples are preferred.
- Alteration of terms or conditions in property or real estate transactions:
  Treating people differently in terms of rent amounts, maintenance services, reasons for termination, etc., because of sexual orientation.
- Sexual Harassment:
  Asking for sexual favors as a condition for sale or rental, or engaging in other verbal or physical conduct of a sexual nature that creates an intimidating, hostile or offensive environment.

(OVER→)

U. S. Department of Housing and Urban Development

EQUAL HOUSING OPPORTUNITY

We Do Business in Accordance With the Federal Fair Housing Law

(The Fair Housing Amendments Act of 1988)

It is illegal to Discriminate Against Any Person Because of Race, Color, Religion, Sex, Handicap, Familial Status, or National Origin

- In the sale or rental of housing or residential lots
- In advertising the sale or rental of housing
- In the financing of housing
- In the provision of real estate brokerage services
- In the appraisal of housing
- Blockbusting is also illegal

Anyone who feels he or she has been discriminated against may file a complaint of housing discrimination:
1-800-669-9777 (Toll Free)
1-800-927-9275 (TTY)

U.S. Department of Housing and Urban Development
Assistant Secretary for Fair Housing and Equal Opportunity
Washington, D.C. 20410

Previous editions are obsolete

form HUD-928.1 (2/2003)

IMPLICATIONS FOR REAL ESTATE LICENSEES

The real estate industry **is largely responsible for creating and maintaining an open housing market.** Licensees are a community's real estate experts. Along with the privilege of profiting from real estate transactions **comes the social and legal responsibilities to ensure that everyone's civil rights are protected.**

Fair housing is the law. The **consequences for anyone who violates the law are serious. In addition to the financial penalties, a licensee's livelihood will be in danger if his license is suspended or revoked.** That the offense was unintentional is no defense. Licensees must scrutinize their practices with care and not fall victim to clients or customers who maneuver to discriminate. All parties deserve the same standard of service. Every future Homeowner has the right to expect fair and equal treatment, with house showings based only on his stated needs and financial capability. A good test is to answer the question, **"Are we providing this service for everyone?"**

Standardized inventories of property listings, standardized criteria for financial qualification, and written documentation of activities and conversations (especially if the licensee senses a client wishes to act in a discriminatory way) are three effective means of self-protection for licensees.

HUD requires that its fair housing posters be displayed in any place of business where real estate is offered for sale or rent. Following HUD's advertising procedures and using the fair housing slogan and logo bolsters public awareness of the licensee's commitment to equal opportunity.

Professional Ethics

Ethics refers to a high moral system of principles, rules, and standards based on conduct and values. The ethical system of a profession establishes guidelines that reach to the higher principles of what is "right." Those principles may form the law, but they exist apart from the law. Professional ethics in business usually focus on two main aspects of the profession:

- They establish standards for integrity and competence in dealing with consumers of an industry's services.
- They define a code of conduct for relations within the industry and among its professionals.

Code of Ethics

One way that many organizations address ethics among their members or in their respective businesses is by **adopting specific, written codes of ethical conduct.** A code of ethics is a written system of standards for professional, values-based conduct. The code contains statements designed to advise, guide, and regulate job behavior. To be effective, a code of

ethics must be specific by creating rules that either prohibit or encourage certain behaviors. By including sanctions for violators, a code of ethics becomes more effective.

MANAGING SUBSIDIZED HOUSING

Actual construction and operation of public housing projects for low-income families has traditionally been the responsibility of local governments. In 1965, Congress authorized the U.S. Department of Housing and Urban Development (HUD) **to provide financial assistance to local housing authorities for the acquisition and operation of existing buildings or privately constructed new housing for low-income Tenants.** Under the 1968 Housing and Urban Development Act, the Federal Housing Administration (FHA), an agency of HUD, was authorized to **encourage private participation in the development and construction of housing for low-income families through rental and mortgage insurance programs. FHA-insured mortgages and government subsidies were awarded to nonprofit cooperative groups for the construction of low-income housing.**

In the late 1970s and early 1980s, housing funds were made available to private Owners to build and manage affordable housing for the low, very low, and extremely low-income population. These units are available throughout the country. Although owned and managed by private Owners and agents, **the units must adhere to strict HUD enforcement regarding verification of resident income and meet very high standards of physical condition.**

Today, HUD is pushing for the privatization and project-based management of public housing. As there are 3,400 public housing authorities in the United States responsible for more than 1.3 million units, cooperating with HUD is a great opportunity for many property managers. These complex networks are in sharp contrast to private management, which often gives employees authority to make many decisions on-site.

Each government program comes with its own set of rules and criteria. This discussion will highlight certain elements common to each program, but the property manager truly becomes a specialist when managing subsidized housing.

Section 8 Housing Assistance Programs (Voucher Programs)

Single family homes or apartments in public housing buildings covered under the HUD Section 8 Housing Assistance Payments Program are rented on a subsidized basis. A low or very low-income family will pay up to 30 per cent of its adjusted monthly income. HUD pays the Landlord the difference between that and market rent. Income eligibility for occupants of public housing varies according to geographic area and the number of dependents in the family.

Low income is defined as less than 80% of the area median income.

In 1996, HUD established the Real Estate Assessment Center (REAC) in order to assess the stock of private HUD housing in the United States. This set of stringent physical standards requires Owners and Agents to maintain HUD housing to the highest standards of safe, decent, and sanitary housing. REAC has been instrumental in changing HUD housing for the better.

Vouchers for Private Owners

In addition to public housing, the local housing authority in some city's contracts with private investors for housing for eligible recipients. Tenant screening is left up to the private Landlord that chooses to accept the vouchers awarded to the resident by the local public housing authority. HUD has developed several **standard lease forms** to be used with public housing, and the Property Manager must use these forms and be familiar with their provisions.

Tenant Rental Assistance Certification Systems (TRACS)

HUD developed a **computer system to improve the management of all assisted housing programs. The Tenant Rental Assistance Certification System (called TRACS) gives HUD a central information system used to verify subsidy calculations.** TRACS has automated the collection of Tenant data and provides HUD offices with an online database, significantly reducing HUD's paperwork.

Need for Professional Property Management

All subsidized public housing developments, of whatever type, have a **common need for ongoing, competent management.** Since its inception, **low-income housing has suffered from both inadequate property management and bureaucratic mismanagement. Effective January 31, 2010, all public and private affordable housing owners must use HUD's Enterprise Income Verification system (EIV).** EIV provides **data from TRACS** and both the **Social Security Administration** and the **Health and Human Services** New Hire database to ensure that residents are making a **full and adequate disclosure of household income** to Landlords to **reduce waste and fraud** of HUD funding. This will allow more households to take advantage of available federal programs.

Professional Property Managers **who choose affordable housing as a career have a number of options for specific training and certification through local HUD offices and state finance agencies.** Some of the available certifications:

- National Affordable Housing Management Association (HAHMA)
- Certified Professional of Occupancy (CPO)
- National Affordable Housing Professional (HAHP)
- National Affordable Housing Professional Executive (HAHP-e)
- National Apartment Association (NAA) in cooperations with NAHMA
- Specialist in Housing Credit Management (SHCM)
- National Home Builders Association (NHBA)

- Housing Credit Certified Professional (HCCP)

HUD is attempting to correct the lack of trained management by conducting management courses, sometimes in connection with local colleges, and by certifying managers who have graduated from HUD-approved management courses. Additionally, most of the certification programs offered by trade associations contain specific courses in managing low-income housing.

CHAPTER 7: REAL ESTATE LICENSING LAW

ILLINOIS REAL ESTATE LAW

The state of Illinois has enacted real estate laws since 1921. The purpose of Illinois Real Estate Licensing Laws is to regulate persons and entities engaged in real estate business for the **protection of the public.** Major changes were made in real estate license law with the **Real Estate License Act of 2000.** We will focus on the review of the Illinois License Law in this chapter as well as other important laws that impact the real estate business.

Federal Laws such as the **Truth-in-Lending Act** (TILA) **Fair Housing Act**, the **Equal Credit Opportunity Act** (ECOA) and **Real Estate Settlement Procedures Act** (RESPA) regulate certain real estate business practices to ensure fair dealing, ethical conduct, and equal treatment. In addition, required disclosures are intended to inform and protect clients and consumers. State laws such as the **Illinois Residential Real Property Disclosure Act**, the **Illinois Radon Awareness Act**, and the **Illinois Human Rights Act** are discussed earlier in this textbook and should be reviewed by the student.

Local laws and ordinances such as land use, zoning, fair housing, landlord/tenants' rights, and environmental protections should be discussed with your sponsoring broker.

The real estate industry in Illinois is regulated by the **Division of Professional Regulation (DPR),** a branch of the **Illinois Department of Financial and Professional Regulation (IDFPR)** also known as the Department, which is charged with protecting and improving the lives of Illinois consumers.

