

# **CHICAGO REAL ESTATE SCHOOL**

## **All Day Review**

Illinois Real Estate Education Provider

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# Chapter 1

## INTRODUCTION TO REAL ESTATE AND REAL PROPERTY

### **Types of Real Property**

- RESIDENTIAL
- COMMERCIAL
- INDUSTRIAL
- AGRICULTURAL
- SPECIAL PURPOSE

### **The Real Estate Market**

- Supply and Demand
- Uniqueness
- Immobility

### **Factors Affecting Supply**

- Labor force and construction costs
- Government Controls
- Governmental Financial Policies
  - The government's monetary policy can have a substantial impact on the real estate market.
- Government Agencies, such as the Federal Housing Administration (FHA) and the Department of Veteran Affairs (VA)

### **Factors Affecting Demand**

- Population
- Demographics
- Employment and wage levels

## LAND, REAL ESTATE, AND REAL PROPERTY

**LAND** – the earth's surface extending downward to the center of the earth and upward to infinity

### REAL ESTATE

Land at, above, and below the earth's surface plus all things permanently attached to it.

### REAL PROPERTY

The INTERESTS, BENEFITS AND RIGHTS that are included in the ownership of land and real estate.

### OWNERSHIP OF REAL PROPERTY

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 the rights of:

- Possession
- Control
- Enjoyment
- Exclusion
- Disposition

### PERSONAL PROPERTY

Personal property is MOVABLE

**Severance:** Severance is the operation whereby real property is converted to personal property.

**Annexation:** Annexation is the operation whereby personal property is converted to real property.

**Fixtures:** A fixture is personal property that has been so affixed to land or a building that, by law, it becomes part of the real property.

## CHARACTERISTICS OF REAL ESTATE

### Economic characteristics

- Scarcity
- Improvements
- Permanence of investment
- Location

### Physical characteristics

- Immobility
- Indestructibility
- Uniqueness

## HOME OWNERSHIP

Ownership expenses and ability to pay

### Mortgage terms

#### Investment considerations

1. Purchasing a home offers several financial advantages to a buyer
2. Possible long-term gain through appreciation
3. Increase in equity as mortgage is paid off

#### Tax benefits

Homeowners may deduct from their income:

1. Some or all of the mortgage interest paid
2. Real estate taxes
3. Certain other expenses

#### Capital Gains Tax Exclusion – Sale of Real Estate

1. \$500,000 is now excluded from capital gains tax for profits on the sale of a principal residence by married taxpayers who file jointly
2. Taxpayers who file singly are entitled to a \$250,000 exclusion
3. The exemption may be used repeatedly, as long as the homeowners have both owned and occupied the property as their residence for at least two of the past five years.

#### Exchanges

To qualify as a tax-deferred exchange, the properties involved must be of *like kind* as defined under Section 1031 of the Internal Revenue Code.

#### Tax Deductions

- Real estate taxes (but not interest paid on overdue taxes)
- Mortgage interest payments on most first and second homes
- Certain loan origination fees in the year of purchase (rules differ for refinance and equity loans)
- Loan discount points in the year of purchase
- Loan repayment penalties

#### Homeowners' Insurance

##### Co-Insurance Clause

# Chapter 2

## OWNERSHIPS, INTERESTS AND ENCUMBRANCES

### LIMITATIONS ON THE RIGHTS OF OWNERSHIP

#### Governmental powers

- Police power
- Eminent domain
  - Condemnation
- Taxation
- Escheat

### ESTATES IN LAND

**Freehold estates** last for an indeterminable length of time, such as for a lifetime or forever.

**Leasehold estates** last for a fixed period of time.

### FREEHOLD ESTATES

#### Fee Simple Estate

Fee Simple Absolute - A fee simple absolute estate is the **highest interest in real estate recognized by law.**

Fee simple defeasible

Determinable – As Long As

#### Life Estate

A life estate is a freehold estate **limited in duration to the life of the owner or the life of some other designated person or persons.**

**Conventional Life Estate:** is created intentionally by the owner. It may be established either by **deed** at the time the ownership is **transferred during the owner's life or by a provision of the owner's will after the owner's death.**

#### Pur Autre Vie

“for the life of another”

#### Remainder Interest

## Reversionary Interest

### Homestead Right – Unsecured Creditors

A homestead is a legal life estate in real estate occupied as the family home.

Every homeowner in Illinois is entitled to a homestead estate up to a value of \$15,000 for a single person and \$30,000 for a married couple.

## ENCUMBRANCES

An encumbrance is a right or an interest held by someone other than the property owner that affects title to the real estate but does not necessarily prevent a transfer of title.

### Liens

### Deed Restrictions

### Covenants, Conditions, and Restrictions (CC&Rs)

### Easements

An easement is the right to use the land of another for a particular purpose.

**An Appurtenant Easement is attached to the ownership of one parcel and allows the owner the use of the neighbor's land.** For an appurtenant easement to exist, ***two adjacent parcels of land must be owned by two different parties***. The parcel over which the easement runs is known as the ***Servient Tenement***; the neighboring parcel that benefits is known as the ***Dominant Tenement***.

### Easement in Gross

An easement in gross is an individual or company interest in or right to use someone else's land, without being appurtenant to the land – ***Rights-of-way or Utility Easements***

### Easement by Necessity

### Easement by Prescription

1. Continuous
2. Exclusive

3. Without the owner's approval ("adverse")
4. Visible
5. Open
6. Notorious; that is, the owner must have been able to learn of it

To establish an easement by prescription in Illinois, the use must be adverse, exclusive, under claim of right, and continuous and **uninterrupted for a period of 20 years.**

## LICENSE

A license is a ***personal privilege*** (not a right) to enter the land of another for a specific purpose. A **license can be terminated or canceled by the licensor (the person who granted the license) at any time.**

**Encroachments** – an encroachment usually is disclosed by either a physical inspection of the property or a **spot survey.**

### Spot survey

## WATER RIGHTS

### Riparian Rights

Riparian rights are common law rights granted to owners of land along the course of a **river, stream, or similar body of flowing water.**

### Littoral Rights

Closely related to riparian rights are the **littoral rights of owners whose land borders commercially navigable lakes, seas and oceans.**

## ACCRETION, EROSION, AND AVULSION

### Increase in Land

An owner is entitled to all land created through **accretion – increase in the land resulting from the deposit of soil by the water's action.**

### Decrease in Land

**Erosion** is the **gradual and imperceptible wearing away** of the land by natural forces such as wind, rain, and flowing water.

**Avulsion** is the **sudden removal** of soil by an act of nature.

## FORMS OF REAL ESTATE OWNERSHIP

- In **severalty**, where title is held by one individual
- In **co-ownership**, where title is held by two or more individuals
- In **trust**, where a third individual holds title for the benefit of another

### OWNERSHIP IN SEVERALTY

Ownership in severalty occurs when property is owned by one individual or corporation.

### CO-OWNERSHIP

#### Tenants in Common

A parcel of real estate may be owned by two or more people as tenants in common. In a **tenancy in common**, each tenant holds an **undivided fractional interest** in the property.

#### Joint Tenancy

The unique feature of joint tenancy is unity of ownership and can be described as a **special bond between the owners**. Each tenant holds **an undivided fractional interest** in the property. In joint tenancy, all share must be equal.

#### Tenants by the Entirety – Special Joint Tenancy for Married Couples

Illinois allows husbands and wives to use a special form of co-ownership called tenancy by the entirety for their **personal residence**.

To create a tenancy in the entirety, the deed must indicate that the property is to be owned “not as joint tenants or tenants in common, but as tenants by the entirety.”

### Community Property

Community property laws are based on the idea that a husband and wife, rather than merging into one entity, are equal partners in the marriage.

## TRUSTS

A trust is a device by which:

- One person (**Trustor**) transfers ownership of property to someone else (**Trustee**)
- **Trustee owns** the property
- **Trustee** holds or manages the property for **the benefit of a third party (Beneficiary)**



## **OWNERSHIP BY BUSINESS ORGANIZATIONS**

### **Partnerships**

A partnership is an association of two or more persons who carry on a business for profit as co-owners.

#### **General Partnership**

All the partners participate in the operation and management of the business. **Each general partner is solely responsible for the entire debt of the partnership.**

#### **General Partners**

- Manage the Limited Partnership (fee)
- Assume all risk for debt
- Contribute little capital
- Take a minor share of the profits

#### **Limited Partners**

- No management role in Limited Partnership
- Liability limited to capital contribution
- Contribute most of the capital
- Take a major share of the profits.

### **Corporations**

A corporation is a **legal entity (an artificial person)** created under the authority of the laws of the state from which it receives its charter.

One of the main disadvantages of corporate ownership of income property is that the profits are subject to double taxation.

### **Syndicated and Joint Ventures**

## CONDOMINIUMS, COOPERATIVES, TOWN HOUSES AND TIME-SHARES

### Condominium Ownership

1. The owner of each unit holds a fee simple title to the air space described by the 3D survey
2. The individual owners also **own a specified share of the undivided interest in the remainder of the building and land, known as the common elements, as Tenants in Common.**

### Creation of a Condominium

In Illinois, creation of condominiums is governed by the Illinois Condominium Property Act (765 ILCS 605/)

### Cooperative Ownership

In a cooperative, a corporation holds title to the land and building.

The corporation offers shares of stock to prospective tenants

The purchaser becomes a **shareholder in the corporation** by virtue of this stock ownership and receives a **proprietary lease** to the apartment for the life of the corporation.

### Time-Share Ownership

Time-share ownership permits multiple purchasers to buy interests in real estate, usually a resort property. Each purchaser receives the right to use the facilities for a certain period of time.

### Illinois Time Share Act

The promotion or sale of all time-share units is strictly regulated by the Illinois Real Estate Time-Share Act of 1999 (765 ILCS 101)

**A time-share estate is a fee simple interest.** The owner's occupancy and use of the property are limited to the contractual period purchased. The owners is assessed for maintenance and common area expenses.

**A time-share use consists of the right to occupy and use** the facilities for a certain number of years.

# Chapter 3

## LAND-USE CONTROLS

### THE COMPREHENSIVE MUNICIPALITY PLAN

Local governments, municipalities, and counties establish development goals by creating a **comprehensive plan**.

### ZONING

Zoning is a regulatory tool that helps communities regulate and control how land is used and limits the type of business in a given area.

Some municipalities also use buffer zones to ease transition from one use to another. A **buffer zone** is typically a strip of land separating land dedicated to one use from land dedicated to another use.

### Zoning Permits

Compliance with zoning can be monitored by requiring that property owners obtain permits before they begin any development.

### Nonconforming Use

Frequently, a lot or an improvement does not conform to the zoning law because it existed before the enactment or amendment of the zoning ordinance.

