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INFORMATION ABOUT THE STATE REAL ESTATE BROKER EXAM

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

Allocations of State Real Estate Broker Exam Questions by Chapter

State Section of the Test	Number of Questions	Chapter(s) in the Book
Licensing Requirements	10	3
Laws and Rules Regulating Real Estate Practice	20	3
Disclosures	10	1, 2, 3

2020 ILLINOIS STATE EXAMINATION OUTLINE

The content outline for the state portions of the examinations has been approved by the Illinois Department of Financial and Professional Regulation. This portion tests knowledge areas that are required specifically for the Illinois real estate professional.

1. **License Requirements**
 - A. License exemptions
 - B. Activities requiring a license
 - C. Types of licenses
 1. Broker
 2. Managing Broker
 3. Leasing Agent
 - D. Assistants
 - E. Eligibility for licensing
 - F. Examination
 - G. License renewal
 - H. Continuing education
 - I. Change in licensee information
 - J. Reciprocity
 - K. Real Estate Recovery Fund
2. **Laws and Rules Regulating Real Estate Practice**
 - A. Purpose of license law
 - B. Advertising (other than disclosure)
 - C. Broker/broker relationship

- D. Commissions
 - 1. Finder's fee/referral fee
 - 2. Rental finding services
 - E. Ownership issues
 - 1. Land trust
 - 2. Homestead
 - F. Handling of monies
 - 1. Special accounts
 - 2. Security deposits
 - G. Handling of documents
 - H. Performing activities exceeding scope of real estate licensing
 - 1. Law
 - 2. Securities
 - I. Transfer tax stamps/affordable housing
 - J. Intestacy
 - K. Legal description/Plat Act
 - L. Real estate taxes and exemptions
 - M. Illinois Human Rights Act
 - N. Interference with contracts or listings
3. **Disclosures**
- A. Agency
 - 1. Designated agencies
 - a. Seller
 - b. Buyer
 - c. Dual
 - B. Advertising
 - C. Property disclosures
 - 1. Residential Real Property Disclosure Act
 - 2. AIDS (HIV)
 - 3. Stigmatized property
 - 4. Material defects

NUMBER OF QUESTIONS FOR THE STATE BROKER PORTION

Licensing Requirements	10
Laws and Rules Regulating Real Estate Practice	20
Disclosures	10

Types Of Questions in The State Broker Exam

In addition, all items will be classified according to the cognitive level that is expected to be required for the entry-level candidate to appropriately respond to the item. The cognitive level classifications are

defined in the following table, which also shows the percentage of items at each level for the broker examination.

Level	Definition	Percentage of Questions
Recall/Recognition	To identify, recall or recognize terms, facts, methods, procedures, basic concepts, principles, and processes	41
Application/Analysis	To apply concepts and principles to situations to identify solutions; calculate solutions to mathematical problems; interpret charts and graphic data; classify items; and interpret information	59

Each question may contain up to EIGHT options and ONLY ONE BEST option shall be selected to answer the question.

Some options are appropriate but NOT the BEST ANSWER.

Select the option that best answers the question in the exam.

A **BEST ANSWER** reflects the optimal solution or most complete resolution to the scenario presented in the question.

EFFECTIVE LEARNING METHODS UTILIZING THIS BOOK AND ONLINE RESOURCES **Bold Type — Take Notes**

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

Underlined Bold Type — Highlight Notes

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

Bold and Underlined Bold Information — Say Aloud

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

Summary

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

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

Learning Procedure

1. Read the chapter quickly to see what is being covered.
2. Read over the chapter slowly, taking notes and speaking key sentences and phrases out loud, so you can hear them.
3. Lookup any words you don't understand in the glossary at the back of the book.
4. Re-read the sections of the chapter that pertains to any concept or State Study Point that you cannot remember or that you don't quite understand.
5. Take the chapter quiz at the end of each chapter.
6. Mark the questions down on your notes that you got wrong. (You will be studying this material again at the end of the course and taking the sample test to make sure that you get them right at that time).
7. Proceed to the next chapter.

Other Study Tips

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

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

Testing Knowledge Through Questions

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

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

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

SO, ANSWER THE QUESTIONS ONLINE AFTER YOU HAVE STUDIED THE CHAPTER.

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

GENERAL STRUCTURE OF THE QUESTIONS

Multiple Choice Questions

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

Memory

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

Analysis

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

Application

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

Common Traps

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

- **Except**
- **Not**

- **Several answers seem alike, but only a word or two differentiate them.** • **Best Answer** — several answers seem to be applicable, but one is the best • **Which is True?**
- **Which is False?**
- **"Which of the following is TRUE?"** means there are three wrong answers and one true answer.
- **What is the difference?**
- **What do they have in common?**
- **Most Likely**

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

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

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

CHAPTER 1: REAL ESTATE AGENCY

INTRODUCTION TO REAL ESTATE AGENCY

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

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

Law Of Agency

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

Both contract law and real estate licensing laws — in addition to the law of agency— interpret the relationship between real estate licensees and their clients.

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

Definitions

Legally, *agency* refers to a **strict, defined legal relationship**. In the case of real estate, agency is a relationship that a broker, managing broker, or residential leasing agent (representing the sponsoring broker) may have with buyers, sellers, landlords, or tenants.

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

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

Definitions - Statutory (Real Estate License Act of 2000)

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

- **Agent** - The individual who is authorized and consents to represent the interests of another person. In the real estate business, **a firm's sponsoring broker is the agent** and **shares this responsibility with the licensees who work for them**.

- **Agency-** A relationship in which a consumer has given consent (express or implied) to a real estate licensee to represent the consumer in a real property transaction. Consent may be given to a licensee directly or through an affiliated licensee.
- **Brokerage agreement** - An agreement, made verbally or set out in writing, for an agent or firm to provide brokerage services to a consumer and to receive compensation for providing those services.
- **Compensation** - Payment (monetary or otherwise) made to a person or entity for executing services for a client or customer.
- **Consumer** - A person or entity for whom an agent provides services, which are only to be provided by a licensee, or a person or entity who seeks such services from a licensee.

Confidential information - Information given by a client to a licensee during the term of a brokerage agreement that:

- **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, or
- the information is revealed by some person or entity other than the licensee.

Client vs Customer

There is a distinction between the level of services a licensee (as agent) provides to a client and the level of services a licensee may provide to a customer.

Customer— A person or entity for whom a licensee is providing services 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.

The client is the **principal to whom her agent gives advice and counsel** and a **written agency agreement has been signed by the client and agent**. The agent is entrusted with certain confidential information and has fiduciary responsibilities (sometimes called statutory responsibilities) to the principal.

In contrast, the **customer is entitled to factual information and honest dealings** as a consumer but **never receives advice and counsel or confidential information about the principal**. The real estate licensee may provide clerical acts to the customer but does not create a non-agency relationship, as an agent, works for the client.

Just as the agent owes certain duties to the principal, the principal has responsibilities toward the agent. **The principal's primary duties are to comply with the brokerage agreement and cooperate with the agent**. The principal must not hinder the agent and must deal with the agent in good faith. The principal also must compensate the agent according to the terms of the brokerage agreement.

Fiduciary/Statutory Responsibilities

The agency agreement usually **authorizes the real estate licensee to act for the principal**. The agent's fiduciary relationship of trust and confidence means that the real **estate licensee owes the principal certain duties**.

These duties were not simply moral or ethical; they formed the common law of agency and now are the **basis for statutory laws governing real estate transactions**. Under *the common law of agency*, *an agent owes the principal the duties of care, obedience, loyalty, disclosure, accounting, and confidentiality*.

The six common-law fiduciary duties may be remembered by the acronym COLD AC:

1. Care,
2. Obedience,
3. Loyalty,
4. Disclosure, 5. Accounting, and 6. Confidentiality.

Care

Agents must exercise a reasonable degree of care while transacting the business entrusted to them by the principal. Principals expect the agent's skill and expertise in real estate matters to be superior to that of the average person. The agent should know all facts pertinent to the principal's affairs, such as the physical characteristics of the property being transferred and the type of financing being used.

If the agent represents the seller, care and skill include helping the seller arrive at an appropriate listing price, discovering and disclosing facts that affect the seller, and properly presenting the contracts that the seller signs. It also means properly marketing the property and helping the seller evaluate the terms and conditions of offers to purchase.

An agent who represents the buyer is expected to help the buyer locate suitable property and evaluate property values, neighborhoods and property conditions, financing alternatives, and offers and counteroffers with the buyer's interest in mind.

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

Obedience

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

Loyalty

The principal's interests come first, even above the self-interest of the agent. Agents must **not** consider how the result of negotiations will serve their own interests (for instance, by providing them with a higher

commission); each agent must perform all services with the goal of promoting the principal's interests. By law, in all fifty states, agents are not permitted to buy property listed with them for their accounts or buy or sell property in which they have personal interest unless they have made that interest known to the principal or purchaser and received that party's consent.

Illinois license law prohibits an agent from acting as a dual agent in any transaction to which the agent is a party (Buyer or Seller). The agent must be particularly sensitive to any possible conflicts of interest.

Disclosure

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

The agent is **obligated to discover facts that a reasonable person would feel are important in choosing a course of action, regardless of whether those facts are favorable or unfavorable to the principal's position**. The agent may be held liable later for a mistake on these issues.

The Illinois Residential Real Property Disclosure form shifts the responsibility for full disclosure from the real estate agent to the seller. It requires that **sellers of one to four-unit residential properties fill out property disclosure forms revealing any material defects** they are aware of in the real estate for sale.

The completed forms shall be given to buyers before an offer is made. If the disclosure **form is delivered after the offer has been accepted** and if it has any **negative disclosures**, the buyer has **three days to cancel the contract**.

Furthermore, if the **seller learns of a new problem after a contract is signed and up until closing, disclosure must be made in writing to the buyer**. In the latter case, the buyer does not have the power to simply cancel the contract. Compensation may be negotiated or the problem remedied by the seller.

Disclosure forms are usually completed by the seller before he signs the listing agreement or at the time of signing. Regardless of the seller's completion of the disclosure form, the seller's agent is required to disclose all material defects known to her, including in cases where the agent knows that the seller has misrepresented the extent or existence of property defects or has not fully disclosed them. An agent for a buyer must disclose deficiencies of a property as well.

Accounting

Most states' license laws require that **agents periodically report the status of all funds or property received from or on behalf of the principal**. Similarly, most state license laws require that licensees give **accurate copies of all documents** to all affected parties and keep copies on file for a period of time.

Illinois licensees are **required to deliver true copies of all executed sales contracts to the people who signed them within 24 hours**. In Illinois, **all funds entrusted to a licensee must be deposited in a special escrow account by the next business day** following the signing of a sales contract or lease.