The Department is responsible for administering and enforcing the Illinois Real Estate License Act of 2000. In addition, the Department administers all licenses for Illinois real estate brokers, managing brokers, residential leasing agents, real estate corporations, partnerships, limited liability companies, real estate branch offices, real estate schools, and real estate instructors.

The Department promulgates rules for the Act's implementation and enforcement. These are often referred to as "the rules," and they supply explanatory detail and guidelines for the Act. The Act, rules, and other significant legislation are available online at www.ilga.gov (click on Illinois Compiled Statutes, Chapter 225; ILCS 454). These are essential for any real estate licensee to know.

ADMINISTRATION OF THE ILLINOIS REAL ESTATE LICENSE ACT

Division of Professional Regulation

The Department, through the Division of Professional Regulation (DPR) has primary authority to administer the Illinois Real Estate License Act of 2000. **It is also empowered to issue rules and**

regulations that implement and interpret the Act. The rules accompanying the Act are important to a full understanding of the Act's implications and applications. The Department has the authority to contract with third parties for any services deemed necessary for proper administration of the Act, such as the Applied Measurement Professionals, Inc. (AMP) testing service for Illinois state testing.

The Department is responsible for administrative activities such as:

- Conducting license examinations
- Issuing and renewing licenses
- Preparing all forms, including applications, and licenses.
- Collecting fees from applicants and licensees

The Department has the following additional functions, which may be exercised only on the initiative and approval of the Real Estate Administration and Disciplinary Board:

- Conducting hearings that may result in the revocation or suspension of licenses or in the refusal to issue or renew licenses
- Imposing penalties for violations of the Act
- Restoring suspended or revoked licenses

Real Estate Coordinator (Section 25-15)

A licensed broker is appointed to the position of Real Estate Coordinator by the Secretary of the IDFPR after the recommendations of real estate professionals and organizations are considered. This individual's license is surrendered to the Department during the appointment.

The Real Estate Coordinator's duties include:

- acting as ex officio Chairperson of the Real Estate Administration and Disciplinary Board (without a vote),
- being the direct liaison between the Department, the real estate profession, and real estate organizations and associations,
- preparing and circulating educational and informational material for licensees,
- appointing any committees necessary to assist the Department in carrying out its duties,
- supervising real estate activities

Real Estate Administration and Disciplinary Board (Section 25-10)

The Real Estate Administration and Disciplinary Board (Board) acts in an advisory capacity to the Real Estate Coordinator regarding **matters involving standards of professional conduct,** discipline, and examination. In addition to its advisory functions, the Board conducts hearings on disciplinary actions against persons accused of violating the Act or the rules. The Board recommends discipline for violations of the Real Estate Licensing Act of 2000, advises the Director on professional conduct, education requirements, and industry trends.

Composition of the Board

The Board is composed of 15 members appointed by the governor, all of whom must have been residents and citizens of Illinois for at least six years before their appointment date. The length of term is for 4 years, not to exceed 10 years.

- **Twelve members shall have been actively engaged as managing brokers** or brokers for **at least 10 years prior to the appointment,** of which 2 must possess an active pre-licensing instructor license.
- Three members of the Board shall be public members who represent the consumers' interest.

None of these members shall be:

- A person who is licensed under this Act or similar Act under another jurisdiction.
- The spouse or family member of a licensee.
- A person who has an ownership interest in a real estate brokerage business.
- A person the Department determines to have any other connection with a real estate Brokerage business or license.
- Chair by statute is the Real Estate Coordinator, of IDFPR - (non-voting member)

There are four major funds administered through the Department:

1. Real Estate License Administration Fund (to which license fees and other funds initially go),
2. Real Estate Research and Education Fund (for research and scholarships),
3. Real Estate Recovery Fund (a consumer-oriented fund for compensating consumers harmed by licensees' actions),
4. Real Estate Audit Fund (for conducting audits of special accounts).

The Real Estate Research and Education Fund (Section 25-25)

According to Section 25-25 of the act, The Real Estate Research and Education Fund is administered by the Department and held in trust by the Illinois Treasury. On **September 15 of each year,** the treasurer **transfers $125,000 from the Real Estate License Administration Fund** to the **Real Estate Research and Education Fund,** primarily to be used to **promote real estate research and education at Illinois organizations and institutions of higher learning.** Of this sum, **$15,000 is set aside for a scholarship program, administered by the Department or a designee of the Department, to support the real estate education of minority real estate professionals.** The scholarship money must go toward courses meant to increase the recipients' knowledge or expertise in the real estate field, including Department-approved broker and managing broker licensing courses, courses necessary to secure the Graduate REALTORS® Institute designation, and courses at accredited Illinois institutions of higher learning.

OBTAINING AND KEEPING A REAL ESTATE LICENSE

Who Needs to Be Licensed? (Section 1-10)

It is illegal for anyone to act as a broker, managing broker, sponsoring broker or residential leasing agent without a real estate license issued by the Department. Any broker who performs any of the following services, either directly or indirectly, whether in or through any media or technology, for another and for compensation must have a real estate license:

- Sells, exchanges, purchases, rents, or leases real estate
- Offers to sell, exchange, purchase, rent, or lease real estate
- Negotiates, offers, attempts, or agrees to negotiate the sale, exchange, purchase, rental, or leasing of real estate
- Lists, offers, attempts, or agrees to list real estate for sale, lease, or exchange
- Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or improvements thereon
- Supervises the collection, offer, attempt, or agreement to collect rent for the use of real estate
- Advertises or represents herself as being engaged in the business of buying, selling, exchanging, renting, or leasing real estate
- Assists or directs in the procuring or referring of leads or prospects intended to result in the sale, exchange, lease, or rental of real estate
- Assists or directs in the negotiation of any transaction intended to result in the sale, exchange, lease, or rental of real estate
- Opens real estate to the public for marketing purposes
- Sells, leases, or offers for sale or lease real estate at auction
- Wholesaling

What is Wholesaling?

When a buyer enters into a purchase agreement with a seller, then the buyer sells the property or assigns the contract to another buyer at a higher purchase price before the first transaction closes, this is wholesaling. When the transaction closes, the first buyer profits on the difference of the transaction without any risk or ownership.

You now must have a real estate license in order to sell any equitable interest the agent has in the transaction. A real estate licensee must disclose to the seller of the property that they will assign the purchase agreement on the property to another buyer for a profit. An individual or entity will need a broker's license or a managing broker's license if engaged in this pattern of business at least twice in a 12-month period." (The full paragraph is in the IDFPR Updates to the Real Estate License Act.)

This is not the same as flipping houses. Flipping is when someone buys a property and takes ownership of the property. After doing some repairs or upgrades, the owner places the property back on the market. A real estate license is not required for flipping houses.

Unlicensed Agent Act (Section 20-22) Violations

Any person who is found working or acting as a managing broker, broker, or residential leasing agent or holding himself or herself out as a licensed sponsoring broker, managing broker, broker, or residential leasing agent, without being issued a valid active license is guilty of a class A misdemeanor and, on conviction of a second or subsequent offense, the violator shall be guilty of a class 4 felony. Effective August 9, 2019.

License Requirement Exemptions (Section 5-20)

The requirement for holding a broker, managing broker, sponsoring broker or residential leasing agent license does not apply to the following:

- **Owners or lessors** (whether individuals or business entities) or their regular **employees** who sell, lease, or otherwise deal with **their own property** in the ways described under Article 1 definitions (This applies in the course of the management, the sale, or other disposition of their own [or their employer's] property).
- acting under duly executed and recorded power of attorney to convey real estate from the owner or lessor
- The services rendered by an **attorney at law** in the performance of her **duties as an attorney at law**
- Any person acting as **receiver, trustee in bankruptcy, administrator, executor, or guardian,** or while acting under a court order or under the authority of a will or a testamentary trust
- A **resident apartment manager** working for an owner or working for a broker managing the property, if the apartment is her primary residence and if she is engaged in leasing activities of the managed property
- **State and federal officers** and employees or state government or political subdivision representatives performing official duties
- **Any resident lessee** of a residential dwelling unit who refers for compensation to the owner of the dwelling unit, or to the owner's agent, prospective lessees of dwelling units in the same building or complex as the resident lessee's unit, but only if the resident lessee:
- refers **no more than 3 prospective lessees in any 12-month period**,
- receives compensation of **no more than $5,000** or the equivalent of 2 months' rent, whichever is less, in any 12-month period, and
- **limits his or her activities to referring prospective lessees** to the owner, or the owner's agent, and **does not show a residential dwelling unit** to a prospective lessee, **discuss**

terms or conditions of leasing a dwelling unit with a prospective lessee, or **otherwise participate in the negotiation of the leasing** of a dwelling unit.

- **A hotel operator** who is registered with the Illinois Department of Revenue and pays taxes under the Hotel Operators' Occupation Tax Act and rents a room or rooms in a hotel as defined in the Hotel Operators' Occupation Tax Act for a period of not more than 30 consecutive days and not more than 60 days in a calendar year or a person who participates in an online marketplace enabling persons to rent out all or part of the person's owned residence. Notwithstanding any provisions to the contrary, the Department and its employees shall be exempt from education, course provider, instructor, and course license requirements and fees while acting in an official capacity on behalf of the Department. Courses offered by the Department shall be eligible for continuing education credit.