### Conditional Use Permit

A conditional use permit (also known as a *special use permit*) is usually granted to a property owner to allow a special use of property, defined as an allowable conditional use.

### Variance

A variance (or *exception*), on the other hand, provides relief **if zoning regulations deprive an owner of reasonable use of the property**.

## **BUILDING CODES AND CERTIFICATED OF OCCUPANCY**

### **Building Codes**

Most municipalities have enacted ordinances to **specify construction standards** that must be met when repairing or erecting buildings.

### **Building Permits**

In addition to adhering to building codes, a property owner who wants to build a structure or alter or repair an existing building usually must obtain a ***building permit***.

## **SUBDIVISION & LAND DEVELOPMENT**

A **subdivider** is a person who **buys undeveloped acreage** and **divides it into smaller lots** for sale to individuals or developers or for the subdivider's own use.

A **developer** (who also may be a subdivider) **improves the land, constructs homes or other buildings on the lots, and sells them.**

## **PRIVATE LAND-USE CONTROLS**

Certain restrictions to control and to maintain the desirable quality and character of a property or subdivision may be **created by private entities, including the property owners themselves.**

### **Covenants, Conditions, and Restrictions (CC&Rs)**

Private restrictions can be enforced in court when one lot owner applies to the court for an **injunction** to prevent a neighboring lot owner from violating the recorded restrictions.

### **National Interstate Lands Sales Full Disclosure Act**

As in the federal statute, in Illinois a purchaser who receives the report prior to signing a contract or agreement may **cancel the contract or agreement** by giving notice to the seller any time before midnight of the **seventh day** following the signing of the contract or agreement.

A purchaser in Illinois who **does not receive this report before a contract or agreement is signed** may cancel the contract or agreement anytime within **two years from the date of signing.**

# Chapter 4

## LEGAL DESCRIPTION OF LAND

### DESCRIBING LAND

A legal description is a detailed way of describing a parcel of land for documents such as deeds and mortgages that will be **accepted in a court of law**.

### METHODS OF DESCRIBING REAL ESTATE

Three basic methods can be used to describe real estate:

1. Metes and bounds
2. Rectangular (or government) survey
3. Lot and block (recorded plat)

### METES AND BOUNDS METHOD

The metes and bound method is the **oldest type of legal description**. **Metes** means distance, and **bounds** means **compass direction or angles**.

**Monuments** are fixed objects used to identify the **POB**, the ends of boundary segments, or the location of intersecting boundaries.

### RECTANGULAR (GOVERNMENT) SURVEY SYSTEM

Locations in Illinois are described by their relation to one of three meridians – **2, 3 and 4**.

#### Township Tiers

Lines running east and west, **parallel to the base line and six miles apart**, are referred to as **township lines**. They form **strips of land called township tiers**.

#### Township Ranges

The land on either side of a **principal meridian is divided into six mile-wide strips by lines running north and south, parallel to the meridian**. These north-south strips of land are called **ranges**.

#### Township Squares

**When the horizontal township lines and the vertical range lines intersect, they form squares**. The 36 square mile areas are called **Townships**. These township squares are the basic units of the rectangular system.

#### Correction Lines

Every **fourth** township line, both north and south of the base line, is designated a **correction line**.

**LOT AND BLOCK SYSTEM**

**Illinois Plat Act**

Under the Illinois Plat Act, when an owner divides a parcel of land into two or more parts, any of which is less than five acres, the parts must be surveyed and a plat of subdivision recorded. An exception to this would be the division of lots or blocks of less than one acre in any recorded subdivision that does not involve the creation of any new streets or easements of access. When a conveyance is made, the county recorder may require an affidavit that an exception exists.

**Elevations**

Just as surface rights must be identified, surveyed, and described, so must rights to the property above the earth's surface. **Elevations are measured to determine the legal descriptions of air rights and condominium apartments.**

**DATUM**

A **datum** is a **point, line, or surface from which elevations are measured** or indicated.

**Land Measurements**

Mile	5,280 Feet
Square Mile	640 Acres
Acre	43,560 Square Feet
Square Yard	9 Square Feet
Cubic Yard	27 Cubic Feet
Square Foot	144 Square Inches
Township	36 Square Miles, 6 Miles Square
Section	1 Square Mile, 640 Acres

# Chapter 5

## LIENS

### GENERAL LIEN INFORMATION

A lien is a monetary charge or claim against property that is made to enforce the payment of money.

A lien represents only an interest in property; it does not constitute actual ownership of the property.

#### Types of Liens

- A **voluntary** lien
- An **involuntary** lien
- A **statutory** lien
- An **equitable** lien

**General Liens** affect all the **property, both real and personal, of a debtor.**

**Specific Liens** are secured by specific property and affect only that particular property.

#### Priority of Liens

Priority of liens refers to the order in which claims against the property will be satisfied. **In general, the rule for priority of liens in “first to record, first in right.”**

Liens take priority from the date they are recorded in the public records of the county in which the property is located.

### REAL ESTATE TAX LIENS

There are two types of real estate taxes:

1. General real estate taxes (also called ad valorem taxes)
2. Special assessments (improvement taxes)

#### General tax (Ad Valorem Tax)

**Ad valorem** is Latin for “**according to value.**” Ad valorem taxes are based on the **value of the property being taxed.**

#### Assessment

Real estate is **valued** for tax purposes by **county or township assessors or appraisers.** The official valuation process is called assessment.

## Validity of Tax Liens

Real estate taxes must be valid to be enforceable.

## Annual Creation of the Tax Lien

General real estate taxes are levied annually for the calendar year and **become a prior first lien, superior to all** other liens, on January 1 of the tax year.

However, they are **not due and payable until the following year**. In other words, Real Estate Taxes in Illinois are **paid in arrears**.

## Enforcement of the Tax Lien

The statutory requirements for enforcement of tax liens are complex. When a property owner fails to pay taxes on real estate in Illinois, the property ultimately may be sold in one of three ways:

1. *At an annual tax sale (investors pay taxes for the owner)*
2. *At a forfeiture sale*
3. *At a scavenger sale*

## OTHER LIENS

### Mortgage Liens (Deeds of Trust Liens)

A **mortgage lien**, sometimes called a *deed of trust lien*, is a **voluntary lien on real estate given to a lender by a borrower as security for a real estate loan**.

### Mechanics' Liens

A mechanics' lien is a specific, involuntary lien that **gives security to persons or companies that perform labor or furnish material to improve real property**.

Contractors with unpaid bills who wish to enforce their lien rights against an owner must file their lien notices **within four months after the work is completed**.

**Mechanics' liens can take priority over a previously recorded lien** if the work done has enhanced the value of the property.

In Illinois, the contractor's lien right will expire **two years after completion of that contractor's work**, unless she files suit within that time to foreclose the lien.

## Judgments

A judgment is a general, involuntary equitable lien on both real and personal property owned by the debtor.

## Lis Pendens

There is often a considerable delay between the time a lawsuit is filed and the time final judgment is rendered.



## **Attachments**

Special rules apply to realty that is not mortgaged or similarly encumbered. To prevent a debtor from conveying title to such previously unsecured real estate while a court suit is being decided, a creditor may seek a *writ of attachment*.

## **Commercial Real Estate Broker Lien**

**The Commercial Real Estate Broker Lien Act** permits commercial sponsoring brokers to place a lien on property in the amount of the commission they are entitled to receive for leasing as well as for a sale under a written brokerage agreement in the event they are not paid for their services. The lien applies to commercial property only, and it must be recorded before closing to be enforceable.

# Chapter 6

## REAL ESTATE FINANCING

### MORTGAGES

**Mortgage:** a mortgage is a voluntary lien on real estate.

#### Title- Theory States

Here, the **mortgagor actually gives legal title to the mortgages** (or some other designated individual) and retains **equitable title**.

#### Lien-Theory States

In this case, **the mortgagor/borrower holds legal title. The mortgagee/lender simply has a lien on the property as security for the mortgage debt, or equitable title.**

#### Illinois – Intermediate Mortgage Theory State

**Illinois does not adhere strictly to either the title or lien theory.** Illinois recognizes both a mortgage approach (buyer gets title to the property) and Deed of Trust (lender has title to the property).

### Mortgage Loans

Mortgage loans are secured loans. Mortgage loans have two parts:

- The debt itself
- The security for the debt

When a property is mortgaged, the owner must execute (sign) two separate instruments:

- A promissory note stating the amount owed
- A security document (mortgage), pledging the property as collateral for the amount owed.

### PROMISSORY NOTES

The promissory note, referred to as the **note or financing instrument**, is the **borrower's personal promise to repay the debt according to agreed terms.**

**Interest** – Interest is a charge for the use of money.

**Usury** – Charging interest in excess of the maximum rate allowed by law is called usury.

In Illinois, there is no legal limit specifically imposed by Illinois on the rate of interest that a lender may charge a borrower when the loan is secured by real estate.

### **Loan Origination Fee**

The **processing** of a mortgage application is known as **loan origination**. When a mortgage loan is originated, a **loan origination fee** is charged by most lenders to cover the **expenses** involved in generating the loan.

### **Discount Points**

A lender may sell a mortgage to investors however, the interest rate that a lender charges the borrower for a loan might be less than the yield (true rate of return) an investor demands. To make up the difference, the lender charges the borrower **discount points**.

For the borrower, one discount point equals 1 percent of the loan amount and is charged as prepaid interest at the closing.

### **DEED OF TRUST**

In some situations, lenders may prefer to use a **three-party instrument known as a deed of trust, or trust deed**, rather than a mortgage.

- The deed given by the **buyer-borrower (Trustor)**, as a security for the loan to a **third party, called the Trustee**.
- The trustee holds title on behalf of the lender, who is known as a **Beneficiary**.
- The **Beneficiary** is the holder of the note.

### **Discount Points and Investor Yield**

As a general guideline, each discount point paid to the lender will increase the lender's yield (return) by approximately 1/8 of 1 percent (0.00125).

### **Assignment of the Mortgage**

Without changing the provisions of a contract, a note may be sold to a third party, such as an investor or another mortgage company.

### **Release of the Mortgage Lien**

When all mortgage loan payments have been made and the note has been paid in full, the borrower will want the public record to show that the debt has been satisfied and that the lender is divested of all rights conveyed under the mortgage. By provisions of the **defeasance clause** in most mortgage documents, the **lender** is required to execute a **satisfaction of mortgage**.

### **Tax and Insurance Reserves**

Many lenders require that borrowers provide a reserve fund to meet future real estate taxes and property insurance premiums. This fund is called an **impound account** or an **escrow account**.

### **Assignment of Rents**

If the property involved includes rental units, the borrower may provide for rents to be assigned to the lender in the event of the borrower's default.