Commingling such monies with the licensee's personal or general business funds is illegal.

Conversion, the practice of using those escrow funds as the licensee's own money, is illegal as well.

Licensees should be aware that records of escrow account transactions and reconciliations must be kept on file for at least five years. All records can be kept electronically but must be backed up on a regular basis.

Confidentiality

Confidentiality is a key element of fiduciary duties. Client information obtained during the term of the brokerage agreement **must be kept confidential.** For example, when the principal is the seller, the agent may not reveal such things as the principal's willingness to accept less than the listing price or urgency to sell, ***unless the principal has authorized the disclosure.*** If the principal is the buyer, the agent may not disclose that the buyer will pay a higher price, is under a tight moving schedule, or other facts that might **harm the principal's bargaining position.**

These statutory duties, based on (but replacing) common-law duties, are set forth in **Article 15 of the Real Estate License Act of 2000.** An agent may not disclose personal, confidential information about her principal. However, **known material facts about the property's physical condition or its environs must always be disclosed.** A **material fact** is any fact that, if known, might reasonably be expected to affect the course of events.

Under Section 15-15 (2) (C) of the Act, material facts do not include the following when located on or related to real estate that is not the subject of the transaction:

- Physical conditions that do not have a substantial adverse effect on the value of the real estate
- Fact situations
- Occurrences

Opinion versus Fact

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

Statements of fact must be accurate. Exaggeration of a property's benefits is called puffing. While puffing is legal, licensees must ensure that none of their statements can be interpreted as fraudulent.

Fraud is the intentional misrepresentation of a material fact in such a way as to harm or take advantage of another person. That includes not only making false statements about a property but also intentionally concealing or failing to disclose important facts.

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

If a contract to purchase real estate is obtained as a result of fraudulent misstatements, the contract may be disaffirmed or renounced by the purchaser. In such a case, the licensee not only loses a commission but can be liable for damages if either party suffers loss because of the misrepresentation. If the licensee's misstatements were based on the owner's own inaccurate statements and the licensee had no independent duty to investigate their accuracy, the licensee may be entitled to a commission, even if the buyer rescinds the sales contract.

Latent Defects

The seller has a duty to disclose any known latent defects that threaten structural soundness or personal safety. A structural defect that would not normally be uncovered over the course of an ordinary inspection (due to the placement or type of defect, for instance) is referred to as a latent defect. Buyers have been able to either rescind the sales contract or receive damages when a seller fails to reveal known latent defects. The courts also had decided in favor of the buyer when the seller neglected to reveal violations of zoning or building codes.

In addition to the seller's **duty to disclose latent defects**, the seller's licensed real estate agent has an **independent duty to conduct a reasonably competent and diligent inspection of the property**. It is the licensee's duty to discover any material facts that may affect the property's value or desirability, whether or not they are known to or disclosed by the seller. Any such **material facts discovered by the licensee must be disclosed to prospective buyers**. If the licensee should have known about a substantial defect that is detected later by the buyer, **the licensee may be liable to the buyer for any damages resulting from that defect**. The statute of limitations is one year for buyer action.

Stigmatized Properties

Stigmatized properties are those properties that society has branded **undesirable because of events that occurred there**. Stigma is the continuing negative association with or feeling about the property.

Article 15 of the Real Estate License Act of 2000 states that in dealing with specific situations related to disclosure, "no cause of action shall arise against a licensee for the failure to disclose:

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

For any action brought under Article 15, "the court may in its discretion, award only actual damages and court costs or grant injunctive relief, when appropriate." Any action brought under Article 15 **must commence within two years after the person bringing the action knew or should have known of such act or omission**. In no event can the action be brought more than five years after the date on which the act or omission occurred. If the person entitled to bring the action is under the age of 18 or under legal disability, the period of limitation shall not begin to run until the disability is removed.

The **buyer's agent** is the one to suggest the **highest range of prices** the buyer should consider, based on **comparable values and current market**. The agent's aim is to help the buyer get the **lowest price possible**, given all other buyer concerns and needs. The buyer's agent discloses information about how long a property has been listed or why the owner is selling, if known. Of course, a seller's agent who discloses such information violates the agent's fiduciary/statutory duties of loyalty to the seller.

The seller's disclosure form is a good guide to follow for what must be disclosed to all parties by the listing side of a transaction. In all other respects, unless it is illegal or a material fact about the property itself, the seller's agent should follow the seller's lawful instructions. A buyer's agent should be on watch and do what research is possible.

Megan's Law

At the state level, Megan's Law is a general name for laws **requiring law enforcement authorities to make information available to the public regarding registered sex offenders**. Individual states decide what information will be made available and how it is to be disseminated. Commonly included information includes the offender's name, picture, address, incarceration date, and nature of the crime. The information is often displayed on public sites but can also be published in newspapers and pamphlets or disseminated through various other means.

At the federal level, Megan's Law is known as the Sexual Offender Act of 1994 and requires persons convicted of sex crimes against children to notify local law enforcement of any change of address or employment after release from custody (such as prison or a psychiatric facility). The notification requirement may be imposed for a fixed period of time, usually at least ten years, or permanently. Some states may legislate registration for all sex crimes, even if no minors were involved. It is a felony in most jurisdictions to fail to register or fail to update information.

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

Listing agents have no legal duty to disclose that a known sex offender resides in a property near a listed home, but skilled buyer's agents should be watchful for any signals of hard-to-identify issues.

Sex offender location lists are public information, and a buyer's agent should refer a buyer client to such lists if asked.

CREATION OF AGENCY

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

Express agency

The principal and agent may enter into a contract, or an express agreement, in which the parties formally express their intention to establish an agency and state its terms and conditions. The agreement may be either oral or written.

An agency relationship between a seller and a sponsoring broker generally is created by a written employment contract, commonly referred to as a listing agreement, that authorizes the sponsoring broker (or their designated licensees) to find a buyer or tenant for the owner's property.

An express agency relationship between a buyer and a sponsoring broker is created by a buyer agency agreement. Similar to a listing agreement, it stipulates the activities and responsibilities the buyer expects from the sponsoring broker (or their designated licensees) in finding the appropriate property for purchase or rent.

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

Implied agency

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

Compensation

The source of compensation does not determine agency. A real estate agent does not necessarily represent the person who pays her commission. In fact, agency can exist even if **no fee** is involved; it is called a **gratuitous agency**. The written brokerage agreement should state how the agent is being compensated and explain all the alternatives available.

NOTE — With new Buyer Broker Agreements, some or all of the commission paid to the Seller's Agent may be shared with the Buyer Broker legally. The commission does not have to come directly from the Buyer in a Buyer Broker Agreement arrangement.

In Illinois, compensation does not determine the agency relationship. Both buyer's and seller's real estate agents are often paid by the seller in a cooperative commission arrangement. The seller first pays the listing sponsoring broker, and the listing sponsoring broker cuts a check to the cooperating sponsoring broker. Sometimes the seller pays only the listing sponsoring broker and the buyer pays the buyer's sponsoring broker. Regardless of the particular arrangement, the licensee is required to inform clients in each transaction of how the sponsoring broker will be compensated and how the commission will be split with sponsoring brokers representing other parties.

TERMINATION OF AGENCY

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

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

In Illinois, a **definite termination date must be included in a brokerage agreement.** **Automatic extension clauses** are illegal under Illinois law. An agency coupled with an interest is an agency relationship in which the agent has an interest in the subject of the agency, such as the property being sold. An agency coupled with an interest cannot be revoked by the principal or be terminated on the principal's death.

TYPES OF AGENCY RELATIONSHIPS

Limitations on an Agent's Authority

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

A **general agent** may represent the principal in a broad range of matters related to a particular business or activity. The general agent may, for example, **bind the principal to any contract within the scope of the agent's authority.** A property manager is typically considered a general agent to the property owner. Brokers and managing brokers are *general agents to their sponsoring broker.*

A **special agent** is **authorized to represent the principal in one specific act or business transaction only, under detailed instructions.** *A real estate licensee usually is a "special" agent to a client.*

If hired by a **seller,** the licensee is limited to **finding a ready, willing, and able buyer** for the property.

A special agent for a **buyer** (buyer's agent) has the limited responsibility of **finding a property that fits the buyer's criteria.**

As a **special agent,** the **licensee may not bind the principal to a contract.** The principal makes all contractually related decisions and will sign on her own. A special power of attorney is another legal means of authorizing an agent to carry out only a specified act or acts.

Finally, a designated agent is a person authorized by the sponsoring broker to act as the agent of a specific principal - Buyer or Seller. A designated agent is the only licensee in the company who has a **fiduciary responsibility toward that principal.** When one licensee in the company is a designated agent, the others are free to act as agents for the other party in a transaction. In this way, two licensees from the same real estate company may represent opposite sides in a property sale without entering dual agency.

NOTE Confidentiality has to be carefully maintained when two agents in the same firm represent the Buyer and Seller. Nothing can be revealed about the Buyer/Seller negotiating position in Sales Meetings or other informal conversations in and out of the office.

Designated agency is recognized in Illinois. A sponsoring broker entering into a brokerage agreement may specifically designate those licensees employed by or affiliated with the sponsoring broker to act as legal agents of that client to the exclusion of all other licensees employed by or affiliated with the sponsoring broker. The sponsoring broker will not be considered to be acting for more than one party in a transaction if the licensees specifically designated as legal agents of a person are not representing more than one party in a transaction.

The sponsoring broker must **take care to protect confidential information disclosed by a client to her designated agent**. A designated agent may disclose to her sponsoring broker or persons specified by the sponsoring broker confidential information of a client for the purpose of seeking advice or assistance for the benefit of the client in regard to a possible transaction. The sponsoring broker **cannot disclose confidential information unless otherwise required by this act or requested or permitted by the client who originally disclosed the confidential information**.

Single Agency

When an agent or firm represents only one party (buyer, seller, landlord, or tenant) exclusively in a real estate transaction, this relationship is referred to as single agency. The agent and firm's fiduciary and statutory duties are provided only to that one party (the principal); the other party in the transaction is referred to as the customer.

While a single agency licensee may represent both sellers and buyers, that licensee **cannot represent both in the same transaction**. This avoids conflict and results in client-based service and loyalty to only one client. On the other hand, it traditionally rules out the sale of in-house listings to represented buyers.