Broker's License (Article 5)

A broker is defined as any individual, partnership, limited liability company (LLC), corporation, or registered limited liability partnership other than a residential leasing agent who, for another and for compensation, whether in person or through any media or technology, or with the intention or expectation of receiving compensation, either directly or indirectly, performs any of the services for which a real estate license is required (**Section 1-10**).

Broker Requirements

Applicants for a broker's license must meet the following requirements, as discussed in Section 5-27:

- Be at least 18 years of age and willing to supply a Social Security number.
- Be of good moral character
- Have graduated from high school or obtained the equivalent of a high school diploma verified under oath by the applicant
- Provide satisfactory evidence of having completed 75 hours of instruction, 15 hours of which must consist of situational and case studies presented in the classroom or by other interactive delivery method presenting instruction and real time discussion between the instructor and the students.
- Satisfactorily pass a state-sponsored written examination
- 45-hour of post-broker is required before first renewal, consisting of three 15-hour courses covering:
    - Applied brokerage principles
    - Risk management/discipline
    - Transactional issues
- 50 question tests after each section given by the education provider

- Will have at most, 2.5 years to complete the 45 hours prior to first or second renewal date

Managing Broker's License (Article 5)

As of the 2019 Amendment to the Real Estate Law, all applicants for managing broker licenses in Illinois must:

- be 20 years old or older,
- be of good moral character,
- have been licensed as a **real estate broker** for at least **two of the previous three years,**
- have completed four years of study at a high school or secondary school, approved by the Illinois board of education, or the equivalent to four years of study as determined by an Illinois Board of Education-administered exam and verified by the applicant under oath.
- have completed at least 165 hours of education as follows,
- 120 pre- and post-licensure hours, as required to obtain a broker's license,
- in the **year before the application for managing broker is filed, 45 additional hours on brokerage administration and management,**
- **Of these 45 hours, 15 must consist of classroom instruction or some other means of interactive, real-time instruction and discussion between student and instructor,**
- take and pass a Department-authorized written examination for licensure, and
- submit a valid application for a managing broker license along with the required fees.

Each application for a license (new or renewal) **must include the applicant's social security number or tax identification number,** in addition to the other required information.

An applicant is permitted to act (subject to IDFPR approval) as designated managing broker after filing her application with the Department and prior to receiving her license but must not continue in this role past the term of 60 days after filing unless her license has been obtained within that period.

Should a sponsoring broker's license be revoked or rendered inactive, all licensees under that sponsoring broker will be considered inactive until such time as the sponsoring broker's license is reinstated or renewed or the licensee changes employment. Expiration dates and renewal periods for each license are set by rule, and **licenses can be renewed within 90 days prior to expiration upon completion of CE and payment of the required fees.**

Education exemptions: broker, managing broker

If an applicant for a broker's and managing broker's license is currently an attorney admitted to the practice of law by the Illinois Supreme Court, she is exempt from the education requirements. **The attorney still must take and pass the state exam.**

Continued eligibility: brokers and managing brokers (Section 5-35)

Approved education for potential brokers and managing brokers is **valid for purposes of licensure for two years after date of satisfactory course completion.** An official uniform transcript is needed for taking the state exam except for persons exempt from the educational requirements.

The broker or managing broker license must be applied for **within one year of passing the state test. Failure to do so means retaking the test. Failing the state test (either broker or managing broker) four times from the date that the first real estate test was taken requires one to retake the educational coursework.**

Corporations, Limited Liability Companies, and Partnerships (Section 5-15)

A corporation, partnership, or limited liability company (LLC) may receive a broker's license under the following conditions:

- In a *corporation,* **every corporate officer** who **actively participates in the organization's real estate activities** must hold a **managing broker license**. In addition, every employee of the corporation who acts as a licensee on the corporation's behalf also must hold a license as a real estate broker, managing broker, or residential leasing agent.
- In a partnership, **every general partner must hold a managing broker license**. Every employee of the partnership who acts as a licensee on the partnership's behalf also must hold a license as a real estate broker, managing broker, or residential leasing agent.
- In a *limited liability company* (LLC) or *limited liability* partnership (LLP), **every manager must hold a managing broker's license**. Additionally, every employee of the LLC/LLP who acts as a licensee on the LLC/LLP's behalf also must hold a license as a broker, managing broker, or residential leasing agent.

No corporation, partnership, LLC, or LLP may be licensed to conduct a brokerage business if any individual broker, residential leasing agent, or group of brokers and/or residential leasing agents owns or directly or indirectly controls more than 49 percent of the shares of stock or ownership interest in the business entity.

Residential Leasing Agent's License (Article 5)

The Real Estate License Act of 2000 provides for a residential leasing agent license for persons who wish to engage only in activities limited to the leasing of residential real property in which a license is required. This license allows such activities as "leasing or renting residential real property; attempting, offering, or negotiating to lease or rent residential real property; or supervising the collection, offer, attempt, or agreement to collect rent for the use of residential real property." Licensed brokers and managing brokers do not need a residential leasing agent license for these activities.

A limited residential leasing agent license applicant must meet the following requirements:

- Be at least 18 years of age
- Be of good moral character
- Have a high school diploma or its equivalent
- Successfully complete a 15-hour residential leasing agent pre-license course
- Pass the state's written leasing license examination

A residential leasing agent must be sponsored by a licensed real estate sponsoring broker.

Period in which to obtain a Residential Leasing Agent License

A person may engage in residential leasing activities for a period of 120 consecutive days without being licensed, so long as the person is acting under the supervision of a licensed real estate designated managing broker or sponsoring broker and that broker or sponsoring broker has notified the Department that the person is pursuing licensure. **All education, examination, and fee requirements must be met during the 120-day period.** An addition to RELA states that the education must commence by day 60 of the 120 days allowed for licensing (Section 5-5(d)).

THE LICENSING EXAMINATION

Requirements to take the State Exam

Applicants are eligible to take the Residential Leasing Agent, Broker or Managing Broker examination only after they have met the education and age requirements:

- they must also be able to demonstrate that they have met the other requirements set out by the Illinois Real Estate License Act of 2000 and any associated rules.
- The test may be administered only at times and places approved by the Department.
- Each test taker must pay the required fee to the appropriate testing center but will forfeit the fee if failing to appear at the scheduled time, date, and place to take the exam following receipt and acknowledgment of one's application by the Department or testing center.
- Candidates must register with the testing service in advance of the test and pay any fees to reserve a spot at one of many convenient locations throughout Illinois on a day that is convenient to them.

- All candidates must bring to the testing center two pieces of current identification. The first MUST be a driver's license with photograph, a passport or military identification with photograph, or an official state identification card with photograph. The second form of identification must display the name and signature of the candidate for signature verification.
- All examinations are given on a computer that displays all the test questions on a monitor and records all the answers. No special knowledge of computers is necessary.
- After completing the test, candidates are immediately informed if they passed or failed.
- Score reports will be emailed to candidates after the exam. A paper copy will no longer be provided after the exam.
- Passing candidates also receive a license application, including directions for applying for a real estate license.
- Passing candidates have one year in which to apply for a license, after which time a new examination will be required.
- Candidates who fail the examination will be told their score and are given diagnostic information in addition to directions on how to apply for a future test.
- Candidates who fail only one portion (either the state or national portion) of the exam are required to retake only the failed portion within 1 year.
- After four failures from the date that the first real estate test was taken, the applicant must successfully repeat all pre-license education before further testing. The fifth attempt to pass the exam is then treated by the Department as if it were a first attempt (**Section 5-35c**).

THE REAL ESTATE LICENSE

After passing the state exam, applicants will receive a score report sheet. Instructions to apply for the license are on the score report. IDFPR requires this score report sheet and course completion transcript be uploaded to the Online Services Portal during application. **A sponsoring broker is required to approve the application before a license will be issued by the state.**

Once a brokerage company has been selected by the person who has passed the State Real Estate Broker Exam:

- The applicant applies for the license with IDFPR online with their sponsoring broker.
- Their transcript should be uploaded as part of this application process.
- The licensee will receive an email back that they are licensed and then they should print their license within a day or two.
- The license will specify whether the individual is authorized to act as a broker, managing broker, or residential leasing agent.

- IDFPR issues the license online. This license authorizes the bearer to engage in appropriate licensed activities for the current license period.
- Licensees must carry this license or an electronic version of it when engaging in any of the activities for which a license is required by Illinois law. This license must be displayed upon request.

What happens to your license when you change or leave firms? (section 5-40)

Old Broker

When a licensee quits or the sponsoring broker or a designated managing broker terminates the licensee's employment with the sponsoring broker for any reason, the licensee must obtain her license from the employing broker at whose firm it has been kept.

- The licensee can terminate their license on their own.
- Once a licensee terminates their sponsorship with their sponsoring broker, their license becomes inactive until they find a new sponsoring broker.