### Assuming a Seller's Mortgage

When a person purchases real estate that **is subject to an outstanding mortgage** that does not have a "Due on Sale Clause", the buyer may take the property in one of two ways:

1. The buyer may purchase the property *subject to* the mortgage.
2. The buyer may *assume* the mortgage and agree to pay the debt.

When the property is sold ***subject to*** the mortgage, **the buyer is not personally obligated to pay the debt in full** (seller is ultimately responsible for the payment of the mortgage).

In contrast, a **buyer** who purchases the property and **assumes the seller's debt** becomes personally **obligated for the payment of the entire debt**.

### Alienation Clause

The lender may want to prevent a future purchaser of the property from being able to assume the loan, particularly if the original interest rate is low. For this reason, some lenders include an **Alienation Clause**, also known as a **Due-on-Sale Clause** in the note.

### OWNER FINANCING

Real estate can be purchased under a land contract, also known as a contract for deed or an ***installment contract***.

### Foreclosure

Foreclosure is a legal procedure in which property pledged as security is sold to satisfy the debt.

### Methods of Foreclosure

- **Non-Judicial foreclosure:** some states allow non-judicial foreclosure procedures to be used when the security instrument contains a power-of-sale clause. In non-judicial foreclosure, no court action is required.
- **Judicial Foreclosure:** Judicial foreclosure allows the property to be sold by court order after the mortgagee has given sufficient public notice.
- **Strict foreclosure:** Although judicial foreclosure is the prevalent practice, it is still possible in some states for a lender to acquire mortgaged property through a strict foreclosure process.

### Deed in Lieu of Foreclosure

As an alternative to foreclosure, a lender may accept a **deed in lieu of foreclosure** from the borrower. This is sometimes known as a *friendly foreclosure* because it is carried out by **mutual agreement** rather than by lawsuit.

### Redemption

Most states give defaulting borrowers a chance to redeem their property through the **equitable right of redemption**.

**There is no statutory right of redemption in Illinois.** In Illinois, a mortgagor in default who wishes to **exercise the equitable right of redemption** to avoid loss of the mortgaged real estate may do so for a **period of seven months after the date of service on the mortgagor or after first publication date, whichever is later.**

### **Deficiency Judgment**

The foreclosure sale may not produce enough cash to pay the loan balance in full after deducting expenses and accrued unpaid interest. In this case, where permitted by law, the mortgagee may be entitled to a *personal judgment* against the borrower for the unpaid balance.

## **THE REAL ESTATE FINANCING MARKET**

### **The Federal Reserve System**

The role of the Federal Reserve System (The Fed) is to maintain sound credit conditions, help counteract inflationary and deflationary trends, and create a favorable economic climate.

The Federal Reserve System regulated the flow of money and interest rates in the marketplace through its member banks by controlling *reserve requirements and discount rates*.

### **The Primary Mortgage Market**

The primary mortgage market is made up of the **lenders that originate mortgage loans**. Income on the loan is realized from two sources:

- *Finance charges* collected at closing, such as loan origination fees and discount points
- *Recurring income* such as the interest collected during the term of the loan

### **Primary Mortgage Market**

- |                        |                              |
|------------------------|------------------------------|
| • Thrifts              | • Pension funds              |
| • Savings associations | • Endowment funds            |
| • Commercial banks     | • Investment group financing |
| • Insurance companies  | • Mortgage banking companies |
| • Credit unions        |                              |

### **The Secondary Market**

In the secondary market, **loans are bought and sold only after they have been funded by primary lenders.**

**Fannie Mae**

**Ginnie Mae**

**Freddie Mac**

### **Straight Loans**

A **straight loan or interest-only loan** (also known as a term loan) is a **non-amortized loan** that essentially divides the loan into two amounts to be paid off separately.

### **Amortized Loans**

Unlike a straight loan payment, the payment in an **amortized loan partially pays off both principal and interest**.

### **Adjustable Rate Mortgages (ARMs)**

Adjustable-rate mortgages (ARMs) generally **originate at one rate of interest**, then **fluctuate up and down** during the loan term, based on some objective economic indicator.

### **Balloon Payments Loan**

When the **periodic payments are not enough to fully amortize the loan by the time the final payment is due**, the **final payment is larger than the others in order to pay off the full loan.**

### **Growing Equity Mortgage (GEM)**

A growing equity mortgage (GEM) is also known as a *rapid-payoff mortgage*. The GEM uses a **fixed interest rate**, but **payments of principal are increased according to an index or a schedule**.

### **Reverse Mortgage**

The borrower is charged a fixed rate of interest, and **no payments are due until the property is sold or the borrower defaults, moves, or dies.**

## **LOAN PROGRAMS**

### **Conventional Loans**

Conventional loans are viewed as **the most secure loans** because their **loan-to-value ratios are often lowest**. Usually, the ratio is 80 percent of the value of the property or less because the **borrower makes a down payment at least 20 percent**.

### **DETERMINING LTV**

If a property has an appraised value of \$100,000, secured by a \$90,000 loan, the LTV is 90 percent:

$$\$90,000/\$100,000 = 90\%$$

### **Private Mortgage Insurance**

One way a borrower can obtain a mortgage loan with a lower down payment is by obtaining **private mortgage insurance (PMI)**.

## FHA-Insured Loans

The Federal Housing Administration (FHA), which operates under HUD, neither builds homes nor lends money. The common term **FHA loan** refers to a loan that is **insured by** the agency. These loans must be made by FHA-approved lending institutions.

Certain technical requirements must be met before the FHA will insure the loans. These requirements include the following:

- The borrower must pay a down payment of at least 3.5 percent of the purchase price, but most of the closing costs and fees can be included in the loan.
- The borrower is charged a mortgage insurance premium (MIP) for all FHA loans.

## FHA Assumption Rules

The assumption rules for FHA-insured loans vary, depending on the dates the loans were originated

## VA-Guaranteed Loans

The Department of Veteran Affairs (VA) is authorized to **guarantee loans** to purchase or construct homes for eligible veteran and their spouses (including un-remarried spouses of veterans whose deaths were service-related).

Like the FHA loan, the VA loan is something of a misnomer. **The VA does not normally lend money; it guarantees loans made by lending institutions approved by agency.**

There is **no VA dollar limit on the amount of the loan a veteran can obtain**; this limit is determined by the lender and qualification of the buyer. **The VA limits the amount of the loan it will guarantee.**

To determine what portion of a mortgage loan the VA will guarantee, the veteran must apply for a **certificate of eligibility**.

The VA also issues a **certificate of reasonable value (CRV)** for the property being purchased.

## Assumption Rules

The VA must approve the buyer and assumption agreement.

## Purchase-Money Mortgages

This is a note and mortgage created at the time of purchase when the **seller agrees to finance all or part of the purchase price and consists of a first or junior lien depending on whether prior mortgage liens exist.**

## Package Loans

A package loan includes real and personal property.

## Blanket Loans

A blanket loan covers more than one parcel lot.

### Wraparound Loans

A **wraparound loan** enables a borrower with an existing mortgage or deed of trust loan to obtain additional financing **from a second lender without paying off the first loan.**

### Open-End Loans

An **open-end loan** secures a note executed by the borrower to the lender. It also secures any future advances of funds made by the lender to the borrower.

### Construction Loans (Interim Financing)

Construction loans are **generally short-term** or *interim financing*. The borrower **pays interest only** on the monies that have **actually been disbursed**. The borrower is expected to arrange for a permanent loan, also known as an **end loan or take-out loan, which will repay or take out the construction financing lender when the work is completed.**

### Sales Leaseback

Sales leaseback arrangements are used to finance large commercial or industrial properties.

### Buydowns

A buy-down is a way to **temporarily (or permanently) lower the initial interest rate** on a mortgage or deed of trust loan.

### Home Equity Loans

Home equity loans are a source of funds using the equity built up in a home. The original mortgage loan remains in place; the home equity loan is junior to the original lien. It is an alternative to refinancing and can be used for a variety of financial needs.

## FINANCING LEGISLATION

### Truth in Lending Act and Regulation Z

Regulation Z, which was enacted pursuant to the Truth in Lending Act by the Federal Trade Commission (FTC), requires that **credit institutions inform borrowers of the true cost of obtaining credit.** With proper disclosures, borrowers can compare the costs of various lenders to avoid the uninformed use of credit. Regardless of the amount, however, Regulation Z applies when a credit transaction is secured by a residence. The regulation **does not apply to business of commercial loans or agricultural loans of any amount.**

Under the Truth in Lending Act, Regulation Z, a **consumer must be fully informed of all finance charges and the true interest rate before a transaction is completed.**

The total finance charge calculation, or APR (Annual Percentage Rate) must include any:

- Loan fees
- Points
- Interest
- Finder's fees
- Service charges



### Three-Day Right of Rescission

In the case of many consumer credit transactions covered by Regulation Z, the **borrower has three days in which to rescind the transaction by merely notifying the lender.**

### Advertising

Regulation Z provides strict **regulation of real estate advertisements** in all media (e.g. newspapers, flyers, signs, billboards, web sites, radio or television ads, direct mailings) that refer to mortgage financing terms. General phrases like “**flexible terms available**” may be used, but if details are given, then **all details in the transaction must be disclosed, including rate, down payment, term**, etc. they must comply with the act. The APR which is calculated, based on all charges rather than the interest rate alone, must be stated.

Specific credit terms, such as *down payment, monthly payment, dollar amount of the finance charge, or term of the loan* are referred to as **trigger terms**. These terms may not be advertised unless the advertisement includes the following information:

- Cash price
- Required down payment
- Number, amounts and due dates of all payments
- Annual percentage rate
- Total of all payments to be made over the term of the mortgage (unless the advertised credit refers to a first mortgage or deed of trust to finance the acquisition of a dwelling)

### Equal Credit Opportunity Act (ECOA)

The Federal Equal Credit Opportunity Act (ECOA) prohibits lenders and others who grant or arrange credit to consumers from discriminating against credit applicants on the basis of:

- Race
- Color
- Religion
- National origin
- Sex
- Marital status
- Age (provided the applicant is of legal age)
- Dependence on public assistance

# Chapter 7

## REAL ESTATE APPRAISAL

### Real Estate Appraisal Process

#### Appraisal

An appraisal is an opinion of value based on supportable evidence and approved methods.

#### Real Estate Broker Competitive Market Analysis

Not all estimates of value are made by professional appraisers. **Real estate licensees often must help a seller arrive at a listing price or assist a buyer in determining an offer price for property without the aid of a formal appraisal report.** In such case, the licensee would use a competitive market analysis (CMA).

#### Broker's Price Opinion (BPO)

a broker's price opinion (BPO) is a less-expensive alternative of valuating properties often used by lenders working with home equity lines, refinancing, portfolio management, loss mitigation and collections.