Buyer Agency

Many licensees involved with residential property are discovering opportunities for buyer representation. Some licensees have become specialists in the emerging field of **buyer agency**, even representing buyers exclusively. **A buyer agency relationship is established in the same way as any other agency relationship by contract, agreement, or implication.**

The buyer's agent may receive a fee from the buyer or share in the seller-paid commission to the listing sponsoring broker or both, depending on the terms of the agency agreement. In Illinois, it is common for the listing sponsoring broker to split the listing commission with the buyer's sponsoring broker.

Property Management Agency

An owner may employ a sponsoring broker to market, lease, maintain, or manage the owner's property. Such an arrangement is known as property *management*. The sponsoring broker is made the agent of the property owner through a property management agreement. As in any other agency relationship, the sponsoring broker has a fiduciary responsibility to the client-owner.

Dual Agency

In dual agency, the agent represents two principals (Buyer and Seller or Landlord and Tenant) in the same transaction. Dual agency requires equal loyalty to two separate principals at the same time. The challenge is to fulfill the fiduciary obligations to one principal without compromising the interests of the other, especially when the parties' interests may not only be separate but even opposite. While practical methods of ensuring fairness and equal representation exist, it should be noted that **a dual agent can never fully represent either party's interests. He or She is a Facilitator, not an Agent.**

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. Although the possibility of conflict of interest still exists, disclosure is intended to minimize the risk for the licensee by ensuring that both principals are **aware of the effect of dual agency on their respective interests**.

The disclosure alerts the **principals that they may have to assume greater responsibility for protecting their interests than they would if each had independent representation**. Because the **duties of disclosure and confidentiality are limited by mutual agreement**, they must be **carefully explained** to the parties in order to establish informed consent. Considerable debate focuses on whether licensees can properly represent both the buyer and seller in the same transaction, even though the dual agency is disclosed.

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** — once at the **beginning of the transaction** and once **before the sale contract is signed**. **All parties must consent to the arrangement, in writing in Illinois.**

Designated agency is a process that avoids dual agency that may occur during an *in-house* sale in which two different agents are involved. Under designated agency, the sponsoring broker designates one agent to represent the seller and one agent to represent the buyer. Designated agency is legal in Illinois. However, designated agency does not apply to a single agent who represents both parties at the same time in the same transaction.

Undisclosed dual agency

A licensee may not intend to create a dual agency. It may occur **unintentionally or inadvertently**. Sometimes the cause is carelessness. Other times the licensee does not fully understand her fiduciary responsibilities. Some licensees lose sight of legal obligations when they focus intensely on bringing buyers and sellers together. For example, a licensee representing the seller might tell a buyer that the seller will accept less than the listing price to entice the buyer into making an offer. Or the listing licensee might try to persuade the seller to accept an offer that is really in the buyer's interest. Giving a buyer any specific advice on how much to offer can lead the buyer to believe that the licensee represents the buyer's interests and is acting as the buyer's advocate.

Any of these actions creates an ***implied* agency with the buyer** and **violate the duties of loyalty and confidentiality to the principal-seller**. Because **neither party has been informed** of that situation and been given the **opportunity to seek separate representation**, the interests of both are jeopardized.

This undisclosed dual agency is a violation of licensing laws. It can result in rescission of the sales contract, forfeiture of commission, or filing of a suit for damages.

Case Studies/Scenarios/Role-playing #1

Designated Agency/Dual Agency

Broker Derek works for a large real estate firm. His Sponsoring Broker assigned Derek as the designated agent on a new listing, a commercial strip mall consisting of several small retail businesses with long term leases. Because of Derek's many contacts with commercial investors, Derek was able to have one of his qualified investors write an offer. Derek had both the seller and investor sign a dual agency consent form. As Derek was finalizing the transaction, another broker from a different firm contacted Derek and mentioned that he has a client who is interested in purchasing the strip mall.

At this point, what should Derek do?

- A. Broker Derek should wait for the other offer to come in and present both offers at the same time.
- B. Broker Derek should present his current offer now because the other offer might not come through.
- C. Broker Derek should let the seller know there is a possibility of another offer, and the seller should wait a few days.
- D. Broker Derek should let the seller know that he has a written offer ready to present now, and there is a possibility of another offer and ask the seller how they want to proceed.

Disclosure of Agency

Real estate licensees are required to disclose the parties they represent. Understanding the scope of the service a party can expect from the agent allows consumers to make an informed decision about whether to seek their own representation.

Licensees are considered to be representing the consumer they are working with as the consumer's designated agent (implied agent) unless there is a written agreement between them specifying a different relationship.

Article 15, Section 15-35, discusses agency relationship disclosure. It requires that a consumer be advised in writing that a designated agency relationship exists unless there is a written agreement between the sponsoring broker and the consumer providing for a different brokerage relationship. This must occur no later than beginning to work as a designated (implied) agent on behalf of the consumer.

The name or names of her designated agent or agents must be in writing, and the sponsoring broker's compensation and policy with regard to cooperating with sponsoring brokers who represent other parties in a transaction must be disclosed.

A licensee must also disclose in writing to a customer that the licensee is not acting as the agent of the customer at a time intended to prevent disclosure of confidential information from a customer to a licensee, but in no event later than the preparation of an offer to purchase or lease real property.

Customer-Level Services

An agent's **primary responsibility** is to the principal, and Illinois courts have long held that the contractual principal-agent relationship as defined in a listing agreement or buyer agency agreement gives the seller or buyer a cause of action against the licensee who breaches her fiduciary duties to the client. **The courts have not demanded fiduciary duty to third parties.** However, Illinois license law does set forth the duties that licensees owe to third-party customers (buyers or sellers). Licensees are to treat all customers honestly. They cannot negligently or knowingly give customers false information.

Finally, licensees must disclose all material adverse facts about the physical condition of the property to the customer that are actually known by the licensee and that could not be discovered by a reasonably diligent inspection of the property by the customer (Latent Defects).

In Illinois, a licensee may be held liable to a seller or buyer if the licensee misrepresents material facts about a property and if the seller or buyer suffers monetary loss through reliance on these statements. The licensee's loyalty to the principal is no defense even though the principal may have ordered the agent to misrepresent. **Licensees have a duty to prospective sellers and buyers to disclose all material information within their knowledge.** If the licensee knowingly makes untrue statements, Illinois courts will have no difficulty in finding the licensee liable to the appropriate party.

Furthermore, liability may be imposed when **the licensee is aware of facts that tend to indicate she is making a false statement.** For instance, if the seller tells his agent/licensee that "the roof was replaced last year," and the agent has good reason to believe that statement is untrue, the licensee should attempt to ascertain the truth and pass the correct information on to the buyer. However, if the client provided the false information and the licensee did not have knowledge that the information was false, the licensee will not be held liable to the customer.

Licensees **who attempt to avoid liability** to buyers through the use of a waiver or an exculpatory clause in the sales contract will **probably be unsuccessful.**

CHAPTER 2: REAL ESTATE BROKERAGE OPERATIONS & AGREEMENTS

REAL ESTATE BROKERAGE OPERATIONS

A **brokerage** business may take many forms. It may be a sole proprietorship (a single-owner company), a corporation, or a partnership. The office may be independent or part of a regional or national franchise. The business may consist of a single office or multiple branches. The brokerage office may be located in a downtown high rise, a suburban shopping center, or the sponsoring broker's home. A typical real estate brokerage may specialize in one kind of transaction or service, or it may offer a variety of services.

No matter what form it takes, a real estate brokerage has the same demands, expenses, and rewards as any other small business. A real estate broker faces many of the same challenges as an entrepreneur in any other industry. In addition to mastering the complexities of real estate transactions, the **real estate broker must be able to handle the day-to-day details of running a business and to set effective policies for every aspect of the brokerage operation.** This includes maintaining space and equipment, hiring employees and real estate licensees, determining compensation, directing staff and sales activities, and implementing procedures to follow in carrying out agency duties. Each state's real estate license laws and regulations establish the business activities and methods of doing business that are permitted.

Virtual Brokerage Offices

A virtual brokerage office offers the same capacity of the traditional brick and mortar office. Because of access to the internet and mobile-friendly devices and available apps, licensed agents can conduct a transaction from anywhere that the agent or consumer is located. An agent or client does not need to come into the office to conduct their business.

THE MANAGING BROKER AND SPONSORING BROKER

The Act creates a new classification of managing broker. A “designated managing broker” is a managing broker appointed by the sponsoring broker who has supervisory responsibilities for licensees in one or multiple offices. **225 ILCS 454 Section 1-10.** In Illinois, every real estate office must have a sponsoring broker or designated managing broker of record, neither of which is required to be the owner of the business. **All licensees acting as a designated managing broker or self-sponsored broker must have a managing broker's license.**

A designated managing broker has **taken additional courses and received a managing broker license.** A sponsoring broker may also be the designated managing broker of an office or may appoint a managing broker to serve as the designated managing broker of several offices, or different designated managing brokers may be responsible for an individual office as long as it is for the same sponsoring broker. In any event, the designated managing broker is responsible for the supervision of all real estate activities performed by affiliated licensees.

Designated Managing Broker Responsibility and Supervision

Designated managing broker's responsibilities include:

- Supervision and training of all licensees and employees associated with each assigned office;
- Implementing company policies; and
- Supervision of all the sponsoring broker's special accounts. **225 ILCS 454 Section 10-55(a)**

In addition, designated managing brokers shall directly handle all earnest money, escrows, contract negotiations, and advertisements for broker who have not completed the 45-hour post-license education. **225 ILCS 454 Section 10-55(b)**

A designated managing broker may be disciplined for failure to provide a written company policy or perform any of the duties set forth in **Section 10-55. 225 ILCS 454 Section 20-20(a)(46)**

A designated managing broker shall be responsible for the supervision of all licensees associated with a designated managing broker's office. A designated managing broker's responsibilities include implementation of company policies, the training of licensees and other employees on the company's policies as well as on relevant provisions of this Act and providing assistance to all licensees in real estate transactions. The designated managing broker shall be responsible for, and shall supervise, all special accounts of the company.

Maintenance of licenses

Sponsoring brokers are required to notify IDFPR in writing of the names and license numbers of all designated managing brokers employed by the sponsoring broker and the office or branch offices for which each designated managing broker is responsible. The designated managing broker must have a current active managing broker's license.

Supervision

The Designated Managing Broker supervises all brokers and also unlicensed assistants working in those offices managed by the designated managing broker. These supervisory duties include the following:

- Implementation of office policies and procedures established by the sponsoring broker
- Training of licensees or unlicensed assistants
- Assisting licensees as necessary in real estate transactions
- Supervising escrow accounts over which the sponsoring broker has delegated responsibility to the designated managing broker in order to ensure compliance with the escrow account provisions of the Act
- Supervising all advertising of any service for which a license is required
- Familiarizing sponsored licensees with the requirements of federal and state laws relating to the practice of real estate
- Compliance with the rules for licensees and offices under his supervision

Sponsoring Brokers

By Section 1450.100 definition, **the sponsoring broker is the entity holding the company real estate license**, whether the entity is an **individual** who operates as a sole proprietorship, **partnership, limited liability company, corporation, or registered limited liability partnership.**

- A sponsoring broker may be **self-sponsored**.
- There may be only one sponsoring broker for any one real estate company.
- A sponsoring broker may authorize a designated managing broker to issue a license in the name of the sponsoring broker.