New Broker

If the licensee is simply changing brokers, the new sponsoring broker will immediately complete a change of sponsoring broker form online.

Change of Address, Name, or Business Information (Section 5-41)

It is the licensee's responsibility to promptly notify the Department of any

- changes in their address, telephone number, e-mail address or office location **within 24 hours,**
- business information changes when acquiring or transferring **any interest in a corporation, LLC, partnership, or LLP that is licensed under the Real Estate License Act of 2000.**
- any changes in designated managing brokers, branch managers, or principal officers **within 15 days** after the change.

Expiration and Renewal

License expiration and renewal dates are established by rule, consistent with the Act; **Licenses may be renewed - by paying required fees and meeting CE requirements—up to 90 days prior to expiration of the license.**

Brokers, managing brokers, and residential leasing agents may **renew their expired licenses (provided they pay the necessary fees and meet the continuing education and other requirements) for up to two years following license expiration. Beyond this two-year period, licensees will be required to meet the qualifications for new licenses set out by the Act.**

Nonresidents and License by Reciprocity (Section 5-60)

A managing broker or broker who lives in a state that has a reciprocal licensing agreement with Illinois may be issued an Illinois license (or an Illinois Licensee may be issued a license in the state offering reciprocity) if the following conditions are met. The key feature of Reciprocity is that the Licensee does not have to live in the state offering reciprocity – Illinois licensees do not have to live in the states offering reciprocity and licensees living in other states offering reciprocity do not have to live in Illinois.

- For a reciprocal broker or managing broker's license, the broker or managing broker holds a broker or managing broker's license in her home state,
- the licensing standards of that state are substantially equivalent to or greater than the minimum standards required in Illinois,
- the managing broker or broker has been actively practicing as a managing broker or broker for at least two years immediately prior to the application date,
- the managing broker or broker furnishes the Department with an official statement, under seal, from her home state's licensing authority that the managing broker or broker has an active managing broker's or broker's license, is in good standing, and has no complaints pending,
- the managing broker's or broker's home state grants reciprocal privileges to Illinois licensees,
- the managing broker or broker completes a course of education and passes a test on Illinois specific real estate brokerage laws or the real estate brokerage laws of the state where the Illinois licensee wishes to do business.
- the broker furnishes the Department with a statement under seal of the proper licensing authority of the state in which the broker is licensed showing that the broker has an active broker's license, that the broker is in good standing, and that no complaints are pending against the broker in that state.

Currently, Illinois has reciprocity with the following states under the Real Estate License Act of 2000:

- Nebraska
- Colorado
- Connecticut
- Indiana
- Iowa
- Georgia
- Wisconsin
- Florida

Always check the Department Website for the latest update on reciprocal states.

Before a managing broker or broker will be issued a license, the applicant must file a designation (Person) in writing to act as her agent in Illinois. **Brokers or managing brokers applying for an Illinois license must furnish the Department with proof of active licensure in their home state.**

They also must pay the same license fees that are required of Illinois brokers and managing brokers. Prospective licensees must agree in writing to abide by all provisions of the Act and to submit to the Department's jurisdiction.

However, once acquired, the **reciprocal license allows a new resident who has recently been working under a non-Illinois license to obtain a valid Illinois license without examination.** Licenses previously granted under reciprocal agreements with other states shall remain in force "so long as the Department has a reciprocal agreement with that state."

Renewal without Fee (Section 5-50)

Licensees whose licenses have expired may renew without paying any lapsed renewal or reinstatement fees if the license expired within two years after the termination of the service, training, or education while the licensee was performing any of the following functions:

- On active duty with the U.S. armed services or called into the service or training by the state militia
- Engaged in training or education under supervision of the United States prior to induction into military service
- Serving as the Coordinator of Real Estate in Illinois or as an employee of the Department

LICENSE FEES

Applicants for real estate licenses are subject to appropriate fees in addition to the testing fee paid to AMP when applying for the examination. The Illinois Real Estate License Act of 2000 provides for predetermined licensing fees.

Initial Fees

- leasing license initial fee - $75.
- broker initial license fee - $125.
- managing broker initial fee - $150
- initial broker's license fee for a partnership, LLC, or corporation - $125.

Included in the initial license fees are a **Real Estate Recovery Fund fee of $10** and a **Real Estate Research and Education fee of $5.** Other licensing fees are indicated in the rules and are set according to actual cost incurred by the Department and may vary.

Returned check penalties and failure to pay (**Section 20-25**)

Anyone who delivers a check or other payment to the Department that is returned for insufficient funds must pay a **returned check fine of $50,** plus the amount originally owed. If the licensee **fails to make full payment of all fees and fines owed within 30 calendar days of the notification that payment is due, the Department will automatically terminate the license or deny the application without a hearing.** The licensee may apply for restoration or issuance of the license and pay all fees and fines due the Department.

Renewal Fees

- Residential Leasing agent - $100
- Broker - $150
- Managing Broker - $200

License Renewal Dates

Broker:	April 30, even years
Residential Leasing agent	July 31, even years
Real estate businesses:	October 31, even years
Managing Broker:	April 30, odd years

CONTINUING EDUCATION

Continuing Education Hours — Requirements

- Residential Leasing Agent — 8 hours of continuing education in the core curriculum for each 2-year renewal period
- Broker — 12 hours each 2-year renewal. 4-Hour CORE and 8 Hours of Elective – one hour of elective must include Sexual Harassment Prevention Training
- Managing Broker — 4-Hour CORE and 8 Hours of Elective – one hour of elective must include Sexual Harassment Prevention Training, plus 12 hours of specific broker management continuing education courses.
- IDFPR Citations provides an abbreviated, non-disciplinary process for failure to complete Continuing Education in a timely manner. The licensee pays and completes Continuing Education or asks for a hearing. They cannot practice real estate; their license is considered inactive if they did not complete their Continuing Education by the deadline date. All brokers and managing brokers must complete the required courses or equivalent before their licenses may be renewed.
- Managing brokers seeking to renew their licenses, beginning with the first renewal period following obtaining a Managing Broker's License, complete a 24-hour Department-approved CE course on broker management during each renewal period and, at the conclusion of the course, take and pass a test developed and administered according to Department specifications.

Managing Broker CE course material shall also include:

- sales promotion
- time management
- standard real estate company training

Instructors

Real estate CE credit may be earned by serving as an approved instructor in an approved course. The amount of credit earned matches the amount of credit given to the course.

Other Continuing Education Rules:

- Credit hours may be earned for self-study programs
- A broker or managing broker may earn credit for a specific CE course only once during the renewal period.
- No more than twelve hours of courses may be taken in any one day
- Pre-and post-licensing course hours may not be counted toward the CE credit-hour requirements unless specifically permitted by the Illinois Real Estate License Act of 2000.

Exempt from the CE requirement

- Licensees who, during the renewal period, served in the armed services of the United States,
- served as elected state or federal officials,
- served as a full-time employee of the Department,
- Licensees who are licensed attorneys admitted to practice law in Illinois.

No license may be renewed except upon the successful completion of the required courses or their equivalent or upon a waiver of those requirements for good cause shown as determined by the Director of Real Estate upon the recommendation of the Board.

If a renewal applicant has earned CE hours in another state, the department may approve the credit at its discretion based upon whether the course is one that would be approved under the Act.

YOUR REAL ESTATE BUSINESS AND THE ACT

Place of Business (Section 5-45)

Any sponsoring broker actively engaged in the real estate business must maintain a definite office or place of business within Illinois. The sponsoring broker must display a visible, conspicuous identification sign outside the office. Inside, the sponsoring broker must

conspicuously display the branch office license she sponsors. The sponsoring broker's office or place of business may not be located in any retail or financial establishment unless it is set apart as a clearly separate and distinct area within that establishment.

Branch offices

Any sponsoring broker who wants to establish **branch offices must notify IDFPR for each branch office maintained.** The **sponsoring broker names a designated managing broker for each branch office** and is responsible for **supervising all designated managing brokers.** The designated managing broker, who must be a licensed Illinois managing broker, oversees the branch's operations.

The name of the branch office must be the same as the primary real estate office or closely linked to it. The Department must be notified immediately in writing of any change of a primary or branch office location and within 15 days of a change of a designated managing broker for any branch.

Exceptions to required place of business

A broker licensed in Illinois by reciprocity with another state may be **exempt from the requirement of maintaining a definite place of business in Illinois** if the broker:

- maintains an active broker's license in the home state,
- maintains an office in the home state, and
- has filed a written statement with the Department appointing the Secretary to act as the broker's agent for service of process and other legal notices, agreeing to abide by all the provisions of the Illinois Real Estate License Act of 2000, and submitting to the jurisdiction of the Department.

Loss of an Office Manager (Section 5-45e)

In the event a **sponsoring broker dies, or a designated managing broker leaves an office unexpectedly, a request may be made to the Department within 15 days of the loss to grant an extension for continued office operations.** The extension may be granted for up to 60 days unless extended by the Department for good cause shown and upon written request by the broker or representative.