#### Value

To have value in the real estate market that is, to have monetary worth based on desirability a property must have the following four characteristics:

- Demand
- Utility
- Scarcity
- Transferability

#### Market Value

The market value of real estate is the most probable price that a property should bring in a fair sale.

#### Market Value versus Market Price

Market value is an opinion of value based on an analysis of data.

Market price is what a property actually sells for, its sale price.

Cost may not equal either the market value or market price.

### **Market Value versus Cost**

An important distinction can be made between market value and cost. One of the most common misconceptions about valuing property is that cost represents market value.

### **Basic Principles of Value**

**Anticipation** – according to the principle of anticipation, value is created by the **expectation that certain events will occur**.

**Change** – no physical or economic condition remains constant

**Competition** – is the interaction of supply and demand. Excess profits tend to attract competition.

**Conformity** – the principle of conformity means that maximum value created when a property is in harmony with its surroundings.

**Contribution** – under the principle of contribution, the **value of any part of a property is measured by its effect on the value of the whole**.

**Highest and Best Value** - the most profitable single use to which a property may be put, or the use that is most likely to be in demand in the near future, is the property's highest and best use.

**Increasing and Diminishing Returns** – the addition of more improvements to land and structures increases total value only to the asset's maximum value. Beyond that point, additional improvements no longer affect a property value.

**Plottage** – the value of two adjacent properties may be greater if they are combined than the sum of their individual value if each is sold separately.

### **Regression and Progression**

**Regression** is *the lowering* of a property's value due to its neighbors.

**Progression** is *the increasing* of a property's value due to its neighbors.

**Substitution** – under the principle of substitution, the maximum value of property tends to be set by how much it would **cost to purchase an equally desirable and valuable substitute** property.

**Supply and Demand** – the principle of supply and demand holds that the value of a property depends on the number of properties available in the marketplace – the supply of the product.

## THE THREE APPROACHES TO VALUE

### The Sales Comparison Approach

In the sales comparison approach (also known as the market *data approach*), an estimate of value is obtained by **comparing the property being appraised (the subject property) with recently sold comparable properties** (properties similar to the subject, called comps).

CBS = if the Comp is Better, Subtract

CPA = if the Comp is Poorer, Add

### The Cost Approach

The cost approach to value also is based on the principle of substitution. The cost approach consists of five steps:

1. Estimate the value of the land as if it was vacant and available to be put to its highest and best use.
2. Estimate the current cost of constructing the buildings and improvements.
3. Estimate the amount of accrued depreciation resulting from the property's physical deterioration, functional obsolescence, and external depreciation.
4. Deduct the accrued depreciation (Step 3) from the current construction cost (Step 2).
5. Add the estimated land value (Step 1) to the depreciated cost of the building and site improvements (Step 4) to arrive at the total property value.

There are two ways to look at construction cost of a building for appraisal purposes:

1. **Reproduction cost** is the construction cost at current prices of an exact duplicate of the subject improvement, including both the benefits and the drawbacks of the property.
2. **Replacement cost** is the cost of construct an improvement similar to the subject property using current construction methods and materials, but not necessarily an exact duplicate.

### Determining Reproduction or Replacement Cost

An appraiser using the cost approach computes the reproduction or replacement cost of a building using one of the following four methods:

- Square-foot method
- Unit-in-place method
- Quantity-survey method

### Depreciation

In a real estate appraisal, **depreciation is a loss in value** due to any cause compared with today's cost of replacement. It refers to a condition that adversely affects the value of an improvement to real property.

**Land does not depreciate, it retains its value definitely.**

### Physical Deterioration

A curable item is one in need of repair, such as painting (deferred maintenance), that is economically feasible and would result in an increase in value equal to or exceeding the cost.

### Functional Obsolescence

Obsolescence means a loss in value from the market's response to the item. **Outmoded or**

**unacceptable physical or design features that are no longer considered desirable by purchasers are considered curable.** Such features could be replaced or redesigned at a cost that would be offset by the anticipated increase in ultimate value.

### **Incurable Obsolescence**

Includes undesirable physical or design features that cannot be easily remedied because the **cost of cure would be greater than its resulting increase in value.**

### **External Obsolescence**

If caused by **negative factors no on the subject property**, such as zoning, environmental, social, or economic forces, the depreciation is **always incurable**. The loss in value cannot be reversed by spending money on the property.

### **The Income Approach**

The income approach to value is based on the **present value of the rights to future income**. It assumes that the **income generated by a property will determine the property's value**.

The income approach is used for valuation of income-producing properties such as **apartment buildings, office buildings, and shopping centers**. In estimating value using the income approach, an appraiser must take five steps:

1. Estimate **annual gross income**. Current rental income may not reflect the current market rental rates, especially in the case of short-term leases or leases about to terminate so current rental income may be adjusted by an investor. Income also includes other income to the property from such sources as vending machines, parking fees, and laundry machines.
2. Deduct an appropriate allowance for vacancy and rent loss, based on the appraiser's experience, and arrive at *effective gross income*.
3. Deduct the annual operating expenses, from the effective gross income to arrive at the annual *net operating income (NOI)*. Management costs are always include, even if the current owner manages the property.
4. Estimate the price a typical investor would pay for the income produced by this particular type and class of property. This is done by estimating the rate of return (or yield) that an investor will demand for the investment of capital in this type of building. This rate of return is called the capitalization (or "cap) rate and is determined by comparing the relationship of net operating income to the sales prices of similar properties that have sold in the current market.
5. Apply the capitalization rate to the property's annual net operating income to arrive at the estimate of the property's value.

### **THE APPRAISAL PROCESS**

Although appraising is not an exact or a precise science, the key to an accurate appraisal lies in the **methodical collection and analysis of data**.

1. General data, which covers the nation, region, city, and neighborhood. Of particular importance is the neighborhood, where an appraiser finds the physical, economic, social, and political influences that directly affect the value and potential of the subject property.
2. Specific data, which covers details of the subject property as well as comparative data relating to costs, sales, and income and expenses of properties similar to and competitive with the subject property.

# Chapter 8

## ENVIRONMENTAL ISSUES

### Illinois Environmental Controls

The Illinois Environmental Protection Agency (IEPA) is charged with maintaining and enhancing the state's air, land and water quality through education, inspection, regulation, enforcement, recycling and prevention activities.

### HAZARDOUS SUBSTANCES

#### Asbestos

Asbestos is a fire-resistant mineral that was once used extensively as insulation and to strength other materials.

Asbestos was used to cover pipes, ducts, and heating and hot water units.

Asbestos is **highly friable, meaning that as it ages, asbestos fibers break down easily into tiny filaments and particles.**

**Encapsulation**, or the sealing off of disintegrating asbestos, is an alternate method of asbestos control that may be preferable to removal in certain circumstances.

#### Lead-Based Paint and Other Lead Hazards

Lead was used as a pigment and drying agent in alkyd oil-based paint. Lead-based paint may be on any interior or exterior surface, but it is **particularly common on doors, windows, and other woodwork.**

The federal government estimates that **lead is present in 75 percent of all private housing built before 1978**, or approximately 57 million homes, ranging from low-income apartments to million-dollar mansions.

**Children younger than six are the most vulnerable to damage from excessive lead levels.** Lead dust can be ingested from the hands by a crawling infant; inhaled by an occupant of a structure, or ingested from the water supply because of lead pipes or lead solder.

Lead-Based Paint Hazard Reduction Act (LBPBRA) requires the following from sellers and landlords of residential **dwellings built before 1978**:

- **Landlords must disclose** known information on lead-based paint and hazards **before leases take effect. Leases must include a disclosure form regarding lead-based paint.**
- **Sellers** have to **disclose known information on lead-based paint hazards prior to an execution of a contract for sale.**
- **Buyers** have up to **ten days to conduct a risk assessment** or an inspection for the presence of lead-based paint hazards.
- **Licensees** provide buyers and lessees with **“Protect Your Family from Lead in Your Home,”** the pamphlet created by the EPA, HUD, and the U.S. Consumer Product Safety Commission.
- **Licensees must ensure that all parties comply with the law.**
- **Sellers, lessors and renovators are required to disclose any prior test results or any knowledge of lead-based paint hazards.**

**1978 is a year to remember. Lead paint and asbestos were both banned.**

### **Radon**

Radon is a naturally occurring, colorless, odorless, tasteless, radioactive gas produced by the decay of other radioactive substances.

**The potential for developing lung cancer from exposure to radon is a function of the extent and the length of a person's exposure to radon.**

The act **does not** require that all homes in a real estate transaction be tested or that the home be mitigated if the test results are elevated. It also does not apply to the transfer of any residential dwelling unit located three stories (or higher) above ground level in any structure.

### **Formaldehyde**

Formaldehyde is a **colorless chemical with a strong, pronounced odor**, is used widely in the manufacture of building materials and many household products because of its preservative characteristics.

**Urea-Formaldehyde foam insulation (UFFI)**, once popular, then banned, and now legal again, is rarely used.

### **Carbon Monoxide**

Carbon monoxide (CO) is a **colorless, odorless gas that occurs due to incomplete combustion as a by-product of burning such fuels as wood, oil, and natural gas.**

**Illinois requires that all residences be equipped with working carbon monoxide detectors.**

### **Electromagnetic Fields**

Electromagnetic fields (EMFs) are generated by the movement of electrical currents. **The use of any electrical appliances creates a small field of electromagnetic radiation;** clock radios, blow-dryers, televisions, and computers all produce EMFs. **The major concern regarding EMFs involves high-tension power lines.** The EMFs produced by these high-voltage lines, as well as by secondary distribution lines and transformers, are **suspected of causing cancer, hormonal changes, and behavioral abnormalities.**

### **Mold**

Mold can be found almost anywhere and can grow on almost any organic substance, so long as moisture, oxygen, and an organic food source are present. **Moisture feeds mold growth.** If a moisture problem is not discovered or addressed, mold growth can gradually destroy what it is growing on.

**In addition, some molds can cause serious health problems.** They can trigger allergic reactions and asthma attacks.

## **Groundwater Protection**

Groundwater is the water that exists under the earth's surface within the tiny spaces or crevices in geological formations.

## **CERCLA-SUPERFUND**

The **Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)** was created in 1980.

### **Liability**

Landowners are liable under CERCLA when a release (or a threat of release) of a hazardous substance has occurred on their property. Regardless of whether the contamination is the result of the landowner's action or those of others, the owner can be held responsible for the cleanup.

**Liability** under the Superfund is considered to **be strict, joint and several and retroactive. Strict liability means that the owner is responsible to the injured party without excuse.**

## **LIABILITY OF REAL ESTATE LICENSEES**

Environmental law is relatively new. Although federal and state laws have defined many of the liabilities involved, common law is being used for further interpretation. Real estate licensees and **all** others involved in a real estate transaction must be aware of both actual and potential liability.