Likewise, the sponsoring broker may assign escrow account bookkeeping duties to a qualified company employee or independent contractor and may delegate authorized individuals to sign on behalf of the sponsoring broker. The sponsoring broker may authorize company personnel to sign contracts entered into by the sponsoring broker according to the sponsoring broker's company policy. Even though the sponsoring broker may delegate authority, ultimately, the sponsoring broker is responsible for all activities.

The sponsoring broker is responsible for supervising all designated managing brokers, shall name a designated managing broker for each office, and notify the Department of all designated managing brokers and the office(s) they manage. **225 ILCS 454 Section 5-45(b)**

The sponsoring broker is ultimately responsible for the actions of **all** sponsored licensees including those of designated managing brokers as well as proper maintenance of escrow funds.

Advertising

Effective August 9, 2019, **all designated managing broker licensees** who are named as designated managing brokers with the Division **must indicate this status on all advertising that includes their name.** Those who **hold the managing broker license but are not named as designated managing broker with the Division, are not required to include their managing broker status. All licensees who have a managing broker's license may indicate that they are managing brokers on all advertisements.**

Planning

Planning is the most fundamental management activity. **Almost every business decision is guided by a business plan.** Planning takes time and money; however, the resources devoted to planning are relatively small in comparison to the benefits of a sound plan that is followed and reviewed often. It is useful for building credibility with others outside your company. For the plan to be effective, it must be flexible and measurable, but, most important, it must be achievable.

The development of the business plan begins with creating a **mission statement.** Everything else in the business plan supports the mission statement. The mission statement identifies **specific objectives or goals** for accomplishing the mission. These are the end results to be achieved. Goals have several characteristics. They must:

- be specific or identifiable,
- be measurable,
- be attainable, and
- have beginning and ending dates.

Each of the goals is supported by **strategies** that prescribe the methodology used in accomplishing that specific goal. **Strategies include things needing to be done to overcome any obstacles or enhancement of resources.**

Preparing a Policy and Procedures Manual

A **policy and procedures manual** should be written and should serve as a risk management tool for the company. Policies and procedures are extremely beneficial for the following reasons:

- Establishing a clear understanding of the relationship between broker and sponsored licensees as well as administrative functions versus staff functions
- Working to resolve conflicts before they come up
- Building confidence that everyone knows what the rules are and how the company is supposed to operate
- Giving guidance for many of the situations licensees face on a day-to-day basis.

Keep in mind that the **policy and procedures manual is not a sales training manual.**

Safety Concerns: Appointments and Showings

Many real estate firms have responded to the violence by **incorporating safety procedures into their procedure manual** as a way to help keep their agents safe. Licensees can help minimize risks by implementing the following suggestions:

- Ask the customer for work, home, and cell phone numbers and a physical address. Verify the information by calling the customer at one or more of the numbers.
- Give someone in your office an itinerary of properties you plan to show and then check back in often by cell phone.
- Do not meet unknown customers at a property. Require that they meet you at your office. Make sure someone writes down their license plate number and the type of car they are driving.
- Never get into a car with someone you don't know. Use your vehicle for showings or ask your customer to follow you in another car.
- Program your cell phone to dial 911 at the touch of a button.
- Never work at a public open house by yourself.
- Do not show vacant properties by yourself unless you know your customers, and never show properties after dark.
- Keep pepper spray or Mace® handy.
- Always follow the customers into the property and let them enter while you stay by the door.
- Pay attention to exits.
- Ask someone else to accompany you to show or list property if you feel uncomfortable about the people with whom you are working.
- Don't assume that women are safer customers than men. Women are as just as capable of armed robbery and sometimes work with a partner who waits at the house for the two of you to arrive.

Business Planning

To stay on top of changes in the real estate industry and practice, as well as keeping up with emerging technologies, brokers should review and update policy manuals regularly.

The Real Estate License Act of 2000 Section 10-40 requires that **"every brokerage company or entity, other than a sole proprietorship with no other sponsored licensees, shall adopt a company or office policy dealing with topics"** such as:

- the agency policy of the entity,
- fair housing, nondiscrimination, and harassment,
- confidentiality of client information, and
- advertising.

Unexpected Loss of Designated Managing Broker

If a sponsoring and/or designated managing broker dies or a designated managing broker leaves a branch office unexpectedly, a request may be made **to IDFPR within 15 days of this development to grant an extension** for continued office operations. The **extension may be granted for up to 60 days**. In the case of an owner's death, a representative of the estate could operate the office for up to 60 days. In most cases of loss of a sponsoring broker or designated managing broker, a licensed designated managing broker assumes the management of the office.

Death of Self-Sponsored Broker

IDFPR will honor the order of a court of competent jurisdiction appointing a legal representative for the sole purpose of closing out the affairs of a deceased or disabled broker who was a sole proprietor. The court order is honored until the real estate brokerage operation is closed but does not allow the brokerage to actively engage in the brokerage business.

Change of Business Address

All designated managing brokers must notify IDFPR on business letterhead of any change of business address for any of the offices they manage **within 24 hours of any change**. Change of address filing is required for all offices and branch offices.

Additionally, each **designated managing broker**:

- is responsible for record-keeping as mandated by **Rule 1450.180**,
- is responsible for the maintenance of the employment agreements entered into with each sponsored licensee (**Rule 1450.160**), and
- if escrow monies are maintained, the designated managing broker must comply with each part of **Rule 1450.155**.

ERRORS AND OMISSIONS INSURANCE

Sponsoring broker or designated managing brokers have an array of issues and options to consider when deciding to obtain an **errors and omissions insurance (E & O) policy**. In general, they need to

determine what level of protection to seek in the policy and how to tailor the coverage to their sponsoring/managing practice. Because insurance policies and practices vary from company to company, the sponsoring broker or designated managing broker must be careful to review any specific policy intended for the office and should discuss coverage with more than one insurance provider before obtaining coverage.

The classes of services performed by licensees shape the types of liability claims most often filed against real estate licensees. Real estate licensees may represent buyers, sellers, lessors, and lessees. They coordinate a variety of services, such as insurance, title, loan origination, home inspection, and legal review of contracts. In addition, they often function as independent professionals managing their own offices, advertising campaigns, and other related business functions. In providing these services, licensees become vulnerable to potential liabilities.

Liability claims can also arise from a number of related services provided occasionally for a separate fee basis or are incidental to the transaction. These include property appraisal, property management, auctioneering, consulting, and handling earnest monies or security deposits.

The most common errors and omissions claims against real estate licensees include the following:

- Mishandling monies (earnest money or security deposits) during transactions
- Making misstatements about material facts regarding the property, such as the presence of lead-based paint, asbestos, or radon
- Misrepresenting the property dimensions or failure to measure property dimensions accurately
- Disclosure of confidential information without authorization from the client
- Undisclosed dual agency
- Failure to identify the real or personal property correctly in the contract
- Mistakes regarding the property tax identification number (PIN) for the subject property or failure to provide an adequate legal description of the property
- Misrepresentations about financing arrangements
- Failure to disclose a financial interest in the customer who is negotiating with the client
- Failure to disclose financial relationships compensating the licensee in the transaction
- Violations of the federal Fair Housing Act and the Illinois Human Rights Act
- Breaching the terms of the listing or buyer agreement or the property management agreement

Policy Protection and Covered Services

A real estate licensee needs insurance protection from claims made by clients, customers, and consumers related to the provision of real estate activities, referred to as professional services by the insurance industry. The sponsoring/designated managing broker must determine whether the errors and omissions policy adequately addresses what:

- services are covered,
- person(s) is(are) covered,
- damages are covered, • defenses are covered, and • territory is covered.

Real estate licensees should know whether the services they provide constitute professional services and are, thus, insurable under the policy. They should also be aware that professional services are defined differently in each insurer's policy.

Professional real estate services typically refer to services that require a person to have an Illinois real estate license in order to perform those services on behalf of clients, customers, and consumers.

As a prerequisite for coverage, the **licensee must possess all valid necessary licenses or certifications at the time of the act or omission giving rise to the claim and must be acting within the scope of the employment agreement**, either written or oral. Sometimes insurance companies will include coverage for ancillary professional real estate services rendered by the insured for others, such as a notary public's duties.

Covered Defense Costs

Errors and omission policies may sometimes pay the costs involved in investigating, defending, and settling claims. These costs primarily involve attorney's fees but also include related expenses required by the claim settlement process. The sponsoring broker should determine whether defense costs are covered by the policy or in addition to the policy limits. If defense costs are covered within the policy limits, then as the legal fees increase, the limits of the coverage of the policy are proportionately reduced.

Excluded Coverage

Most E & O policies **exclude certain ancillary real estate related activities**. These exclusions include a licensee's involvement in areas that do not require an Illinois real estate license, such as property development and insurance agency operations.

Depending on the insurer, coverage for such services may be bought back for an additional premium, if an insured's operations require such coverage. A real estate licensee who wants coverage for such services may obtain it by paying an additional premium or, depending on the limitations of the policy, by obtaining a separate policy. **The sponsoring broker or designated managing broker should also be aware that violations of fair housing laws, some civil sanctions, and criminal act are not covered by E & O policies.** Some policies will cover the legal defense for certain issues, such as discrimination, but not the damages awarded.

Other possible exclusions from coverage under E & O policies include the following:

- Bankruptcy of the insured
- Violation of securities law
- Wrongful termination
- Employee Retirement Income Security Act (ERISA) violations
- Claims by or against related entities
- Workers' compensation claims
- Claims arising from usage of vehicles, aircraft, and watercraft
- Environmental issues, such as mold and asbestos
- Real estate owned by the insured
- Commission disputes

Covered Persons

E & O policies are intended to **cover those licensees whose licenses are held by the sponsoring broker, as well as office staff and unlicensed assistants in an insured real estate broker's office who may be involved in a transaction—even if their function does not involve professional activities.** Where the sponsoring broker is a business entity, such as a partnership, corporation, or limited liability company (LLC), these policies can include coverage for past and present partners, officers, directors, and regular employees.