Employment Agreements (Section 10-20)

A licensee must have only one sponsoring broker at any given time and may perform real estate activities only for that sponsoring broker. In turn, a sponsoring broker must have a written agreement with any designated managing brokers, brokers, or residential leasing agents (s)he employs. The agreement must describe the significant aspects of their professional relationship, such as supervision, duties, compensation, and grounds for termination, and must address the employment or independent contractor relationship terms. A sponsoring broker

must also have a written agreement with any licensed broker acting as a personal assistant of licensees sponsored by the broker.

Agency Relationships (Article 15)

Once a relationship has been formed between a licensee and a sponsoring broker, the next set of relationships that dominate the real estate business falls under law of agency. Article 15 deals with the licensee's relationships with the public. This article indicates specific standards to be held to in agency relationships. It clearly indicates that **"the law of agency under this Act ...primarily governs the actions of licensees, not common law."** Note that Article 15 of the Real Estate License Act of 2000 is the only section of the Act that has private right of action.

Section 15.10 sets out the basic relationship with consumers by saying "licensees shall be considered to be representing the consumer they are **working with as a designated (implied) agent for the consumer** unless there is a written agreement between the sponsoring broker and the consumer providing that there is a different relationship.

Replacing common law, Section 15-15 notes the statutory duties a licensee has toward the client. The statutory duties are fulfilled by:

- performing the terms of the brokerage agreement between a sponsoring broker and a client,
- promoting the best interest of the client (e.g., timely offer presentation, material facts disclosure, best interests of the client prevail over any self-interest),
- obeying any directions that are not contrary to public policy or law,
- exercising skill and care in performing brokerage services,
- timely accounting for all money and property received in which the client has, may have, or should have had an interest,
- keeping confidential information confidential, and
- complying with the Act and applicable statutes.

The Act also clarifies certain often misunderstood situations that occur when one is an agent. Under the Act the following apply:

- It is considered reasonable to show available properties to various prospects without being viewed as breaching duty to a given client.
- A licensee must provide written disclosure to all clients for whom the licensee is preparing or making contemporaneous offers or contract to purchase or lease the same property and must refer any client that requests a referral to another designated agent.
- It is not considered a conflict for a buyer's agent to show homes wherein the commission is based on the ultimate sales price (in other words, where a higher price creates a higher commission).

- Unless a licensee "knew or should have known the information was false," a licensee is not considered responsible or liable for false information passed on to the client from a customer via the licensee, or vice versa.
- The licensee remains responsible under common law "for negligent or fraudulent misrepresentation of material information."

Section 15-25 deals with a licensee's treatment of customers. A licensee shall "treat all customers honestly and shall not negligently or knowingly give them false information." Clerical acts are permitted.

Section 15-40 clearly states that compensation does not determine agency.

Dual Agency Disclosure

Informed written consent is required of both buyer and seller for dual agency under **Section 15-45** of the Act. Also, a **licensee may not serve as dual agent in any transaction in which (s)he has an ownership interest, whether direct or indirect.**

Designated Agency

The alternative to Dual Agency is highlighted in **Section 15-50.** This allows the sponsoring broker to **appoint or designate one agent for the buyer and one agent for the seller, even within the same firm, without legally being construed as a dual agent. The broker is obligated to protect any confidential information. Because of this, "a designated agent shall disclose to his or her sponsoring broker** (or persons specified by the sponsoring broker) **confidential information** of a client for the **purpose of seeking advice or assistance** for the benefit of the client in regard to a possible transaction."

Article 15 (Agency) also clearly notes the following:

- Offers of **sub-agency** through the **multiple listing service (MLS)** are **not permitted** in Illinois.
- A consumer cannot be held "vicariously liable" for the acts or omissions of a licensee in providing licensed activities for or on behalf of the consumer.
- The Department may further amplify anything in Article 15 by way of promulgating additional rules at any time.
- There is a time limit on legal actions. Legal actions under Article 15 may be forever barred "unless commenced within two years after the person bringing the action knew or should reasonably have known of such act or omission." In no case may actions be brought after more than five years.

DISCLOSURES

What Must Be Disclosed:

- Material facts of a property
- Known latent physical defects
- Agency relationships
- Designated agency
- Dual agency
- Lack of agency (to a purchasing customer) — No Agency Disclosure Form
- Compensation sources

Real estate disclosure means an acknowledgment, stated clearly and usually in writing, of certain key facts that the law holds might, if left unknown or if unclear, unfairly influence the course of events. Failure to disclose is an increasingly serious issue in a consumer-based society and under consumer-driven laws.

Article 15, Material Facts Disclosure

A licensee must disclose to the client **"material facts concerning the transaction of which the licensee has actual knowledge unless that information is confidential information. Material facts do not include physical conditions with little or no adverse effect on the value of the real estate."**

A listing agent must disclose to <u>prospective buyer customers</u> "all latent, material, adverse facts pertaining to the physical condition of the property that are actually known by the licensee and that could not be discovered by a reasonably diligent inspection of the property by the customer." A licensee is **not to be held liable for false information provided to the customer** that the **licensee did not actually know was false** (15-25a).

Non-required disclosure items are:

- HIV and AIDS, (Can't Reveal under Federal Law – See Below)
- "any other medical condition",
- the fact that a property was "the site of an act or occurrence that had no effect on the physical condition of the property or its environment or the structures located thereon",
- factual situations for properties other than the "subject of the transaction",
- physical conditions on nearby properties that "do not have a substantial adverse effect on the value of the real estate that is the subject of the transaction."

It is illegal under federal law to disclose that a property's occupant has or had HIV or AIDS.

Section 15-35, Agency Relationship Disclosure

Before a listing agreement, buyer agency agreement, or any other brokerage agreement may be created, a consumer must be told in writing:

- that No Agency Relationship exists
- that licensee is not acting as the agent of the customer at a time intended to prevent disclosure of confidential information.
- the sponsoring broker's compensation policy insofar as cooperating with brokers who represent other parties in a transaction, if an Agency Agreement is signed
- the name or names of designated agent(s) if an Agency Agreement is signed

Section 10-5, Disclosure of Compensation

The Act holds that clients must be made aware of compensation, source of compensation, and the sponsoring broker's policy on sharing commission with cooperating brokers.

Handling Client Funds (Section 20-20)

Licensees should immediately provide any earnest money checks to their sponsoring broker. The sponsoring broker must "maintain and deposit in a special account, separate and apart from personal and other business accounts, all escrow monies belonging to others entrusted to a licensee while acting as a real estate agent, escrow agent, or temporary custodian of the funds of others."

The Act states that the **sponsoring broker's escrow account is to be noninterest bearing, "unless** the character of the deposit is such that payment of interest thereon is otherwise **required by law** or **unless the principals to the transaction specifically require, in writing, that the deposit be placed in an interest-bearing account and who the recipient of the interest is."** Receipts must be made, and a duplicate kept by the sponsoring broker for any escrow monies received.

Earnest money and security deposits must be deposited within *one business* day of contract or lease acceptance or, if a holiday, the next available business day. The escrow must be in a federally insured depository.

The Act **does not limit the number of escrow accounts one sponsoring broker may maintain.** A Sponsoring Broker does not have to have an Escrow Account.
Commingling of personal and business funds is prohibited. **Conversion**, or use of the escrow funds for personal or business purposes, is also prohibited.

Dispute over Disbursement of Escrow Funds

If there should be disputes between the parties regarding escrow money, **the sponsoring broker "shall continue to hold the deposit.** The Sponsoring Broker must wait:

- for all parties to signal agreement on the escrow disposition by signing a definite agreement; otherwise, she should not disburse funds
- until such an agreement is reached
- if no agreement can be reached within 6 months, the Sponsoring Broker turns the funds over to the Court, where final decision concerning disbursement of the funds is made, or deemed abandoned and transferred to the Office of the State Treasurer to be handled as unclaimed pursuant to the Uniform Disposition of Unclaimed Property Act.

Escrow Account Records

Each sponsoring broker who accepts earnest money shall maintain, in his/her office or place of business, a **bookkeeping system in accordance with sound accounting principles, and** such system shall consist of at least the following escrow records.

Journal

A journal must be maintained for each escrow account. The journal shall show the chronological sequence in which funds are received and disbursed.

For funds received, the journal shall include:

- the date the funds were received,
- the name of the person on whose behalf the funds are delivered to that sponsoring broker, • the amount of the funds delivered.

For fund disbursement, the journal shall include:

- the date,
- the payee,
- the check number,
- the amount disbursed.

A running balance shall be shown after each entry (receipt or disbursement).

Ledger

A ledger shall be maintained for each transaction. **The ledger shall show the receipt and the disbursement of funds affecting a single particular transaction such as between buyer and seller, or landlord and tenant, or the respective parties to any other relationship.**

For funds received, the ledger shall include:

- the names of all parties to a transaction,
- the amount of such funds received by the sponsoring broker,
- the date of such receipt.