### **Discovery of Environmental Hazards**

Real estate licensees are not expected to have the technical expertise necessary to discover the presence of environmental hazards.

## **ENVIRONMENTAL SITE ASSESSMENTS**

An environmental site assessment is often performed on a property to show that due care was exercised in **determining if any environmental impairment exists.**

A Phase 1 environmental report is requested first to determine if any potential environmental problems exist at or near the subject property that may cause impairment. This consists of a visual inspection of the site and an inspection of any appropriate documentation. Phase 2 is the Testing phase. Phase 3 is the Mitigation Phase, where the contamination is removed or mitigated.



# Chapter 9

## TITLE TRANSFER AND RECORDS

### Meaning of Title

The term *title* has three meanings.

1. Title is a way of referring to ownership; it is not an actual printed piece of paper
2. **Title to real estate** means the right to ownership or actual ownership of the land; it represents the **owner's bundle of rights**.
3. **Title also serves as evidence of that ownership** of real estate. **This is indicated by a deed, or a piece of paper.**

### Requirements for a Valid Deed

The following are the minimum requirements for a valid deed in Illinois:

- *Grantor*
- *Grantee*
- *Recital of Consideration*
- *Granting Clause*
- *Accurate legal description* of the property conveyed
- *Any relevant exceptions or reservations*
- *Signature of the grantor*
- *Delivery* of the deed and *acceptance* by the grantee to pass title

A **grantor** must be of lawful age, at least 18 years old. **A deed executed by a minor is usually voidable.**

**Grantee** – to be valid, a **deed must name a grantee.**

**Consideration** – a valid deed must contain a clause **acknowledging that the grantor has received consideration.**

**Granting clause (words of conveyance)** – A deed must contain a granting clause that states the grantor's intention to convey the property.

**Legal description of real estate**

**Exceptions and reservations**

**Signature of grantor** – to be valid, a deed must be **signed by all grantors named in the deed.**

**Acknowledgement/Notarization** – this is a formal declaration that the **person who signs a written document does so voluntarily and that her signature is genuine.**

## Types of Deeds

The most common deed forms are the:

- General warranty deed
- Special warranty deed
- Quitclaim deed

**General Warranty deed** – a general warranty deed provides the **greatest protection of any deed**

## Special Warranty Deed

1. Warranty that the grantor received title
2. Warranty that the property was not encumbered during the time the grantor held title, except as otherwise noted in the deed.

**Quitclaim Deed** – a **quitclaim deed** provides the grantee with the least protection of any deed. It carries no covenants or warranties and generally **conveys only whatever interest the grantor may have when the deed is delivered.**

## Transfer Tax Stamps

The Illinois Real Estate Transfer Act imposes:

- A state tax on conveying title to real estate in the amount of **\$0.50 per \$500**, or fraction thereof
- In all Illinois counties, there is an additional transfer tax of **\$0.25 per \$500**, or fraction thereof
- Total transfer tax to state and county combined is **\$0.75 per \$500** or fraction thereof

## Involuntary Alienation

Title to property may be transferred without the owner's consent by involuntary alienation. Involuntary transfers are usually carried out by operation of law such as by condemnation or sale to satisfy delinquent tax or mortgage liens.

## Transfer by Adverse Possession

- Open
- Notorious
- Continuous and uninterrupted
- Hostile
- Adverse to the true owner's possession.

**The period of uninterrupted possession required to claim title by adverse possession is 20 years.**

## Transfer of Property Through a Will

A person who dies testate (with a will) has prepared a will indicating how her property should be handled.

## Transfer of Property After Death – No Will

## **Probate**

Legally, when a person dies, ownership of real estate immediately passes either to their heirs by descent or to the persons named in the will.

## **REAL ESTATE DOCUMENTS – PUBLIC RECORDS**

**Public records contain detailed information about each parcel of real estate in a city or county.** These records are crucial in establishing ownership, giving notice of encumbrances, and establishing priority of liens.

**Public records are just that: open to the public.**

This means that **anyone interested in a particular property can review records** to learn the documents, claims, and other issues that affect their ownership.

**Illinois law does not require that most documents be filed or recorded within a specified period of time.**

## **Constructive Notice**

This is legal presumption that information may be **obtained by an individual through due diligence – consulting the public documents.**

## **Actual Notice**

This means not only that the information is available but also that someone has been given the **information and actually knows it.**

## **Unrecorded Documents**

Certain types of liens are not recorded. **Real estate taxes and special assessments are liens on specific parcels of real estate and usually are not recorded at the time they become effective (January 1 each year for Illinois Real Estate Taxes).**

## **Chain of Title**

A chain of title is the **record of a property's ownership**. Beginning with the earliest owner, title may pass to many individuals. Each owner is linked to the next so that a chain is formed.

If ownership cannot be traced through an unbroken chain, a gap or cloud in the chain of title is said to exist. In these cases, the cloud on the title makes it necessary to establish ownership by a court action called a **suit of quiet title**.

## **Title Search and Abstract Title**

A title search is an examination of all of the public records to determine whether any defects exist in the chain of title.

**An abstract of title is a summary report of what the title search found in the public record.**

## **PROOF (ASSURANCE) OF OWNERSHIP**

Proof of ownership is evidence that title is marketable. A deed by itself is not considered sufficient evidence of ownership in Illinois.

### **Certificate of Title**

A **certificate of title** is a **statement of opinion** regarding **title status** on the date the certificate is issued.

### **Abstract and Attorney's Opinion of Title**

#### **Title of Insurance**

Title insurance is a **contract (Insurance Policy) under which the policy holder (Buyer) is protected from losses arising from defects in the title.** A title insurance company determines whether the title is insurable based on a **review of the public records.**

The premium of the policy is paid once, at closing.

### **Owner's Title Insurance Policy**

**Extended coverage, as provided by an American Land Title Association (ALTA) Policy,** includes the protections of a standard policy plus additional protections.

### **Lender's (Buyer's) Title Insurance Policy**

A lender's policy is issued for the benefit of the mortgage company.

# Chapter 10

## REAL ESTATE CLOSINGS

### PRECLOSING PROCEDURES

Buyer's Requirements to Close

Final Property Inspection

Spot Survey

Seller's Requirement to Close

### CLOSING PROCEDURES

#### Face-to-Face Closing

##### Closing Agent or Closing Officer

A closing agent must be a representative of the title company, the lender, the real estate broker, or the buyer's or seller's attorney.

##### The Exchange

When the parties are satisfied that **everything is in order, the exchange is made.**

##### Closing in Escrow (Non Face-to-Face Closing)

An escrow is a method of non-face-to-face closing in which a **disinterested third party is authorized to act as escrow agent and to coordinate the closing activities.**

##### Licensee's Role at Face-to-Face Closings

In Illinois, the licensee's role is limited to simply collecting the commission.

##### Lender's Interest at Closing

Whether a buyer obtains new financing or assumes the seller's existing loan, the **lender wants to protect its security interest in the property.**

### REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA)

RESPA prohibits certain practices that increase the cost of settlement services:

- Section 8 prohibits kickbacks and fee-splitting for referrals of settlement services and unearned fees for services not actually performed.
- Section 9 prohibits home sellers from requiring that homebuyers buy title insurance from a particular company
- Section 10 prohibits lenders from requiring excessive escrow account deposits, money set aside pay taxes, hazard insurance, and other charges related to the property.

## Good Faith Estimate of Lending Costs

- **No Tolerance** – Fees that may not increase before closing:
  - Lender charges for taking, underwriting, and processing the loan application
  - Including points
  - Origination fees
  - Yield spread premiums
- **10 percent tolerance** – fees that cannot increase by more than 10 percent in any given category:
  - Settlement services for which the lender selects the provider or for which the borrower selects the provider from the lender's list
  - Title services and title insurance if the lender selects the provider, and recording fees
- **Unlimited tolerance** – fees for services that are out of the lender's control; services for which the borrower chooses the provider:
  - Escrow charges
  - Title insurance fees
  - Impounds for taxes, mortgage interest
  - The cost of homeowners' insurance

**Uniform Settlement Statement (HUD-1):** RESPA requires that the Uniform Settlement Statement **itemize all charges that are normally paid by a borrower and a seller in connection with settlement**, whether required by the lender or another party, or paid by the lender or another person.

## PREPARATION OF CLOSING STATEMENTS

A typical real estate transaction requires accounting for the expenses incurred by either party, generally on the HUD-1, a form required by any federally related closing. All expenses must be itemized to arrive at the **exact amount of cash required from the buyer and the net proceeds to the seller**. These include prorated items – those prepaid by the sellers for which they must be reimbursed and expenses the seller has incurred but for which they buyer will be charged.

### How the Closing Statement Works

The completion of a closing statement involves an accounting of the parties' debits and credits. A debit is an amount that a party owes and must pay at closing. A credit is an amount entered in a person's favor, an amount that has already been paid, an amount being reimbursed, or an amount the buyer promises to pay in the form of a loan.

**A *debit* is an amount to be *paid* by the buyer or seller**

**A *credit* is an amount payable to the buyer or seller**

## PRORATIONS

Most closings involve the division of financial responsibility between the buyer and seller for such items as loan interest, taxes, rents, fuel, and utility bills. These allowances are called **prorations**. **Prorations are necessary to ensure that expenses are divided fairly between the seller and the buyer.**

**Accrued items** such as water bills, Illinois real estate taxes, and interest on an assumed mortgage that is paid in arrears are expenses to be prorated that are **owed by the seller but later will be paid by the buyer. The seller therefore pays for those items by giving the buyer credits for them at closing.**

**Prepaid Items**, such as fuel oil in a tank, are expenses to be prorated that have been paid by the seller but not fully used up. **They are therefore credits to the seller.**

# Chapter 11

## 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.

### 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.

#### Definitions – Statutory (Real Estate License Act of 2000)

- **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.
- **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.
- **Ministerial Acts** – Informative or clerical services provided by a licensee to a consumer; providing ministerial acts is not equivalent to active representation.
- **Confidential Information** – information given by a client to a licensee during the term of a brokerage agreement that:
  - **The client requests (in writing or verbally) the licensee keep in confidence**
  - **Relates to the client's negotiating position**
  - **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
- The information is revealed by some person or entity other than the licensee.
- **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.
- **Client** – The person or entity that a licensee represents in a real property transaction.



## **Fiduciary/Statutory Responsibilities**

- Care
- Obedience
- Loyalty
- Disclosure
- Accounting
- Confidentiality

## **Confidentiality**

Confidentiality is a key element of fiduciary duties.