Independent Contractors

Most real estate offices that sell residential real estate will sponsor licensees who are treated as independent contractors. Therefore, it is **important that the E & O policies cover those independent contractors.** The sponsoring/designated managing broker must keep in mind that unlicensed assistants cannot be treated as independent contractors because it is a violation of federal tax law. Therefore, the sponsoring/ designated managing broker must be certain that the E & O policy is written to cover unlicensed assistants. A sponsoring broker must also address liability arising from predecessor firm issues.

Because there can be coverage gaps between E & O policies and commercial general liability (CGL) policies, the sponsoring/designated managing broker should ensure that excluded coverage for bodily injury, property damage, and personal injury are covered by CGL policies or by special

endorsement. Potential gap coverage between E & O policies and CGL policies should be discussed by the sponsoring broker with the insurer to best customize the coverage to the brokerage firm.

Covered Territory

Most E & O policies cover claims resulting from anywhere in the world, provided the claim and concomitant litigation is brought in the United States, its territories or possessions, or Canada. Actions conducted outside the United States will likely require additional coverage or a separate policy. **The licensee should be aware that use of Websites with their worldwide exposure might lead to claims and litigation outside the United States; a licensee would need a policy with unrestricted territorial coverage to address this issue.**

Other Policy Issues

The sponsoring broker or designated managing broker should be aware of additional issues that might affect E & O coverage. The insurance claims process varies from insurer to insurer. Therefore, licensees need to understand the procedures of their provider. Some policy issues to be aware of include the following:

- Most E & O policies have **liability caps** that set a payment limit per claim and an aggregate payment limit; the licensee should obtain coverage that matches the licensee's liability exposure.
- There are two basic types of deductible provisions. One type of **deductible applies to each error committed**, and the **other type applies to each claim filed**.
- Most E & O policies have provisions that **limit payment to the amount offered in a settlement offer**.
- All E & O policies have some **additional conditions that are essential elements of the policy's coverage**.
- Problems may arise when one insured sues another insured.
- Although most insurers limit coverage to the inception date of the policy, **some insurers will consider providing first-time insurance buyers coverage for prior acts** (for an additional premium).

It is the duty of the sponsoring broker to determine what level of E & O insurance is necessary to meet the needs of the brokerage office.

SPONSORED LICENSEES

Article 5, Section 5-26 of the Real Estate License Act of 2000, states that "no new salesperson licenses shall be issued after April 30, 2011, and all existing salesperson licenses shall terminate on May 1, 2012." After April 30, 2012, only two types of licenses will be issued: **broker and managing broker. Both brokers and managing brokers can work under the supervision of a sponsoring broker.** A sponsoring broker may assign supervisory responsibilities to a designated managing broker.

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. The agreement defines the employment or independent contractor relationship, including supervision, duties, compensation, and termination. The employment agreement must be dated and signed by both parties. Termination is not intended to indicate that a specific

termination date is required but rather allows for negotiation as to the term of the employment agreement. An executed copy of the employment agreement must be provided to the sponsored licensees.

Independent Contractors:

- No Benefits
- No withholding of taxes
- *What not how*
- Do not work employer-determined hours
- Must be self-starters
- Decide when and how to do their work
- Paid only Commission; in some cases, expenses are taken out of commission

Employees:

- Benefits
- Withholding of taxes
- *How not What*
- Required work hours
- Required attendance at sales meeting
- Required training

A sponsoring broker's relationship with a sponsored licensee who is an **independent contractor** is very different. A licensee must meet three specific criteria set out by the IRS in the Internal Revenue Code to be treated as an independent contractor for federal tax purposes, the following criteria must be met:

- Individual must hold an active real estate license
- Individual must agree in writing **not** to be treated as an employee for federal tax purposes
- At least 90 percent of the individual's income must be derived from sales rather than hours worked

An employment agreement between the sponsoring broker and designated managing broker is also required even if the designated managing broker is the sole owner in the sponsoring brokerage (regardless of the business type: LLC, LLP, and so on).

A sponsoring broker's relationship with a licensee who is an independent contractor can be very different from the relationship with an employee. As the name implies, independent contractors usually have a more flexible work schedule than that of employees. A broker may determine what the independent contractors do (especially because the contractors represent the broker as the broker's agents) but cannot dictate how they do it. As such, a company can expect independent contractors to comply with its policies and procedures. An independent contractor's income is typically commission based. Independent contractors are responsible for paying their own income taxes and Social Security taxes.

Assistants

An **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, (s)he is allowed to perform many more duties if holding a real estate license. (In Illinois, there is no specific assistant's license).**

An unlicensed assistant's duties might include:

- clerical functions,
- secretarial functions, • answering phones.

A licensed broker working as an 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.

In other words, a licensed broker working as an assistant can perform any activity that any licensee is permitted to perform. **Section 1450.165** of the administrative rules specifies the permitted activities in which an unlicensed real estate assistant may engage.

The Real Estate License Act of 2000 requires that licensed brokers working as assistants must have an employment agreement with the sponsoring broker of the firm in which they are working, even though they are, in practice, working for an affiliate licensee. The sponsoring broker must pay licensed brokers acting as assistants.

Case Studies/Scenarios/Role-playing #2 *Managing Assistants*

Real estate broker Maria is a top producing agent with a large firm. She employs two assistants, one who is licensed broker (Martin) the other Mina is unlicensed. Martin, the broker, handles all of the showings, inspections, appraisals, etc. While Mina, the unlicensed assistant handles the paperwork and follow up with clients, attorneys, lenders, and other agents. While broker Maria and licensed assistant Martin were attending an all-day seminar. Mina received a call from a buyer who wanted to see one of Maria's listings that was on the market for a long time and ready to expire. The buyer was deciding on making an offer on Maria's listing or another property and wanted to see Maria's listing now. Mina couldn't reach Maria or Martin, and since Mina was very familiar with the property, she decided to assist the buyer. Mina met the buyer at the property and let the buyer inside. Mina never said anything to the buyer. The buyer was pleased with the property, and an offer was accepted by the seller.

How should broker Maria handle this situation?

- Broker Maria should immediately terminate Mina and let her sponsoring broker aware of what happened.
- Maria shouldn't say anything because the buyer and seller did agree on a purchase contract and everyone is pleased.
- Mina should have waited until she heard from broker Maria.
- Mina's actions resulted in a sale and she should be compensated for a job well done.

Termination of Sponsorship

Section 5-40 of the Act states, “When a licensee terminates his or her employment or association with a sponsoring broker or the employment is terminated by the sponsoring broker, the person or entity initiating the termination shall notify the Department, in a manner prescribed by the Department, of the termination within 24 hours. Failure to timely notify the Department of the termination shall subject the person or entity initiating the termination to discipline under Section 20-20 of this Act. The license of any licensee whose association with a sponsoring broker is terminated shall automatically become inactive immediately upon the termination, and the licensee shall not be authorized to practice until a new valid sponsorship is registered with the Department.”

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

TEAMS OF BROKERS

Illinois real estate laws do not currently define the concept of a team, although the laws that define activities that require a real estate license in Illinois apply to them. A licensed team member must have a written employment contract/independent contractor agreement with the sponsoring broker.

Teams

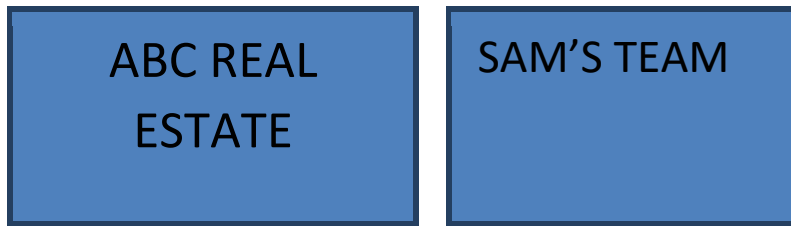
Team - now defined team as any two or more licensees who work together to provide real estate brokerage services, represents themselves to the public as being a part of a team or group, are identified by a team name that is different than their sponsoring broker's name, and together are supervised by the same Designated Managing Broker and sponsored by the same Sponsoring Broker. "Team" does not mean a separate organized, incorporated, or legal entity. **Team advertising applies to all forms of advertising including all social media.**

List of words **NOT ALLOWED** to identify a team:

- Company
- Realty
- Real Estate
- Agency
- Associates
- Broker
- Property
- Properties

If ad content or team name includes the word “team” after verboten words, the team should be allowed.

- Size of a licensee or team name cannot be larger than that of the sponsoring broker company name
- URL/Domain names cannot be deceptive, cannot drive traffic
- One click away rule
 - Example samrealtor.com - one click away to Sam's team at ABC Real Estate is okay.
 - Company logo is not part of the company's legal name. The company name has to be as big Or bigger in font size (area, width, and height) as the team's name.



Unlicensed team members are regular employees.

Either the sponsoring broker or a licensed team member might compensate them. The sponsoring broker will want to ensure that proper withholding requirements are met if a team member is compensating the regular employee.

Similarly, the use of an unlicensed assistant, whether or not a member of a team, must comply with the laws that determine who is an independent contractor. **By definition, the unlicensed assistant does not meet the safe harbor provisions of an independent contractor and would likely need to be paid as a regular employee.**

SPONSORING BROKER COMPENSATION - COMMISSION

The sponsoring broker's compensation is specified in the contract with the client. The amount of a broker's commission is negotiable in every case. Even subtle attempts to impose uniform commission rates are clearly a violation of antitrust laws. A sponsoring broker, however, may set the minimum commission rate acceptable for his own company.

Commissions

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

- The designated managing or sponsoring broker then may share it with any licensees who are directly involved in or responsible for a given transaction.
- To collect a 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.
- The percentage of sales price or dollar amount of commission must have been expressed clearly in the agreement.
- If another real estate office "brought in" the buyer, the concept of cooperative commission allows the seller *broker to pay the buyer broker the amount of cooperative commission* advertised in advance on the multiple listing service (MLS) listing.
- This commission check is issued by the listing broker's office to his own office and also to the buyer broker's office.
- Checks then are cut by each of these sponsoring brokers to any respective salespersons (or other brokers working within the firm) who were directly involved in the transaction.
- A commission is usually considered earned when the work for which the real estate broker was hired has been accomplished - seller and buyer have signed a sales contract.
- Although commissions are earned when the sales contract is signed, they are usually paid at closing.

Most sales commissions are payable when the sale is consummated by *delivery of the seller's deed*. This provision is generally included in the listing agreement. When the sales or listing agreement specifies no time for the payment of the broker's commission, the commission is usually earned when:

- a completed sales contract has been executed by a ready, willing, and able buyer, • the contract has been accepted and executed by the seller, and • copies of the contract are in possession by all parties.