For fund disbursement, the ledger shall show:

- the date,
- the payee,
- the check number,
- the amount disbursed.

The ledger shall segregate one transaction from another transaction. There shall be a separate ledger or separate section of each ledger, as the sponsoring broker shall elect, for each kind of real estate transaction.

If the ledger is computer-generated, the sponsoring broker must maintain hard copies of:

- bank deposit slips,
- bank disbursement slips,
- other bank receipts

These hard copies are to be retained to account for the data on the ledger.

Monthly Reconciliation Statement

Each sponsoring broker shall reconcile, within ten days after receipt of the monthly bank statement, each escrow account maintained by the sponsoring broker except where there has been no transactional activity during the previous month. Such reconciliation shall include a written worksheet comparing the balances as shown on the bank statement, the journal, and the ledger, respectively, in order to insure agreement between the escrow account and the journal and the ledger entries with respect to such escrow account**. Each reconciliation shall be kept for at least five years from the last day of the month covered by the reconciliation.**

Master Escrow Account Log

Each sponsoring broker shall maintain a master escrow account log identifying all escrow bank account numbers and the name and address of the bank where the escrow accounts are located. The master escrow account log must specifically include all bank account numbers opened for the individual transactions, even if such account numbers fall under another umbrella account number.

If the Department requests to view or audit escrow records, they must be supplied within *24* hours of the request to the Department personnel. Escrow records must be **maintained for**

five years. The escrow records for the **immediate prior two years shall be maintained in the office location,** and the balance of the records can be maintained at another location.

THE LICENSE ACT AND ASSISTANTS

Unlicensed Assistants

These employees can legally perform **only limited tasks (typing, filing, answering phones).**

Licensed Broker As Assistants

The actual employment agreement for a licensed broker working as an assistant is made with the sponsoring broker of the firm and can only be compensated by the sponsoring broker.

ADVERTISING REGULATIONS (SECTION 10-30)

Advertising is expanded to include social media and digital forums.

A sponsoring broker must include his/her business name and franchise affiliation in all advertisements.

The Sponsoring Broker's name shall be at least equal in size or larger than the team names or that of the individual licensee

Blind ads are prohibited. Blind ads are defined as advertisements related to the sale or lease of any real estate, other real estate activities, or the hiring of other licensees that:

- Do not indicate the brokerage firm name
- "Blind Advertisement" is expanded to include electronic ads that do not provide a direct link to all the required disclosures
- Do not indicate that the advertiser is a licensee
- Offer only a box number, street address, or telephone number for responses
- **Designated Managing brokers (manage an office) must advertise as Designated Managing Brokers**
- **All other Managing Brokers may advertise as "Managing Brokers"**
- In addition, pursuant to Section 10-40, every brokerage company or entity, other than a sole proprietorship with no other sponsored licensees, must adopt a company or office policy covering certain topics including advertising

Ads prepared by licensees should at least include:

- Property for sale,
- licensee name,
- company name (as registered with the Department) and company city/state, and • the city or area of the advertised property.

All other ads:

- licensee name,
- company name (as registered with the Department) and company city/state.

A licensee must:

- **NEVER** advertise in only his/her name,
- **ALWAYS** include the firm's name and address,
- **NEVER** advertise another sponsoring broker's listings without written permission,
- **ALWAYS** keep advertisements up-to-date and clear,
- **NEVER** create ads containing "inherently misleading terms," such as: Company, Realty, Real Estate, Agency, Associates, Brokers, Properties, Property.

Licensees must disclose to consumers their **intent to share or sell consumer information that has been collected via the Internet or any other means of electronic communication.** This disclosure must be conspicuous and timely.

Social Media and Text

Social media has opened up opportunities for people to communicate with others and grow their business. Social media has changed the way real estate professionals get information out to their clients. Marketing properties through social media allows real estate agents to reach their Sphere of Influence (SOI) and inform clients. Social media also allows agents to market themselves and grow their business.

Social Networking platforms like Facebook, LinkedIn, Instagram, and Twitter, allow agents to reach a wide range of traffic and provide useful information. Posting of events such as showings, new listings, open houses, closings, and any other real estate activities should be done daily.

When texting information to clients, agents must be careful about terms or abbreviations that can be misunderstood or using language that can alienate others.

Agents should be careful about posting/sharing Personally Identifiable Information (PII), for the confidentiality of their clients.

Licensees advertising via the Internet or other forms of electronic media are forbidden to:

- employ deceptive or misleading URLs or domain names,
- frame the website of another real estate brokerage or multiple listing service without permission or with the intent or effect of deceiving the consumer, and
- use keywords or other such tools to mislead consumers or deceptively guide or engage Internet traffic.

Advertising on the Internet

Ads prepared for the Internet must adhere to the following:

- An Internet ad must include proper identification licensee name, company name, company location, and geographic location of property.
- E-correspondence, bulletin boards, or e-commerce discussion groups require licensee name, company name, and company location.
- Links to listing information from other Internet sites are permitted without approval unless the website owner requires approval for links to be added. Any such link must not "mislead or deceive the public as to the ownership of any listing information."
- As with other advertising, internet sites are to be updated periodically and kept current.

In Internet advertising situations, the rules do not allow:

- "advertising a property that is subject to an exclusive listing agreement with a sponsoring broker other than the licensee's own without the permission of and identifying that listing sponsoring broker," and
- "failing to remove advertising of a listed property within a reasonable time, given the nature of the advertising, after the earlier of the closing of a sale on the listed property or the expiration or termination of the listing agreement."

Painting a True Picture

Licensed real estate agents must present a "true picture" in advertising and representation to the public, including URLs and domain names. The National Association of Realtor® Code of Ethics states:

"Realtors shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations.

Realtors shall ensure status as real estate professionals is readily apparent in their advertising, marketing, and other representations and that the recipients of all real estate communications are or have been notified that those communications are from a real estate professional. **Advertising must contain all the information necessary to communicate to the public in an accurate, direct, and readily comprehensible manner.**

Phone book listings

Licensees **must not place their own names under the heading "Real Estate"** in a **telephone directory** or **otherwise advertise their services to the public through any media without also listing the business name of the sponsoring broker with whom they are affiliated.** This rule is consistent throughout all advertising media.

Selling Your Own Property

Selling or leasing your own property or a property in which you have an interest means you, as a licensee, must use the term "broker-owned" or "agent-owned" in all advertising and on listing sheets.

If the real estate firm's sign is used in the yard, and the firm's services are being used, then having the "agent-owned" or "broker-owned" notation on the sign itself is not necessary. However, **all written materials (listing sheets, ads, Internet ads) still must carry the "broker-owned" or "agent-owned" notation.** The Illinois Real Estate License Act of 2000 provides that no matter how one lists an agent-owned property by owner or through a real estate firm **the agent must take care not to confuse the public.**

Finally, it *is* possible and permitted by the Department to list your own personal real estate with a firm other than the one at which you work if you so desire and if your sponsoring broker approves.

A licensee must:

- ALWAYS disclose "agent-owned"
- Place "agent-owned" on the home sign if FSBO

If a licensee advertises to personally purchase or lease real estate, disclosure of licensee status is required.

Compensation and Business Practice (Article 10)

- **Section 10-5:** A licensee may not receive compensation from anyone other than her sponsoring broker. In turn, sponsoring brokers may compensate only licensees whom they personally sponsor (including licensed brokers working as personal assistants). The one exception is a former licensee now working for another sponsoring broker but who is due a commission from work completed while still at the first firm.
- Sponsoring brokers may directly compensate other sponsoring brokers (as in a cooperative commission arrangement for the listing broker to pay commission to the firm with the buyer).
- **Section 10-10:** Disclosure of compensation is a significant issue. The Act holds that clients must be made aware of compensation, source of compensation, and the sponsoring broker's policy on sharing commission with cooperating sponsoring brokers.
- If compensation is being issued to an agent from both buyer and seller in one transaction, this must be disclosed. Any third-party compensation must also be disclosed.
- If a licensee refers a client to a service in which the licensee has greater than 1 percent interest (title, legal, mortgage), the interest must be disclosed.
- **Section 10-15**: It is illegal to compensate unlicensed persons, or anyone being held in violation of the Act.
- To sue for commission in Illinois, one must be a licensed real estate sponsoring broker.

- **Funds from sellers or buyers always go through the sponsoring broker.** (S)he is the only one who issues compensation to brokers, managing brokers, residential leasing agents, or licensed brokers working as personal assistants working under him/her.
- **No licensee may pay a referral fee to an unlicensed person who is not a principal to the transaction.** A licensee may not request a referral fee unless *reasonable cause* for payment of the fee exists (a contractual referral fee arrangement).
- **Section 10-15** also states that a licensee "may **offer cash, gifts, prizes, awards, coupons, merchandise, rebates or chances to win a game of chance,** if not prohibited by any other law" to consumers as a legitimate approach to garnering business
- Additionally, it is perfectly legal to share commission compensation with a principal to a given transaction.
- It now is legal for a sponsoring broker to pay a corporation set up by the licensee, rather than the licensee directly, if desired. They cannot sell under the corporate name; they must sell under their own name.
- The law allows formation of an entity to receive licensee compensation from the sponsoring broker where licensee is sole owner; or licensee spouses sponsored by the same sponsoring broker are owners; or licensee and unlicensed spouse are owners of the entity.