## **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 statements is an opinion or a fact.**

**Statements of fact must be accurate. The misrepresentation or omission does not have to be intentional to result in licensee liability.**

## **Latent Defects**

The seller has a duty to disclose any **known latent defects** that threaten structural soundness or personal safety.

## **Stigmatized Properties**

Stigmatized properties are those properties that society has branded **undesirable because of events that occurred there.**

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

## **TYPES OF AGENCY RELATIONSHIPS**

A **universal agent** is a person empowered to do anything the principal could do personally.

A **general agent** may represent the principal in a broad range of matters related to a particular business or activity.

A **special agent** is authorized to represent the principal in one specific act or business transaction only, under detailed instructions.

## **Dual Agency**

In dual agency, the agent represents two principals (buyer and seller or landlord and tenant) in the same transaction.

**Required Disclosed Dual Agency Disclosure Notice**

Real estate licensing laws permit dual agency only if the buyer and seller are informed and consent to the licensee's representation of both in the same transaction.

**Confirmation of Consent to Dual Agency**

Because of the obvious risks inherent in dual agency ranging from conflicts of interest to outright abuse of trust, Illinois requires that the buyer and seller sign a dual agency disclosure twice.

**Designated agency** is a process that avoids dual agency that may occur during an in-house sale in which two different agents are involved.

**Undisclosed dual agency**

A licensee may not intend to create a dual agency.

**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 active representation on behalf of a consumer.

# Chapter 12

## CONTRACT LAW

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.

- Voluntary
- An agreement or a promise
- Supported by legal consideration
- Having to do with a legal act

### Express and Implied Contracts

- An **express contract** exists when the **parties state the terms and show their intentions in words**. An express contract may be **oral or written**.
- In an **implied contract**, the agreement of the parties is demonstrated by their acts and conduct.

**Enforceable in Court** – only written contracts can be enforceable in court, with very few exceptions. In Illinois, most of our real estate contracts/agreements have to be in writing.

The Illinois Statue of Frauds requires that any contracts for sale of land, or for leases that for more than one year from the date they are entered into, must be in writing to be enforceable in court.

### Bilateral and Unilateral Contracts

- In a **bilateral contract**, both parties promise to do something; one promise is given in exchange for another.
- 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. The second party is not legally obligated to act. However, **if the second party does comply, the first party is then obligated to keep the promise**. An option contract to retain one's option to possibly make a purchase later is an example of a unilateral contract.

### Executed and Executory Contracts

- An executed contract is one in which all parties have fulfilled their promises: the contract has been performed.
- An executory contract exists when one or both parties still have an act to perform.

### Essential Elements of a Valid Contract

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

### **Offer and acceptance (mutual assent):**

There must be an offer by one party that is accepted by the other party.

An offer is a promise made by one party requesting something in exchange for that promise.

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 seller has rejected it.

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.

### **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.

Good consideration – love and affection

Value consideration – money, things of tangible value (gold, pearls, diamonds)

### **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.

### **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 purpose.

### **Legally Competent Parties**

### **Validity of Contracts**

A contract can be described as 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.
- 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.
- A contract 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.

### **Assignment – New Person**

This is a transfer of rights or duties under a contract.

### **Novation – New Contract**

Substitution of a new contract for an existing contract is called novation.

### **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.

### **Seller Breach**

If the seller breaches a real estate sales contract, the:

- The buyer may sue for specific performance unless the contract specifically states otherwise.

### **Buyer Breach**

If the buyer defaults:

- The seller may sue for the purchase price in exchange for a deed (similar to specific performance for a buyer).
- The seller may declare the contract forfeited.

## **ELECTRONIC SIGNATURES FOR CONTRACTS/DOCUMENTS**

The use of electronic signatures has been a topic of discussion and laws (Federal and State) for many years. A Federal law covering this subject was also passed in 2000, the Electronic Signatures in Global and National Commerce Act (ESIGN) recognizes electronic signatures as legally binding in business transactions.

## **Listing and Buyer Agency Agreements**

Listing and buyer agency agreements are employment contracts.

A **listing agreement** establishes the rights and obligations of the **sponsoring broker as agent and the seller as principal**.

A **buyer agency agreement** establishes the relationship between a **buyer as principal and sponsoring broker as agent**.

**Earnest Money Deposits** – it is customary (although not legally required) for a purchaser to provide a deposit when making an offer to purchase real estate. This deposit, usually in the form of a check, is referred to as earnest money.

### **Commingling**

Sponsoring brokers are strictly prohibited from commingling, that is, depositing earnest money in their personal or corporate operating account.

### **Conversion**

Conversion involves the use of escrow funds to pay for personal or business expenses. This is also a violation of Real Estate Licensing Law.

## Equitable Title

### Contingencies

Additional conditions that must be satisfied before a sales contract is fully enforceable are called **contingencies**. A contingency includes the following three elements:

1. The specific actions necessary to satisfy the contingency.
2. The time frame within which the actions must occur.
3. Who is responsible for paying any costs involved?

The most common contingencies include:

- **Mortgage Contingency**
- **Inspection Contingency**
- **Property sale Contingency**

**Amendments** – a change to an existing contract.

**Addendums** – any provision added to an existing contract without altering the content of the original.

### Land Contracts – Installment Contract (Seller Financing)

A real estate sale can be made by a **land contract**, also called a contract of deed, an **installment contract**, or articles of agreement for warranty deed. Under a typical land contract, the seller (also known as a vendor) retains legal title. The buyer (called the vendee) takes possession and gets equitable title to the property.

### Parole Evidence Rule

# Chapter 13

## REAL ESTATE BROKERAGE OPERATIONS & AGREEMENTS

### REAL ESTATE BROKERAGE OPERATIONS

A brokerage business may take many forms.

In Illinois, every real estate office must have a sponsoring or designated managing broker of record, neither of which is required to be the owner of the business.

### Managing Brokers

A managing broker has taken additional courses and received a managing broker license.

### Independent Contractor versus Employee

Every sponsoring broker who hires licensees or has an **independent contractor relationship** with a licensee must have a **written employment agreement** with each licensee.

### Designated Managing Broker Responsibilities

The designated managing broker has supervisory responsibilities for all licensees in one or, in the case of a multi office company, more than one office appointed by the sponsoring broker.

### Termination of Sponsorship

- The licensee goes online and terminates their employment with their current sponsoring broker.
- The termination automatically becomes effective, as does the licensee's ability to practice real estate, unless she accepts employment with a new sponsoring broker.

### If the licensee is simply changing brokers:

- Apply online with the new sponsoring broker

### Preparing a Policy and Procedure Manual

A **policy and procedure manual** should be written and should serve as a risk management tool for the company.

## Errors and Omissions Insurance

Liability claims can also arise from a number of related services provided occasionally for a separate fee basis or are incidental to the transaction.

## Personal Assistants

A **personal assistant**, also known as a **real estate assistant** or **professional assistant**, is often a **combination office manager, marketer, organizer, and facilitator** with a fundamental understanding of the real estate industry. While an **assistant does not need to have a real estate license, she is allowed to perform many more duties if holding a real estate license. (In Illinois, there is no specific assistant's license, so licensed Personal Assistants have to obtain a Broker's license.)**

An **unlicensed assistant's** duties might include:

- Clerical functions
- Secretarial functions
- Answering phones

A **licensed assistant can:**

- Set up and host open houses
- Deal more extensively with clients
- Actively show houses
- Assist in all aspects of a real estate transaction

## Commissions

Only a licensed managing or sponsoring brokers may collect a commission in Illinois.

The managing or sponsoring broker then **may share it with any licensees** who are directly involved in or responsible for a given transaction.

To collect commission on a real estate transaction, the agent must have been "hired" by way of an agreement in which the principal (seller or buyer) agreed to pay a specified commission for services.

**Once a seller accepts an offer from a ready, willing and able buyer, the real estate broker is entitled to a commission.**

## Sales Force Compensation

The amount of compensation a licensee receives from a sale is set by mutual agreement between the affiliated licensees and their sponsoring brokers.

Fees, commissions, or other compensations cannot be paid to unlicensed persons for services that legally require a real estate license.

Under the Act, a licensee may **form a solely owned corporation** for the purpose of receiving compensation.

**Commissions and Disclosures:** the sponsoring broker's compensation and policy with cooperating brokers who represent other parties in a transaction **must always be disclosed**. If there is a compensation from two parties to a transaction from both the buyer and the seller, **that needs to be disclosed in writing as well.**



## **Antitrust Violations include**

- Price-fixing
- Group boycotting
- Allocation of customers
- Allocation of markets
- Tie-in Agreements (tying)

### **Price-Fixing**

Price-fixing is the practice of setting prices for products or services rather than letting competition in the open market establish those prices.

Price-fixing is illegal.

### **Group Boycotting**

Group boycotting occurs when two or more businesses conspire against another business or agree to **withhold their patronage to reduce competition**. Group boycotting is illegal under the antitrust laws.

### **Allocations of Customers or Markets**

Allocation of customers or markets involves an agreement among real estate companies to **divide their markets and refrain from competing for each other's business**.

### **Tie-In Agreements**

Tie-in agreements, also known as tying agreements, are **agreements to sell one product only if the buyer purchases another product as well**.

### **National Do Not Call Registry**

Licensees are permitted to call customers with whom they have an established business relationship up to **18 months** following the consumer's last payment, purchase, or delivery.

### **The CAN-SPAM Act**

### **The Junk Fax Prevention Act**

### **STATE LICENSE LAWS**

All 50 states, the District of Columbia, and all Canadian provinces **license and regulate the activities of real estate professionals**. **While the laws share a common purpose, the details vary from state to state**.

**Real estate license laws have been enacted to protect the public** by ensuring a standard of competence and professionalism in the real estate industry.

## BROKERAGE AGREEMENTS

Brokerage agreements are employment contracts for the personal professional services of the sponsoring broker, not for the transfer of real estate.

A listing agreement is an employment contract between a sponsoring broker and a seller.

## TYPES OF LISTING AGREEMENTS

### 1. Exclusive-Right-To-Sell Listing Agreements

In an exclusive-right-to-sell listing agreement, **one broker is appointed as the seller's sole agent**.

### 2. Exclusive-Agency Listing Agreements

In an exclusive-agency listing, **one broker is authorized to act as the exclusive agent to the seller – principal**. However, the **seller retains the right to sell the property without obligation to the broker**. The seller retains the right to sell the property without financial obligation to the listing broker.

### 3. Open Listing Agreement

In an open listing (known in some areas as a nonexclusive listing), the **seller retains the right to employ any number of brokers as agents**.

### 4. Net Listing

A net listing provision specifies that the **seller receives a net amount of money from any sale, with the excess going to the listing broker as commission**.