To be entitled to a sales commission, an individual

- must be a licensed real estate broker,
- the procuring cause of the sale, and
- employed by the buyer or the seller under a valid contract.

To be considered the **procuring cause of a sale**, the broker must have started or **caused a chain of events that resulted in the sale**.

A broker who causes or **completes such an action without a contract** or without having been promised payment **is a volunteer and may not legally claim compensation**.

A ready, willing, and able buyer is one who:

- is prepared to buy on the seller's terms
- ready to take positive steps toward consummation of the transaction.

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

If the buyer or seller breach the contract, the real estate broker may still be entitled to a commission:

- if the seller had a change of mind and refused to sell,
- has a spouse who refused to sign the deed,
- had a title with uncorrected defects,
- committed fraud with respect to the transaction,
- was unable to deliver possession within a reasonable time,
- insisted on terms not in the listing (e.g., the right to restrict the use of the property),
- had a mutual agreement with the buyer to cancel the transaction.

In Illinois, the closing of the sale is the usual proof in a court of law that the broker has produced a buyer and earned a commission.

Commission Structures

Commission "splits" earned by sponsored licensees vary. Some firms have adopted a 100 percent commission plan. Sponsored licensees in these offices pay a monthly service charge or desk fee to their sponsoring brokers to cover the costs of office space, telephones, and supervision in return for keeping 100 percent of the commissions from the sales they negotiate. The 100 percent commission sponsored licensee pays all of his own expenses.

Other companies offer graduated commission splits based on a sponsored licensee's achieving specified production goals. No matter how the licensee's compensation package is structured, only the sponsoring broker can pay it.

In **cooperating transactions** (usually stated as "co-op: X% on the MLS sheet), the **commission is paid by the sponsoring broker of the "seller side" to the sponsoring broker of the "buyer side"**.

If a sponsored licensee had earned a commission, but his employment had been terminated prior to the payment of the commission, the former sponsoring broker may pay the commission directly to the former associate, even if that former associate has a new sponsoring broker.

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 compensation from **two parties** to a transaction from both the buyer and the seller **that needs to be disclosed in writing as well.**

If a licensee refers the client to another source for services related to the transaction and the licensee has an interest greater than 1 percent in that source, it must be disclosed. In addition, a licensee must disclose to a client all sources of compensation related to the transaction received by the licensee from a third party.

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.** This **compensation agreement is included in the employment agreement.** Some sponsoring brokers require that **licensees pay all or part of the expenses of advertising listed properties;** this may be subtracted from commissions by agreement or be billed separately to the licensee.

In many states, including Illinois, it is illegal for a sponsoring broker to pay a commission to anyone other than:

- a licensee under that same sponsoring broker; or
- another firm's sponsoring broker (cooperative commission) who then pays his own sponsored licensees involved.

Fees, commissions, or other compensation cannot be paid to unlicensed persons for services that legally require a real estate license. "Other compensation" includes certain items of personal property, such as a new television, or other premiums, such as vacations, given to non-licensed persons to perhaps acquire names of "leads." This is not to be confused with **referral fees** paid between designated managing or sponsoring brokers for "leads," which are legal as long as the individuals are licensed.

Under the Act, a licensee may form a solely owned business entity for the purpose of receiving compensation. That one-shareholder corporation cannot be licensed by the IDFPR. **However, the licensee must file a copy of the certificate of incorporation issued by the Secretary of State with IDFPR.** The corporation **can receive compensation earned by that licensee only,** both from real estate and non-real estate-related activities. The **corporation cannot be licensed and cannot be used by the licensee to perform real estate activities, sponsor, or employ other licensees, or advertise itself to the public in the corporation's name.**

TECHNOLOGY AND BROKERAGE OF THE FUTURE

Social networking sites such as Facebook, LinkedIn, YouTube, and Twitter are becoming increasingly useful in business, and the real estate industry is no different. Recognizing the value and pervasiveness of these sites, sponsoring brokers should set out clear guidelines in policy manuals and brokerage agreements to permit and guide the use of these technologies by licensees.

Sponsoring brokers must also learn about the potential risks and liabilities of these sites, for instance, **recognizing that communication through these sites establishes a permanent record of sorts and should incorporate this understanding into the policies and guidelines they establish for licensees on the use of social networking in their businesses.**

ANTITRUST

Violations include:

- Price-fixing,
- Group boycotting,
- Allocation of customers,
- Allocation of markets, and
- 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. In real estate, **price-fixing occurs when competing real estate companies agree to set standard sales commissions, fees, or management rates or if they attempt illegal tying arrangements.**

Price-fixing is illegal. Real estate companies must **independently determine any minimum commission rates or minimum fees.** These decisions must be based on a company's business judgment and revenue requirements without input from other real estate companies.

MLSs, Boards of REALTORS[®], and other professional organizations may not set fees or commission splits. They cannot deny membership to licensees based on the fees the licensees charge.

The challenge for real estate licensees is to avoid even the impression of price-fixing. Hinting to prospective clients that there is a "going rate" of commission or a "normal" fee also implies that rates are, in fact, standardized, which must be avoided. The licensee must make it clear to clients that any stated minimum is **only the firm's minimum.** The specific commission is negotiable in a fair market.

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 antitrust laws.

Allocation 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**. Allocations may be made on a geographic basis, with real estate companies agreeing to specific territories within which they will operate exclusively. The division also may occur by markets, such as by price range or category of housing. These agreements result in reduced competition.

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**. The sale of the first (desired) product is "tied" to the purchase of a second, less desirable product.

Penalties

The penalties for violating antitrust laws are severe. For instance, under the *Sherman Antitrust Act*, people who fix prices or allocate markets may be subject to a maximum \$1 million fine and up to ten years in prison. For corporations, the penalty may be as high as \$100 million.

OTHER CONSUMER PROTECTION MEASURES

National Do Not Call Registry

In 2003, the **Federal Communications Commission (FCC)** established the **National Do Not Call Registry**. The registry is a list of phone numbers of consumers who do not want to be contacted by commercial telemarketers. It is managed by the FTC and is enforced by the FTC, the FCC, and state officials. The registry applies to any plan, program, or campaign to sell goods or services through interstate phone calls.

The registry does not limit calls by:

- Political organizations,
- Charities,
- Collection agencies • Telephone surveyors.

Fortunately, the law establishes specific guidelines for when licensees may contact consumers, even when they are listed in the National Do Not Call Registry.

Licensees are permitted to call consumers with whom they have an established business relationship up to 18 months following the consumer's last payment, purchase, or delivery. With consumers on the registry who have **submitted applications or made inquiries**, licensees are allowed additional contact for up to three months after the fact.

Accessing the National Do Not Call Registry

Sellers, telemarketers, and other service providers **must register to access the registry**. The do-not-call registry may not be used for any purpose other than preventing telemarketing calls to the telephone numbers on the registry. Regulators say that **brokerage companies must have a do-not-call policy even if they do not engage in cold calling**. A company that is a seller or telemarketer could be in violation of the law for placing any telemarketing

calls (even to numbers not on the do-not-call registry) if the company does not have a **policy for access to the registry**. Violators may be subject to fines for each call placed.

To successfully avoid penalties ("safe harbor"), the seller or telemarketer must demonstrate the following:

- It has written procedures to comply with the do-not-call requirements.
- It trains its personnel in those procedures.
- It monitors and enforces compliance with these procedures.
- It maintains a company-specific list of telephone numbers it may not call.
- It accesses the national registry every 31 days before calling any consumer and maintains records documenting this process.
- It must show that any call made in violation of the do-not-call rules was the result of an error.

The best source of information about complying with the do-not-call rules is the FTC's Websites: www.donotcall.gov and www.ftc.gov. They include business information about the registry.

The CAN-SPAM Act of 2003 (Controlling the Assault of Non-Solicited Pornography and Marketing Act) establishes requirements:

- for sending commercial e-mail,
- spells out penalties for those that don't comply, not just "spammers",
- gives consumers the right to have e-mailers stop e-mailing them.

The act **does not apply to "transactional or relationship content,"** that is, those messages meant to facilitate or alter existing customer agreements (for instance, by giving a customer additional information about an existing agreement or conducting business as part of an existing agreement); however, these e-mails must not explicitly or implicitly operate for the purposes of advertising or promotion, as this would be in violation of the law.

Briefly, the CAN-SPAM Act requires the following:

- *False or misleading header information is banned.* An e-mail's "From," "To," and routing information-including the original domain name and e-mail address must be accurate and identify the person who initiated the e-mail.
- *Deceptive subject lines are prohibited.* The subject line cannot mislead the recipient about the contents or subject matter of the message.
- E-mail *recipients* must have an opt-out method. You must provide a return e-mail address or another Internet-based response mechanism that allows a recipient to ask you not to send future e-mail messages to that e-mail address and requests must be honored.

Each violation is subject to fines. Deceptive commercial e-mails are also subject to laws banning false or misleading advertising. Additional fines are provided for commercial e-mailers who violate the rules and do any of the following:

- "Harvest" e-mail addresses from Websites or Web services that have published a notice prohibiting the transfer of e-mail addresses for the purpose of sending e-mail
- Generate e-mail addresses using a "dictionary attack" combining names, letters, or numbers into multiple permutations

- Use scripts or other automated ways to register for multiple e-mail or user accounts to send commercial e-mail
- Relay e-mails through a computer or network without permission for example, taking advantage of open relays or open proxies without notification.

Licensees in Illinois should be aware that they are subject to additional regulation in their use of commercial e-mail, per the Illinois Electronic Mail Act. The use of e-mail communication and Web advertising is also restricted as laid out in "Rules" Section 1450.145.

The Junk Fax Prevention Act

The Junk Fax Prevention Act of 2005 does **not legalize unsolicited fax advertisements** or solicitations but does **allow for an established business relationship exception**. As a general rule, a real estate licensee could not legally send an unsolicited commercial fax message without express written consent or without an established business relationship with the recipient.

Following are the provisions of the fax law:

- Sets out guidelines for what constitutes an established business relationship (EBR) and reaffirms that EBR when customers pose exceptions to the ban on unsolicited commercial faxes
- Does not place time limitations on EBRs
- Requires companies to offer a free method by which fax recipients may opt-out of receiving future fax communications. The opt-out method must be available at any time of day, every day, and the opt-out information must be made available on the first page of the fax.
- Requires businesses to receive customer's written or oral consent to send fax advertising, or in the case of new business relationships, to send only to those customers who have provided their fax numbers willingly to some other source with permission for such use by other parties (including the sender)
- Permits businesses to send faxes to numbers that they had access to via an EBR prior to July 9, 2005, when the act became law.
- Requires businesses to receive direct consent from EBR customers for whom they did not already have fax numbers prior to the effective date of the legislation, or to obtain these numbers via some other source to which the EBR customer willingly provided them with permission for such use by other parties (including the sender).