DISCIPLINARY PROVISIONS AND LOSS OF LICENSE

The Real Estate License Act of 2000 lists specific violations for which licensees may be subject to discipline. The Department is authorized to impose the following disciplinary penalties:

- Refuse to issue or renew any license
- Suspend or revoke any license
- Censure or reprimand a licensee
- Place a licensee on probation
- Impose a civil penalty of not more than **$25,000 for any one cause or any combination of causes**

Causes for Discipline

The Department may take disciplinary action against a licensee for any one cause or a combination of causes. Specifically, a licensee may be subject to disciplinary action or fines if the licensee:

- makes a false or fraudulent representation in attempting to obtain or renew a license,
- has been convicted of a felony or of a crime involving dishonesty, fraud, larceny, embezzlement, or obtaining money, property, or credit by false pretenses or by means of a confidence game,
- is unable to practice the profession with reasonable judgment, skill, or safety as a result of a physical illness,
- practices as a licensee in a retail sales establishment from an office, desk, or space that is not separated from the main retail business and in a separate and distinct area,

- has been subjected to disciplinary action by another state, the District of Columbia, a territory, a foreign nation, a government agency, or any other entity authorized to impose discipline if at least one of the grounds for that discipline is the same as or equivalent to a cause for discipline in Illinois,
- has engaged in real estate brokerage without a license or with an expired or inactive license,
- attempts to subvert or cheat on the licensing exam or assists someone else in doing so,
- advertises in a way that is inaccurate, misleading, or contrary to provisions of the act.

A licensee also is subject to disciplinary action if found guilty of any of the following activities:

- Making any false promises to influence, persuade, or induce
- Pursuing a continued and flagrant course of misrepresentation or making false promises through licensee, employees, agents, advertising, or otherwise
- Using any trade name or insignia of membership in any real estate organization of which the licensee is not a member
- Acting for more than one party in a transaction without providing written agency disclosure
- Representing or attempting to represent a broker other than the sponsoring broker
- Failing to account for or remit any monies or documents belonging to others that come into the licensee's possession
- Failing to properly maintain and deposit escrow monies in a separate account
- Failing to make all escrow records maintained in connection with the practice of real estate available during normal business hours and within 24 hours of submitted request
- Failing to keep all records for 5 years – can be kept electronically but must be backed up on a regular basis.
- Failing to furnish, on request, copies of all documents relating to a real estate transaction to all parties executing them
- Failure of the sponsoring broker to provide appropriate licensing documents (license termination information) in a timely way
- Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public
- Commingling the money or property of others with one's own
- Employing any person on a purely temporary or single-deal basis as a means of evading the law regarding illegal payment of fees to non-licensees
- Permitting the use of one's managing broker's license by another person in order to operate a real estate office
- Displaying a *For Rent* or *For Sale* sign on any property, or advertising in any fashion, without the written consent of the owner

- Failing to provide information requested within 30 days of the request as related to audits or complaints made against the licensee based on the Act
- Utilizing blind advertising
- Offering an improperly constructed guaranteed sales plan, one that does not meet the Act's requirements for such plans
- Intending to promote racial or religious segregation by use of actions or words or behaving or speaking in such a way as to discourage integration
- Violating the Illinois Human Rights Act
- Inducing any individual to break out of an existing contract to enter into a new one, whether a sales contract or a listing contract
- Negotiating directly with the client of another agent
- Acting as an attorney in the same transaction in which one acts as a real estate licensee
- If merchandise or services are advertised for free, any conditions or obligations necessary for receiving the merchandise or services must appear in the same ad or offer
- Disregarding or violating any provisions of the Land Sales Registration Act or the Time-Share Act
- Violating a disciplinary order
- Paying or failing to disclose compensation that violates the Act
- Disregarding or violating any provision of this act or the published rules or any regulations promulgated to enforce the Act
- Failing to provide the minimum services required under an exclusive brokerage agreement
- Violating the terms of a disciplinary order issued by the Department
- Forcing any party to a transaction to compensate the licensee as a requirement for releasing earnest money
- Habitual use or addiction to alcohol, narcotics, stimulants, or any other chemical agent that results in licensee's inability to practice with skill and safety
- Failure to disclose the licensee status on the Multiple Listing Service data form that is accessible to the public if the licensee has any ownership interest in the property

A licensee shall report to the Department, in a manner adopted by rule, any plea of guilty, or nolo contendere to forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any similar offense or offenses or any conviction of a felony involving moral turpitude that occurs during the licensee's term of licensure.

Discrimination

Licensee guilty of discrimination (**Section 20-50**) If there has been a civil or criminal trial in which a licensee has been found to have engaged in illegal discrimination in the course of a

licensed activity, the Department must suspend or revoke the licensee's license unless the adjudication is in appeal. Similarly, if an administrative agency finds that a licensee has engaged in illegal discriminatory activities, the Department must take disciplinary action against the licensee unless the administrative order is in appeal.

Guaranteed sales plans

A "guaranteed sales plan" means a real estate purchase or sales plan whereby a licensee enters into one or more conditional or unconditional written contracts with a seller, one of which is a brokerage agreement, and wherein the person agrees to purchase the seller's property within a specified period of time, at a specific price, in the event the property is not sold in accordance with the terms of a brokerage agreement to be entered into between the sponsoring broker and the seller. A licensee is subject to disciplinary action if (s)he offers a guaranteed sales plan without complying with the Act's requirements for such agreements.

- A person who offers a guaranteed sales plan to consumers is engaged in licensed activity under this Act and is required to have a license.
- A licensee offering a guaranteed sales plan shall provide the details, including the purchase price, and conditions of the plan, in writing to the party to whom the plan is offered prior to entering into the brokerage agreement.
- A licensee offering a guaranteed sales plan shall provide to the party to whom the plan is offered evidence of sufficient financial resources to satisfy the commitment to purchase undertaken by the broker in the plan.
- A licensee offering a guaranteed sales plan shall undertake to market the property of the seller subject to the plan in the same manner in which the broker would market any other property unless the agreement with the seller provides otherwise.
- The licensee may not purchase seller's property until the period for offering the property for sale has ended according to its terms or is otherwise terminated.
- Any licensee who fails to perform on a guaranteed sales plan in strict accordance with its terms shall be subject to all the penalties provided in this Act for violations thereof and, in addition, shall be subject to a civil fine payable to the party injured by the default in an amount of up to $25,000 **(Source: P.A. 101-357, eff. 8-9-19).**

Unlawful actions by associates if no sponsoring broker knowledge

A sponsoring broker will not have his/her license revoked because of an unlawful act or violation by any broker, managing broker, or residential leasing agent employed by or associated with the sponsoring broker, or by any unlicensed employee, **unless the sponsoring broker had knowledge of the unlawful act or violation.** The sponsoring broker could possibly be held liable for the employee's actions under *vicarious responsibility.*

Disciplinary Procedures

Any person providing or offering to provide real estate services, or who is licensed or claims to be licensed under the Act, may be investigated by the Department. At least 30 days before the date of a hearing set for examination of such an issue, and prior to taking any disciplinary action (including but not limited to reprimand, probation, or revocation or suspension of license), the Department will do the following:

- In writing, inform the person under investigation of the charges being brought against her and the location and time of the hearing**;** this notification may be sent by personal delivery or certified mail to the address given by the individual in her last communication with the Department
- Instruct the accused individual to respond to the charges, under oath and in writing, within 20 days of being informed of the charges and hearing
- Notify the individual that unless (s)he responds as instructed, default will be taken against her and disciplinary action, such as imposition of a fine or license suspension, revocation, or probation, may be instituted.

At the hearing, the charges will be presented to the Board, and the **accused individual and her counsel will be allowed to offer a defense via statements, arguments, testimony, and evidence.** The Board may continue the hearing from time to time. When an individual fails to respond to the notice and the charges are deemed sufficient, the Department may institute disciplinary action without a hearing.

The Department is required to keep a record of all formal hearing proceedings, at the Department's expense. According to the same guidelines concerning fees, mileage, and manner provided for civil cases for state court, the Department is empowered to subpoena materials, such as books, documents, and records, and bring people before it to testify orally or give depositions, or both. All members of the Board as well as the Secretary, the designated hearing officer, may place witnesses under oath in any authorized Department hearing or in other contexts in which the Department is authorized to do so by this act.

The Department will present the licensee with a copy of the Board's report following the conclusion of the hearing. The licensee may request a rehearing, via a motion in writing, which indicates the reasons justifying a new hearing. This request must be made within 20 days after the licensee has been served with the Department's report. If the motion for rehearing is denied, the Secretary is empowered to enter an order as recommended by the Board.