## TERMINATION OF LISTING AGREEMENTS

Because the licensee's services are unique, a brokerage agreement **cannot be assigned to another licensee without the principal's written consent**.

### Expiration of Brokerage Agreement

All exclusive brokerage agreements should specify a **definite period during which the broker is to be employed**.

### Automated Extension

Pursuant of Section 10-25 of the Illinois Real Estate License Act of 2000, **no licensee shall obtain any written brokerage agreement containing a clause automatically extending the period of the contract**.

## SAFETY CLAUSE

This is a clause in the listing agreement which provides the listing broker a commission if, within a specific period after the listing agreement expires, the owner transfers property title to someone who saw the property while it was listed with the broker.

## THE LISTING PROCESS

### Pricing the Property

While it is the responsibility of the broker to advise and assist, it is the seller who must determine the listing price for the property.

Brokers can help sellers determine a listing price for the property by using a **comparative market analysis (CMA)**. A CMA analyzes properties similar to the subject property in size, location, and amenities.

### Market Value

**Market value** is the most probable price a property would bring in an arm's-length transaction under normal conditions on *the* open market.

## THE LISTING AGREEMENT

In Illinois, the listing contracts most commonly in use are prepared by local REALTOR® associations and their attorneys. These forms may vary slightly from area to area.

Illinois law requires that the following disclosures be included with listing contracts:

- Disclosure of material facts
- Disclosure of interest
- Disclosure of special compensation
- Earnest money and purchaser default
- Disclosure of property condition
- A Property Disclosure Report must be given to the buyer before an offer is made and accepted or the buyer has three days to rescind the contract, based on any negative disclosures. In addition, a lead and paint disclosure is required on any property **built before 1978**, and radon disclosure is required of the seller.

### Minimum Services

All exclusive brokerage agreements must specify that the sponsoring broker, through its sponsored licensees, must provide the following required minimum services:

- Accept delivery of and present the client all offers and counteroffers to buy, sell, or lease the client's property or the property the client seeks to purchase or lease.
- Assist the client in developing, communicating, negotiating, and presenting offers, counteroffers, and notices that relate to the offers and counteroffers until a lease or purchase agreement is signed and all contingencies are satisfied or waived.
- Answer the client's questions relating to the offers, counteroffers, notices and contingencies.

## BUYER AGENCY AGREEMENTS

Like a listing agreement, a buyer agency agreement is an employment contract. In this case, **the broker is employed as the buyer's agent**.

### **Types of Buyer Agency Agreements**

- 1. Exclusive Buyer Agency Agreement**
- 2. Exclusive-Agency Buyer Agency Agreement**
- 3. Open Buyer Agency Agreement**

# Chapter 14

## FAIR HOUSING

### 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.

**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.**

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.**

### Federal laws

The federal government's efforts 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*.

### Fair Housing Act

Title VII of the **Civil Rights Act of 1968** prohibits discrimination in housing based on *race, color, religion, and national origin*.

In **1974**, the Housing and Community Development Act added sex to the list of protected classes.

In **1988**, Congress passed the Fair Housing Amendments Act that expanded federal civil rights protections. The act extended coverage to include *families with children and persons with physical or mental disabilities*.

### 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 protection extends to families with children. The term includes a woman who is pregnant.

### Disability

A *disability* is a **physical or mental impairment**. It is unlawful to discriminate against prospective buyers or 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.

**People with disabilities must be permitted to make reasonable modifications to the premises at their own expense.**

**The landlord may not increase the customarily required security deposit for persons with disabilities.**

### **Exemptions to the Fair Housing Act**

The federal Fair Housing Act provides for **certain exemptions**.

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
- 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.

### **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 age 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.

### **Jones v. Mayer**

### **Americans with Disabilities Act (ADA)**

The ADA is important to licensees because it addresses the rights of individuals with disabilities in employment and public accommodations.

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.

## **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 in the neighborhood will have some sort of negative impact on property values**.

### **Steering**

Steering is the **channeling of home-seekers to particular neighborhoods. It also includes discouraging potential buyers from considering some areas**.

## **Advertising**

Advertisements of property for sale or rent may not include language indicating a preference or limitation.

## **Redlining**

The practice of refusing to make mortgage loans or issue insurance policies in specific areas for reasons other than the applicant's financial qualifications is known as redlining.

## **Intent and Effect**

If an owner or real estate licensee purposely sets out to engage in blockbusting, steering or other unfair activities, and the intent to discriminate is obvious.

## **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.

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

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

- Ancestry
- Age
- Marital status
- Military service
- Unfavorable discharge from military service
- Sexual orientation
- Order of protection status in connection with employment
- Real estate transactions
- Access to financial credit
- The availability of public accommodation.

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

## **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.**

# Chapter 15

## PROPERTY MANAGEMENT & LEASING

### 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.

The property manager has three principal responsibilities

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

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**.

### THE MANAGEMENT PLAN AND AGREEMENT

#### The Management Plan

Property management begins with a management plan prepared by the property manager. A management plan outlines the details of the owner's objectives with the property, as well as what the property manager expects to accomplish and how, including all financial objectives.

In preparing a management plan, a property manager analyzes three factors:

- The owner's objectives
- The regional and neighborhood market
- The specific property

#### 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.

### Property Manager's Responsibilities

#### Financial Reports

#### Operating Budget

#### Income

#### Expenses



## **Renting the Property**

### **Setting rental rates**

Rental rates are **influenced primarily by supply and demand**. The property manager should conduct a detailed survey of the competitive space available in the neighborhood, emphasizing similar properties.

### **Collecting Rents**

A property manager should accept only those tenants who can be expected to meet their financial obligations.

### **Maintaining Good Relations with Tenants**

An effective property manager establishes a good communication system with tenants. The property manager must be able to handle residents who do not pay their rents on time or who break building regulations.

### **Maintaining the Property**

One of the most important functions of a property manager is the supervision of property maintenance. A primary maintenance objective is to protect the physical integrity of the property over the long term. Keeping the property in good condition involves the following four types of maintenance:

- Preventive maintenance
- Repair or corrective maintenance
- Routine maintenance
- Construction

The ADA recommends reasonably achievable accommodations to provide access to the facilities and services. New construction and remodeling must meet higher standards because new design costs less than retrofitting. An unexpected benefit to new owners is that many of the accessible design features and accommodations benefit everyone.

## **LEASES**

### **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 of time. 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 statutes of fraud in Illinois requires that lease agreements be in writing to be enforceable if they are for more than one year. The written rule also applies to leases for one year or less that will not be performed within one year of the contract date. Verbal leases for one year or less that can be performed within a year of their making are enforceable. Written leases should be signed by both lessor and lessee.

## 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.

### 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. An estate for years (sometimes referred to as fixed term tenancy) always has specific beginning and ending dates.

### Estate from Period to Period

An estate from period to period, or periodic tenancy, is created when the landlord or tenant enter into an agreement for an indefinite time.

### Periodic Tenancy – After Estate for Years Tenancy Expires

An estate from period to period also might be created when a tenant with an estate for years remains in possession, or holds over, after the lease term expires. **If no new lease agreement has been made, a holdover tenancy is created.**

**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**.

### 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 for indefinite duration; it continues until it is terminated by either party giving proper notice.

### Estate at Sufferance

An estate (tenancy) at sufferance arises when a tenant who lawfully possessed the real property continues in possession of the premises without the landlord's consent after the rights expire.

## 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
- Legal objectives
- Offer and acceptance
- Consideration

### **Possession of Premises**

The lessor, or owner of the real estate, is usually bound by the implied covenant of quiet enjoyment.

### **Implied Warranty of Habitability**

The Illinois Supreme Court first confirmed the concept of an implied warranty of habitability in residential tenancies in 1972

### **Security Deposits**

Most leases require that the tenant provide some form of security deposit to be held by the landlord during the lease term.

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.

### **Improvements**

Neither the landlord nor the tenant is required to make any improvements to the leased property.

### **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.**

### **Assignment and Subleasing**

When a tenant transfers all of his leasehold interests to another person, the lease has been assigned. On the other hand, 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.

## **TYPES OF LEASES**

### **Gross Lease**

In a gross lease, the tenant pays a fixed rent, the landlord pays all taxes, insurance, repairs, utilities, and the like connected with the property.

### **Net Lease**

In a net lease, the tenant pays all or some of the property charges in addition to the base rent.

In a **triple-net lease**, or net-net-net lease, the tenant pays all operating and other expenses in addition to the rent.

### **Percentage Lease**

Either a gross lease or net lease may be a percentage lease. The rent is based on a minimum fixed base monthly rental fee plus a **percentage of the annual gross income** received by the tenant doing business on the leased property.

### **Variable Lease**

Several types of leases allow for increases in rental charges during the lease periods.

### **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**.

### **Oil and Gas Lease**

### **Lease with Option to Purchase**

A lease with option to purchase is used when a tenant wants to purchase the property but is unable to do so.

### **Sale-and-Leaseback**

A sale-and-leaseback is the arrangement whereby the owners of property sell the property and then lease it back again for an agreed period and rental.

### **Breach of Lease**

If a tenant defaults on payment of rent, the landlord has two options:

- He may elect to serve the tenant with five days' notice, demanding payment of the delinquent rent within five days after the notice is received.
- Alternatively (and in cases in which the tenant's breach is other than nonpayment of rent), the landlord may terminate the tenancy by serving the tenant with ten days' written notice, including a demand for possession.

### **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 to the tenant before commencing the lawsuit.

When a court issues a judgment for possession to the landlord, the tenant must vacate the property.

In Illinois, a landlord seeking actual eviction of a tenant must file an action called a forcible entry and detainer.

**Illinois landlords have no right to self-help;** that is, they may not forcibly remove a tenant without following the property 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.

## **CIVIL RIGHTS LAWS**

## **LEAD-BASED PAINT**

# Chapter 16

## ILLINOIS REAL ESTATE LICENSING LAW

### Illinois Real Estate Law

Since 1921, Illinois has had a real estate license law. The **body of law is intended to regulate the real estate industry for the protection of the public.**

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)**.

The Department is responsible for administering and enforcing the **Illinois Real Estate 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 office locations, real estate schools, and real estate instructors.

The Department promulgates rules for the Act's implementation and enforcement.

### 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 Department is responsible for administrative activities such as these:

- Conducting license examinations
- Issuing a renewing licenses
- Preparing all forms, including applications, licenses, and sponsor cards.
- 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 the 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 a 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
- Serving as ex officio Chairman of the Advisory Council without a vote

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

The Real Estate Administration and Disciplinary Board ("the Board") acts in an advisory capacity to the Real Estate Coordinator regarding **matters involving standards of professional conduct**, discipline, and examination.

### **Composition of the Board**

The Board is composed of **fifteen 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.