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. The laws achieve this goal by:

- **establishing** basic requirements for obtaining a real estate license and, in many cases, requiring continuing education to keep a license,
- **defining** which activities require licensing,
- **describing** the acceptable standards of conduct and practice for licensees, and
- **enforcing** those standards through a disciplinary system.

The purpose of these laws is not merely to regulate the real estate industry. Their main objective is to **make sure that the rights of purchasers, sellers, tenants, and owners are protected from unscrupulous or sloppy practices**. However, by establishing minimum levels of competency and limits of permitted behavior, laws can make the marketplace safer and more honest.

BROKERAGE AGREEMENTS

Brokerage agreements are employment contracts for the personal professional services of the sponsoring broker, not for the transfer of real estate. The various types of brokerage agreements establish the basic relationship between the parties and provide different levels of rights and responsibilities for the sponsoring broker. Perhaps most important, brokerage agreements address the essential questions of exclusivity and compensation.

A **listing agreement** is an employment contract between a sponsoring broker and a seller; a buyer representation agreement is an employment contract as well because it establishes the rights and responsibilities of the sponsoring broker as agent for the buyer.

A **management contract** sets up the relationship between the sponsoring broker and the owner of a rental property.

In Illinois, per **Section 1450.195**, a brokerage agreement is either a written or oral agreement between a sponsoring broker and a client for licensed real estate activities to be provided to a client in return for compensation or the right to receive compensation from another. **Brokerage agreements may constitute either a bilateral or a unilateral agreement between the sponsoring broker and the sponsoring broker's client depending upon the content of the brokerage agreement. All exclusive brokerage agreements must be in writing**.

Also in Illinois, each broker agreement must clearly state that it is illegal for either the owner or the sponsoring broker to refuse to display or sell to any person because of one's membership in a protected class (e.g., race, color, religion, national origin, sex, ancestry, age, marital status, physical or mental handicap, familial status, or any other class protected by **Article 3 of the Illinois Human Rights Act**). **Employment** contracts with buyers and sellers create special agency relationships between the principal/client (the person who is being represented by the sponsoring broker) and the sponsoring broker (the agent). As agent, the sponsoring broker is authorized to represent the principal/client to third parties.

Under both the law of agency and most state license laws, only a sponsoring broker can act as the legal agent to list, sell, rent, or purchase another person's real estate and provide other services to a principal. All sponsored licensees of a sponsoring broker may perform these acts in the name of and under the supervision of the sponsoring broker only (Designated Buyer or Seller Agent).

Expiration of Brokerage Agreement

All exclusive brokerage agreements should specify a definite period during which the broker is to be employed. In Illinois, as in most states, failing to specify a definite termination date in a listing agreement is grounds for the suspension or revocation of a real estate license.

Automatic Extension

Pursuant to 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.**

TYPES OF LISTING AGREEMENTS

Four basic types of buyer agency agreements exist:

1. Exclusive-right-to-sell listing agreements
2. Exclusive-agency listing agreements
3. Open Listing Agreement
4. Net Listing

Exclusive-right-to-sell listing agreements

In an exclusive-right-to-sell listing, **one broker is appointed as the seller's sole agent.** The listing broker is given the exclusive right or authorization to market the seller's property. **If the property is sold while the listing is in effect, the seller must pay the broker a commission regardless of who sells the property:** the listing broker, another broker, or even if the seller finds a buyer without the broker's assistance. Sellers benefit from this form of agreement because the broker feels freer to spend time and money actively marketing the property, making a timely and profitable sale more likely. From the broker's perspective, an exclusive-right-to-sell listing offers the greatest opportunity to receive a commission. **The majority of residential listing agreements in Illinois are exclusive-right-to-sell listing agreements.**

Exclusive-agency listing agreements

In an exclusive-agency listing, **one broker is authorized to act as the exclusive agent of 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.

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.** The brokers can act simultaneously, and the seller is financially obligated only to that broker who successfully produces a ready, willing, and able buyer. If the seller personally sells the property without the aid of any of the brokers, the seller is not obligated to pay a commission.

Negotiated terms of an open listing agreement should be in writing to protect the broker's ability to collect an agreed-on fee from the seller. Written terms may be in the form of a listing agreement (if the broker represents the seller) or a fee agreement (if the broker represents the buyer or the seller does not wish to be represented). However, many Open Listing Agreements are oral.

Net listing

A net listing provision specifies that the **seller will receive a net amount of money from any sale, with the excess going to the listing broker as commission.** The broker is free to offer the property at any price greater than the net amount the seller wants; the difference is the broker's fee. Because a **net listing can create a clear**

conflict of interest between the broker's fiduciary responsibility to the seller and the broker's profit motive, net listings are legal in Illinois but not recommended due to the potential for fraud.

Case Studies/Scenarios/Role-playing #3

Part A. Broker Frankie is a very successful top real estate agent in his market area for over 20 years. A very close friend of broker Frankie decided to list his home. The seller, Michael, is a very successful businessperson with many business connections in the same area. Broker Frankie provided a very detailed Market Analysis on Michael's property, and according to the Market Analysis, the current market value is \$500,000. Seller Michael felt that since broker Frankie is a top producing agent, seller Michael wanted to get as much as he can and wanted to list the property at \$550,000. Broker Frankie knows that he can sell the property if it is priced correctly at \$500,000. Broker Frankie wants the listing so that he can tap into Michael's business connections.

What should broker Frankie do?

- A. Broker Frankie should turn down the listing because it is overpriced at \$550,000.
- B. Broker Frankie should take the listing at \$550,000 and work a lot harder and try to sell the property.
- C. Broker Frankie should refer his client Michael to another agent so that his relationship with Michael will not be affected.
- D. Broker Frankie should review the market data with Michael and, if needed, reduce his commission so that seller Michael will get what he wants.

Part B. While reviewing the property disclosures, broker Frankie notice that seller Michael fail to disclose an existing seepage problem in the basement of the house.

What should Broker Frankie do?

- A. Broker Frankie should insist that the seepage problem be disclosed.
- B. Broker Frankie will inform the buyer only if asked.
- C. Wait for the inspection report and see if this issue is discovered.
- D. Broker Frankie should order an inspection by a professional to verify if there is a problem.

Guaranteed Sale

Sometimes, **brokers and sellers enter into *guaranteed sale agreements*, in which the broker agrees to buy the listed property if it fails to sell before the end of the listing period.** Typically, these guarantees are made to the seller as an **inducement to list the property with the broker.**

In Illinois, any exclusive listing agreement must be in writing and is subject to other legal requirements, noted in detail in the Illinois Real Estate License Act of 2000.

SPECIAL LISTING PROVISIONS

Multiple listing

A *multiple listing* clause may be included in an exclusive listing. It is used by licensees who are members of a multiple listing service (MLS). **An MLS is an information/ marketing organization whose members make their listings available for showing and sale through all the other member licensees.**

An MLS offers advantages to licensees, sellers, and buyers. Licensees develop a sizable inventory of properties to be sold and are assured a portion of the commission if they list property or participate in the sale of another licensee's listing. Sellers gain because the property is exposed to a much larger market. Buyers gain because of the variety of properties on the market.

The contractual obligations among the member licensees of an MLS vary widely. Most MLSs require that a licensee, **turn over new listings to the service within a specific, fairly short period of time after the licensee obtains the listing.** The length of time during which the listing licensee can offer a property to the public on her own without involving the MLS varies. Of course, sellers must be informed and give their written consent for any delay in notifying the MLS. This gives the listing company a strong chance to sell its own listing.

Under the provisions of most MLSs, a participating licensee makes a **unilateral offer of cooperation and compensation to other member licensees, when the listing enters the MLS.** The licensee must have the **written consent of the seller to include the property in an MLS.**

Under Illinois law, a licensee working with a buyer is not considered to be a subagent of the seller. No offer of subagency can be made through an MLS in Illinois today. Illinois law states that a buyer is represented as a client by the licensee with whom she is working unless that consumer chooses not to be. This approach makes it clear to all parties who is represented by whom.

While a few buyers choose to remain as customers without representation, **even that lack of agency is now subject to disclosure.** Generally, a **notice of no agency would be provided.** If nothing is said about agency, licensees are considered to be representing the consumer with whom they are working, either as a **designated agent for the consumer** (unless there is a written agreement to the contrary) or as a **licensee if performing only ministerial acts.**

In spite of these relatively clear lines with regard to whose agent is whose, sellers often still pay the fees for both agents in a transaction. These fees are called **cooperative commissions.** In an Illinois MLS listing datasheet, this is typically stated as "coop: X% or as a flat fee." ***Paying someone a commission does not create agency in Illinois.***

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.** The property owner cannot force the licensee to perform, but the **licensee's failure to work diligently toward fulfilling the contract's terms constitutes a breach of the listing agreement.** If the licensee cancels the listing, the seller may be entitled to sue the licensee for damages.

On the other hand, a **property owner could be liable for damages to the licensee by refusing to cooperate with the licensee's reasonable requests,** such as allowing the licensee to show the property to prospective buyers or refusing to proceed with a complete sales contract.

Listing agreements may be terminated for the following reasons:

- When the agreement's purpose is fulfilled, such as when a ready, willing, and able buyer has been found
- When the agreement's term expires

- If the property is destroyed or its use is changed by some force outside the owner's control, such as a zoning change or condemnation by eminent domain
- If title to the property is transferred by operation of law, as in the case of the owner's bankruptcy or foreclosure
- If the sponsoring broker and the seller mutually agree to cancel the brokerage agreement
- If either the sponsoring broker or seller dies or becomes incapacitated. **If the sponsored licensee dies or becomes incapacitated, the brokerage agreement is still valid.**

SAFETY CLAUSE

This is a clause in the listing agreement which provides the listing broker a commission if, within a specified time 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 Safety clause protects brokers from losing a commission on a sale involving buyers who saw the property while it was listed and to **discourage others from trying to reach private arrangements with sellers.**

Safety Clause Features:

- The length of time for a Safety cause is set by agreement.
- Any new buyers the seller might procure on her own after expiration of the listing are not affected.
- This clause cannot be enforced if the property is relisted under a new contract with another brokerage firm.

Each brokerage agreement for a residential property of four units or less that provides for a protection period subsequent to its termination date shall also provide that no commission or fee will be due and owing pursuant to the terms of the brokerage agreement if, during the protection period, a valid, written brokerage agreement is entered into with another licensed real estate broker.