If the Secretary determines that emergency action is required to protect the public interest, welfare, or safety, **she may move to suspend the accused individual's license without a hearing first.** However, a hearing must be scheduled for within 30 days of the suspension. The licensee may seek a continuance to postpone the hearing, but in such a case, the suspension will remain in effect.

In any action intended to discipline a license holder or to refuse to issue, restore, or renew a license, the Secretary may appoint an Illinois-licensed attorney to serve in her place as the hearing officer, with complete authority to direct the proceedings. The officer must establish findings pertaining to the allegations, the licensee's conduct, and the law, and present these conclusions to the Board, along with her recommendations. Board members may attend hearings, if they wish, and are required to review the hearing officer's report and then present the board findings to the Secretary and all parties to the hearing. The Secretary is permitted to enter an order that is inconsistent with the board or hearing officer's recommendations if she disagrees with either party.

Once the order to suspend or revoke a license has been put through, the licensee is required to immediately hand over her license. If the licensee fails to surrender her license, the Department is empowered to seize it. **If the Board so recommends (in writing), the Department can restore the suspended or revoked license at any time following the event.** The exception to this is any instance in which the Board further investigates the issue, holds a hearing, and decides that restoring the license would not serve the public interest.

The Secretary may order that another hearing be held (before the same examiners or a different set) in the event that she believes that the disciplinary action taken was unjust.

Right to Petition Administrative/Judicial Review (Section 20-75)

All final administrative decisions are subject to judicial review under the provisions of the **Administrative Review Law** and its rules. The accused may request a judicial review by petitioning the circuit court of the county of her residence. If the party is not a resident of Illinois, the venue will be in Sangamon County.

NONPAYMENT ISSUES WHEN OBTAINING A LICENSE OR RENEWING ONE

Nonpayment of Child Support

Specifically highlighted in the Illinois Real Estate License Act of 2000, the Department will **refuse to issue or renew** (or may revoke or suspend) the **licenses of individuals who are more than 30 days delinquent in child support payments.**

Nonpayment of State Income Tax

Anyone who fails to file a tax return or to pay any tax, penalty, interest, or final assessment required by the Illinois Department of Revenue may have her license withheld or suspended until any such tax requirements are met (**Section 20-35**).

Nonpayment of Student Loans

If student loans were provided or guaranteed by the Illinois Student Assistance Commission or any governmental agency of the state, and not paid back, the Department will not grant a real

estate license to that individual. For an existing licensee, a hearing is made available, after which, if no satisfactory repayment plan has been made, the license may be suspended or revoked.

Good Moral Character (Section 5-25)

The Board may revoke licenses or refuse to grant licenses to applicants who make **false statements on their licensure applications**. In evaluating an applicant's moral character and deciding whether to grant a license, the Board may take into account facts and events from the applicant's past, including **prior conduct; revocation of her license; conviction for a felony that involved moral turpitude; or a conviction or plea of guilty or nolo contendere in cases involving "forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or conspiracy to defraud**."

In its consideration of the prior revocation, conduct, or conviction, the Board shall take into account the nature of the conduct, any aggravating or extenuating circumstances, the time elapsed since the revocation, conduct, or conviction, the rehabilitation or restitution performed by the applicant, mitigating factors, and any other factors that the Board deems relevant.

In evaluating past conduct, the Board will consider the particular details of the behavior or violation, how long ago the event(s) took place, whether the applicant has made restitution or been rehabilitated, and other factors as the Board desires.

Violations (Section 20-22)

Any person who is **found working or acting as a managing broker, broker, or residential leasing agent without being issued a valid existing license is guilty of a Class A misdemeanor** and, **on conviction of a second or subsequent offense, the violator is guilty of a Class 4 felony.**

Injunctions

In addition to criminal prosecutions, the Department has **the duty and authority to originate an injunction to prevent or stop a violation or to prevent an unlicensed person from acting as a broker, managing broker, or residential leasing agent.**

A violation of the Illinois Real Estate License Act of 2000 is specifically declared to be harmful to the public welfare and a public nuisance. The attorney general of Illinois, a county state's attorney, the Department, and even private citizens may seek an injunction to stop or prevent a violation.

Disciplinary Statute of Limitations (Section 20-115)

No action may be taken by the Department against any person for violation of the terms of this act or its rules **unless the action is commenced within five years after the occurrence of the alleged violation.**

Index of Decisions (Section 20-5)

The Department is **required to maintain an index of all its licensee-related formal decisions.** This includes all refusals to issue, all renewals, or refusals to renew, all revocations or suspensions of licenses, and all probationary and other disciplinary actions. The index is available for public inspection during normal business hours.

If the licensee wishes to have their license reinstated, the licensee must reimburse the fund all fees plus interest. The interest rate is established by state statute.

THE REAL ESTATE RECOVERY FUND

The Real Estate Recovery Fund provides a means of compensation for actual monetary losses (as opposed to losses in market value) suffered by any person as a result of actions by a licensee or a licensee's unlicensed employee:

- A violation of the Real Estate License Act of 2000, its rules and regulations
- Act of embezzlement of money or property
- Obtaining money or property by false pretenses, artifice, trickery, forgery or fraud
- Misrepresentation, deceit, or discrimination

The procedure for recovery for actual loss by an aggrieved person has been substantially streamlined to allow for actual recovery from the fund if there is a basis for recovery.

The fund may pay out a maximum sum as determined by the department to the wronged person, as ordered by the relevant county's circuit court. This amount **can include an additional payment for legal costs and attorneys' fees of up to 15 percent of the total amount** ordered as recovery for the improper conduct. **The maximum fund liability of $100,000 must be spread equally among all co-owners.** Interest is not paid on the recovery amount. **Recovery sums will only be paid out in cases where valid judgments have been made** and will **not be paid out for violations of the Land Sales Act or the Time-Share Act.**
A claim against the Fund does not need to arise from a loss resulting from intentional misconduct.

The Department will determine by rule the maximum amount an aggrieved person may recover from the Fund, as well as the maximum liability arising out of a licensee's activities. There is no

longer a cap on attorney's fees. The Act removes certain barriers to be eligible to recover from the Fund.

Collection from the Recovery Fund (Section 20-90)

When **a lawsuit may result in a claim against the Real Estate Recovery Fund**, the Department must be notified in writing by the aggrieved person at the time the action is commenced against the licensee, specifically, within seven days of filing a suit against the licensee. Failure to notify the Department of the potential liability precludes any recovery from the fund. If the plaintiff is unable to serve the defendant with a summons, the Secretary may be served instead, and this service will be valid and binding on the defendant. Additionally, legal action must have commenced no later than two years after the aggrieved person knew of the acts or omissions that gave rise to possible right of recovery from the fund.

If a claimant recovers a valid judgment in any court against any licensee or unlicensed employee for damages resulting from an act or omission qualifying for coverage under the fund, the Department must receive written notice of the judgment within 30 days. The Department is also entitled to 20 days' written notice of any supplementary proceedings, in order to permit the Department to participate in all efforts to collect on the judgment.

For a claimant to obtain recovery from the fund, all proceedings (including all reviews and appeals) must be completed. **In addition, the claimant must show that she has attempted to recover the judgment amount from the licensee or unlicensed employee's real or personal property or other assets and was either unable to do so or the amount recovered was insufficient to satisfy the judgment.** The names of all licensees and other parties that are in any way responsible for the loss must have been named in the suit. If they were not, it may preclude recovery from the fund. Finally, the claimant must show that the amount of attorney's fees being sought is reasonable.

When a judgment amount is paid from the Recovery Fund, the Department takes over the rights of the aggrieved party on this issue. She is required to assign all right, title, and interest in judgment to the Department. By this *subrogation,* any funds recovered on the judgment will be deposited back in the Recovery Fund.

Fund Losses Held Against the Licensee (Section 20-90)

When payment is made from the recovery fund to settle a claim or satisfy a judgment against a licensed broker, managing broker, or unlicensed employee, the license of the offending broker or managing broker is automatically terminated. The broker, or managing broker, may not petition for the restoration of her license until she has made repayment in full to the recovery fund of all awards made due to her actions, plus interest at the statutory annual rate. A discharge in bankruptcy does not relieve a person from the liabilities and penalties provided for in the Illinois Real Estate License Act of 2000. If the licensee wishes to have their license

reinstated, the licensee must reimburse the fund all fees plus interest. The interest rate is established by state statute.

Statute of Limitations (Sections 20-90 and 20-115)

A suit that may ultimately result in collection from the fund must be commenced within two years after the date the alleged violation occurred. The Department must initiate any action it plans to take against an individual licensee within five years of the violation.

Financing the Recovery Fund (Sections 25-35)

If at any time during the year the fund slips below $750,000, the Real Estate License Administration Fund is utilized to upgrade the level to a minimum balance of $800,000. All recovery fund monies received from applications, renewals, and fines and penalties are deposited into the Real Estate Recovery Fund, and its sums may be invested and reinvested.