- **Twelve of the fifteen must have been active** real estate managing brokers, brokers or salespeople for at **least ten years prior to appointment**
- The **remaining three must be unlicensed**, unconnected with the real estate profession, and represent consumer interest.
- **None of the consumer members** (or their spouses) or a person who has an ownership interest in a real estate brokerage business **may hold licenses**. The Board itself should reasonably reflect representation from all the various geographic areas of Illinois.
- **Members are appointed to four-year staggered terms**. Board members may be reappointed, but no individual may serve **more than total of 10 years in a lifetime**.
- **The Board makes recommendations to the Secretary regarding professional conduct and discipline of licensees as well as testing of license seekers**. The IDFPR develops forms and issues rules pertaining to real estate licensing after considering the requirements of the Illinois Real Estate License Act and any recommendations made by the Board.
- The Real Estate Coordinator is the nonvoting, ex officio board chairperson

## **OBTAINING AND KEEPING A REAL ESTATE LICENSE**

### **Who Needs to Be Licensed?**

**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

## License Requirement Exemptions

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

- **Owners or lessors** or their regular **employees** who sell, lease, or otherwise deal with their own property in the ways described under Article 1 definitions
- 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 a **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

**Should a sponsoring broker's license be revoked or rendered inoperative, all licensees under that sponsoring broker will be considered inoperative.**

## Broker's License

A broker is defined as an 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 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.

## Broker requirements

Applicants for a broker's license must meet the following requirements, as discussed in Section 5-17:

- 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
- Have completed a minimum of the previous required hours of pre-license education in brokerage administration
- 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 instruction and the students.



- Satisfactorily pass a state-sponsored written examination

## **Managing Broker's License**

### **Managing broker requirements**

All applicants for managing brokers licensed 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 high school or secondary school, approved by the Illinois board of education, or 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
- Submit a valid application for a managing broker license along with a sponsor card, a managing broker appointment, and 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**

Approved education for potential brokers and managing brokers is **valid for purposes of licensure for two years after date of satisfactory course completion**.

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** requires one to **retake the educational coursework**.

### **Corporations, Limited Liability Companies, and Partnerships**

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**

The Real Estate License Act of 2000 provides for a limited scope 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.

### **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 managing broker or sponsoring broker and that broker or sponsoring broker has notified the Department that the person is pursuing licensure.

### **Requirements to Take the State Exam**

Applicants are eligible to take the licensing agent examination only after they have met the education and age requirements:

- 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 be 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
- After four failures, the applicant must successfully repeat all pre-license education before further testing. The fifth attempt to pass is then treated by the Department as if it were a first attempt.

### **THE REAL ESTATE LICENSE**

- After passing the state exam, a formal application for licensure needs to be made to the state
- Prior to receiving the actual license and pocket card in the mail, a person who has just passed the licensing exam still may practice real estate as long as that person has a sponsor card
- After passing the state exam, the person is given a blank sponsor card at the testing site with her picture on it. When completed by a sponsoring broker, this sponsor card is valid for 45 days while the wall license and pocket card are being processed.

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

- Must have a sponsoring broker and apply online
- The license will specify whether the individual is authorized to act as a broker, managing broker, or residential leasing agent
- In addition to issuing the license, the Department issues a pocket card to each licensee. This card authorizes the bearer to engage in appropriate licensed activities for the current license period.
- **Licenses must carry this card when engaging in any of the activities for which a license is required by Illinois law. The pocket card must be displayed on request.**
- The pocket card can be on a phone or laptop and must be shown upon request.

### **What Happens to Your License When You Change or Leave Firms?**

#### **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 goes online and terminates their employment with their current sponsoring broker.
- The termination automatically becomes effective, as does the licensee's ability to practice real estate, unless she accepts employment with a new sponsoring broker.

### **New Broker**

If the licensee is simply changing brokers, the new sponsoring broker will:

- Apply online with the new sponsoring broker

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

It is the licensee's responsibility to promptly notify the Department of any change of name, address, or office location within 24 hours.

### **Expiration and Renewal**

License expiration and renewal dates are established by rule, consistent with the Act

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.**

### **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

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

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

**Always check the Department web site for the latest update on reciprocal states.**

### **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**

- The residential leasing license initial fee is \$75
- Broker initial license fee is \$125
- Managing broker initial fee is \$150
- Initial broker's license fee for a partnership, LLC, or corporation is \$125

## **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 agents – 8 hours each 2 year renewal
- Broker – 6 hours per year, 12 hours each 2 year renewal
- Managing broker – 12 hours per year, 24 hours each 2 year renewal

## **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.

### **Office Locations**

Sponsoring brokers may establish multiple office locations as long as the Department is notified and gives approval. The sponsoring broker can appoint a designated managing broker for each office locations and is responsible for supervising all designated managing brokers.

### **Loss of an Office Designated Manager Broker (Section 5-45e)**

In the event a sponsoring broker dies, or a designated managing broker leaves a branch office unexpectedly, a request may be made to the Department within **15 days** of the loss to grant an extension for continued office operation.

### **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 sponsored broker.

In turn, a sponsoring broker must have a written agreement with any managing brokers, brokers or residential leasing agents she employs.

**Replacing Common Law, Section 15-15 notes the statutory duties a licensee has toward her 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 clients (e.g. timely offer presentations, material facts disclosure, best interests of the client prevail over 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
- 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
- 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 remaining 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."** Ministerial 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 a dual agent in any transaction in which she has an ownership interest, whether direct or indirect.

### **Designated Agency**

This 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.

### **Articles 15 (Agency) also clearly notes the following:**

- Offers of sub-agency through the multiple listing service (MLS) are not permitted in Illinois

### **Disclosure**

#### **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

### **Article 15, Material Fact 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 prospective buyer customers “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/AIDS

**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.

### **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 for proper deposit in a special account

The Act states that the sponsoring broker's escrow account is to be noninterest bearing.

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.**”

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 Act does not limit the number of escrow accounts one sponsoring broker may maintain.**

**Commingling** of personal and business funds is **prohibited**.

**Conversion** or use of the escrow funds for personal and business purposes, is also **prohibited**.

### **Disputes Over Disbursements of Escrow Funds**

If there should be disputes between the parties regarding escrow money, **the sponsoring broker shall continue to hold the deposit**. If the parties cannot resolve their issues, the sponsoring broker holding the escrow funds must turn the escrow funds to the courts

### **Escrow Account Records**

Each sponsoring broker who accepts earnest money shall maintain, in 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.
- **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.
- **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.
- **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.

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 Personal Assistants**

### **Unlicensed Assistants**

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

### **Licensed Assistants**

The actual employment agreement for a licensed assistant is made with the sponsoring broker of the firm.

### **Licensed Personal Assistant Compensation**

Any person who is a licensed personal assistant for another licensee may only be compensated in her capacity as a personal assistant by the sponsoring broker for that licensed personal assistant. (Sections 10-5c).

## **Advertising Regulations (Section 13-30)**

**A sponsoring broker must include her business name and franchise affiliation in all advertisements. Blind ads are prohibited.** Blind ads are defined as advertisements relating to the sale or lease of any real estate, or other real estate activities, or the hiring of other licensees that:

- Do not indicate the brokerage firm name
- Do not indicate that the advertiser is a licensee
- Offer only a box number, street address or telephone number for responses.

### **Ads prepared by licensees should at least include:**

- Licensee name
- Company name (as registered with the Department) and company city/state
- The city or area of the advertised property

### **A licensee must**

- NEVER advertise in only her name
- ALWAYS include the firm's name
- NEVER advertise another sponsoring broker's listing without permission
- ALWAYS keep advertisements up-to-date and clear.

## **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 the property.
- Licensees must paint a true picture in all advertising.

### **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 permission of and identifying that listing broker.



### **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.**

**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 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.
- 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 10-5 – 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. She is the only one who issues compensation to brokers, managing brokers, residential leasing agents, or licensed personal assistants working for 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 is now **legal for a sponsoring broker to pay a corporation set up by the licensee**, rather than the licensee directly, if desired.

## **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 under probation
- Impose a civil penalty of not more than \$25,000 for any one cause or any combination of causes.

### **Causes of 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 inoperative license
- Attempts to subvert or cheat on the licensing exam or assists someone else in doing so
- Advertising that is inaccurate, misleading, or contrary to provisions of the act

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

- Making any substantial misrepresentation or untruthful advertising
- Making any false promises to influence, persuade, or induce
- Pursuing a continued and flagrant course of misrepresentation or making false promises through licensees, employees, agents, advertising or otherwise
- Using any misleading or untruthful advertising
- Using any trade name or insignis 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 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 (sponsor cards, 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
- Engaging in any dishonest dealing, whether specifically mentioned by the Act or not
- 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
- Paying or failing to disclose compensation that violates the Act
- 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

## **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 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

### **Discrimination**

**Licensees 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 license activity, the **Department must suspend or revoke the licensee's license unless the adjudication is in appeal.**

### **Guaranteed Sales Plan**

A licensee is subject to disciplinary action if she offers a guaranteed sales plan without complying with the Act's requirements for such agreements

**A guaranteed sales plan is any real estate purchase or sales plan in which a sponsoring broker**

- Enters into an unconditional written contract with a seller
- promising to purchase the seller's property
- for a specified price
- if the property has not sold within an agreed period of time on terms acceptable to the seller

The Act indicates how such a plan can be constructed so as to comply with Illinois law. An Illinois sponsoring broker who offers a guaranteed sales plan in compliance with the Act must:

- provide the details and conditions of the plan in writing to the seller
- offer evidence of sufficient financial resources to satisfy the agreement's purchase commitment
- market the listing in the same manner in which she would market any other property, unless the agreement with the seller provides otherwise
- not purchase the seller's property until the brokerage agreement has ended or is otherwise terminated

## **THE REAL ESTATE RECOVERY FUND**

The Real Estate Recovery Fund provides a **means of compensation for actual monetary losses 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, or
- act of embezzlement of money or property
- obtaining money or property by:

- false pretenses
- artifice
- trickery
- forgery
- fraud
- misrepresentation
- deceit
- discrimination

**Reimbursement from the Recovery Fund applies to situations causing cash losses (rather than the loss of market value) to the harmed party.**

The fund may pay out a **maximum sum of money 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 **attorney's fees** ordered as recovery for the improper conduct.

**If the licensee wishes to have their license reinstated, the license must reimburse the fund all fees plus interest.**

#### **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 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 and 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 notice of the judgment within 30 days.**

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.**

#### **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.

#### **Statute of Limitations (Section 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.

**THANK YOU FOR  
ATTENDING THE  
ALL DAY REVIEW**

**SAM ZAKARIAN**

**SALES MANAGER**

**CENTURY 21 UNIVERSAL**

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