THE LISTING PROCESS

Measuring Structure and room count

It is important to understand when it comes to measuring a property, there is no one size fits all method employed by appraisers, real estate agents, lender, or government units. To varying degrees, guidelines define Gross Living Area (GLA).

Fannie Mae, HUD/FHA guidelines do not include basements/below grade, unfinished areas, and garages in the Gross Living Area. Appraisers measure the exterior of each floor to the inch.

Fannie Mae/Freddie Mac form appraisal report, used by conventional lenders as well as FHA/VA, describes the house by the total room count, the number of bedrooms, and the number of bathrooms it contains.

In general, a room count is a kitchen, bedroom, a living room, a dining room, a family room, an office, study, or den. There are always restrictions as to what guidelines are used. Real estate agents need to measure structures and room counts correctly in order to raise the standard of professionalism and improve the consumer confidence.

Qualifying the Seller

When meeting the potential client for the first time, the agent shall spend time gathering information on the sellers needs and motivation. The seller should understand the process involved in selling, marketing, and setting a range for

listing their property. The agent should gather data on the community so that the agent can target any potential buyers.

Asking questions about the property amenities allows the agent to point out the benefits of the property.

When asking the seller questions, wait and listen to the seller's answer to avoid any misunderstanding. Remember, buying and selling a house is probably the biggest investment in someone's life. Providing what is expected in the sale of real estate allows the seller to have a positive experience and a successful transaction.

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. Because the average seller does not have the skills needed to determine a market-based listing price, brokers must be prepared to offer their knowledge and expertise.

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.** It is distinctly different from an appraisal report offered by a licensed appraiser that is based only on an analysis of properties that have actually sold.

The CMA is based on:

- Recently closed properties (solds),
- Properties currently on the market (competition for the subject property), and
- Properties that did not sell (expired listings in the area).

Sold prices represent what buyers have been willing to pay for similar properties in the neighborhood. Very often, the expired listing prices are those prices that buyers have not been willing to pay for a property similar to the subject property.

Market Value

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

Current asking prices of current, similar properties on the market indicate the trend: asking prices lower than the "solds" indicate a slow or declining market. An optimistic market is indicated when the asking prices are higher than the "solds." Although a CMA is not viewed as a formal appraisal, the **broker uses many of the appraiser's methods and techniques in arriving at a reasonable value range.**

The figure sought in both CMAs and appraisals is the **property's market value. Market value is the most probable price a property would bring in an arms-length transaction under normal conditions on the open market.** A CMA estimates market value as likely to fall within a range of values (e.g., \$335,000 to \$340,000).

While it is the **property owner's privilege to set whatever listing price he chooses, a broker should consider rejecting any listing in which the price is substantially exaggerated or severely out of line with the indications of the CMA or appraisal.** These tools provide the best indications of what a buyer will likely pay for the property. An unrealistic listing price will make it difficult for the broker to properly market the seller's

property within the agreed-upon listing period. Furthermore, a buyer may have difficulty obtaining financing because the property did not appraise for the sale price.

Information Needed for Listing Agreements

Once the broker and the owner agree on a listing price, the broker must **obtain specific, detailed information about the property**. Obtaining as many facts as possible ensures that most contingencies can be anticipated. This is particularly important when the listing will be shared with other licensees through an MLS, and the other licensees must rely on the information taken by the listing broker.

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** - A broker must not withhold material facts concerning a property of which she has knowledge from any purchaser, prospective purchaser, seller, lessee, lessor, or other party to the transaction. **Material facts are any facts on which a reasonable person would base a contractual decision.**
- **Disclosure of interest** - A broker must disclose in writing to the parties to the transaction her status as a broker and any **direct or indirect interest (s)he has or may have in the subject property**. For example, if the buyer or seller is a licensed broker, this must be clearly stated in the contract.
- **Disclosure of special compensation** - A broker is **prohibited** from accepting "**any finder fees, commissions, discounts, kickbacks, or other compensation from any financial institution, title insurance company, or any other person other than another licensee, without full disclosure in writing of such receipt to all parties to the transaction.**" Sponsored licensees receive any such compensation only through their respective sponsoring brokers.
- **Earnest money and purchaser default** - When any written listing includes a provision that the seller will not receive the earnest money deposit if the purchaser defaults, this fact must appear **emphasized in letters larger than those otherwise used in the listing agreement**.
- **Disclosure of property condition** - **Seller disclosure of property conditions is required by law in Illinois.** These disclosures normally cover a wide range of structural, mechanical, and other conditions that a prospective purchaser should know about to make an informed decision.
- **A Property Disclosure Report** must be given to the buyer before an offer is made and accepted or the buyer will have **three days** in which to rescind the contract, based on any negative disclosures. In addition, a **lead paint disclosure** is required on any property built before 1978, and a **radon disclosure** is **required** of the seller.

Once a long-lasting agreement has been finalized and signed by the broker and seller, Illinois law prohibits the broker from making any addition to, deletion from, or alteration of the written listing without the written consent of the principal. **The broker must return a true copy of the listing agreement, signed by the seller and by the sponsoring broker or designated managing broker, to the principal within 24 hours of execution.**

Listing Agreement Content

There is no required state form for any real estate contract in Illinois. However, all written exclusive listing agreements must include:

- the list price of the property,
- the agreed-upon amount of commission and the time of payment,
- the duration of the agreement, with a definite termination date clearly set forth,
- the names of the broker and seller,
- signatures of both broker and seller,
- the identification of the property involved (address or legal description),
- the duties of the listing broker,
- a statement of nondiscrimination, and
- a statement regarding antitrust.

Licensees **may not permit blank spaces on their signed brokerage agreements**. Where no information is to be inserted into the blank space, the Licensee should insert NA or draw a line through the blank space.

Type of listing agreement

The contract may be an exclusive-right-to-sell listing (the most common type), an exclusive-agency listing, an open listing, or a net listing (the last not recommended). The type of listing agreement determines the extent of a broker's authority to act on the principal's behalf. Most MLSs do not permit open listings to be posted in their systems.

BROKER'S AUTHORITY AND RESPONSIBILITIES

The contract should **specify whether the broker may place a sign on the property and advertise and market the property or utilize social networking through Facebook or other similar sites.**

Another new major consideration, since the inception of Buyer Broker Representation in Illinois, is whether the broker is permitted to authorize buyers' broker's marketing efforts through an MLS and the Internet. It should also address whether or not the broker may accept earnest money on behalf of the seller and the responsibilities for holding the funds.

Names of all parties to the contract

Anyone who has an ownership interest in the property must be identified and must sign the listing to validate it. If the property is owned under some form of co-ownership, that fact should be clearly established.

If a married couple is living in the listed property, both spouses must sign the listing, even if only one owns the property, in order to release homestead rights. If the property is in the possession of a tenant, that should be disclosed and instructions given on how the property is to be shown to a prospective buyer.

Brokerage firm

The brokerage company name, the sponsoring broker, and the *designated agent* of the sponsoring broker must all be identified.

Evidence of ownership

A warranty deed, title insurance policy, or abstract of title with an attorney's opinion can be used for proof of title.

Listing price

This is the proposed gross sales price. The seller's proceeds will be reduced by unpaid real estate taxes, special assessments, mortgage or trust deed debts, and any other outstanding obligations.

Real property and personal property

Any real property to be removed from the premises by the seller and any personal property to be included in the sale for the buyer should be noted and be explicitly identified in the subsequent purchase contract. Some items that may later become points of negotiation might include major appliances, swimming pool and spa equipment, fireplace accessories, storage sheds, window treatments, stacked firewood, and stored heating oil.

Leased equipment

It must be determined if leased equipment such as security systems, cable television boxes, water softeners, or special antennas will be left with the property. If so, the seller is responsible for notifying the equipment's lessor of the change of property ownership.

Description of the premises

In addition to the street address, the legal description, lot size, and tax parcel number (property index number or PIN) may be required for future insertion into a purchase offer.

The street address of the property (street address and unit number for a condo) is sufficient for listing agreements to be valid and enforceable under Illinois law. However, it is advisable to include the parcel number (or property index number, or PIN), and most listing agreements include a blank for it.

This number can be acquired from the tax database.

Proposed dates for the closing and the buyer's possession

These dates should be based on an anticipated closing date. The listing agreement should allow adequate time for the paperwork involved (including the buyer's qualification for any financing) and the physical moves to be arranged by the seller and the buyer.

The closing

An attorney, title company, or escrow company should be considered and retained as soon as possible. A designated party will be needed to complete the settlement statements, disburse the funds, and file the proper forms, such as documents to be recorded and documents to be sent to the IRS.

Legal Rights and Obligations of the Seller and Buyer

As each contract is prepared for signature during a real estate transaction, the licensee should advise the parties of the desirability of securing legal counsel to protect their interests. **Only a lawyer can offer legal advice. Licensees are prohibited from practicing law. In Illinois, the attorney, title company, and lender dominate closing issues.**

Encumbrances

All liens must be paid by the seller or be assumed by the buyer at the closing. Identify as much information as possible about existing loans, such as the name and address of each lender, the type of loan, the loan number, the loan balance, the interest rate, the monthly payment, and if the loan can be prepaid without penalty. Determine if the buyer can assume the present loan, and if so, under what circumstances and if there is any possibility of seller financing.

Physical encroachments on the property (such as a fence) and their legal implications are questions best referred to an attorney, even if they were noted in the listing file.

Zoning Identify current zoning for the property.

Property taxes

Ask about current (or most recent year's) property taxes and determine the amount of any outstanding special assessments and whether they will be paid by the seller or assumed by the buyer.

Home warranty program

In some situations, it may be advisable to offer a "home warranty" with the property. Skillful brokers are able to explain these warranties that often benefit both the seller and the buyer.

Commission

The circumstances **under which a commission will be paid must be specifically stated in the contract.** Negotiation of commission is a key discussion point in creating a listing contract. The commission amount is fully negotiable between parties.

By Illinois law, written listing agreements in Illinois must state that no change in the amount of the commission or time of payment will be valid or binding unless the change is made in writing and signed by all parties.

Antitrust wording

Any assertion that a "set" or "standard" commission exists violates antitrust laws. Any sponsoring broker is free to set a minimum commission that will be accepted within a given office, but there is *no such thing as a standard commission*. The contract should indicate that all commissions have been negotiated between the seller and the broker. It is illegal for commissions to be set by any regulatory agency, trade association, or other industry organization.

Termination of the contract

A contract should provide **some way for the parties to end it** and **under what circumstances** will the contract terminate.

In Illinois, if a listing agreement provides that, in the event of a default by a buyer, the broker's full commission or fees will be paid out of an earnest money deposit, with the remainder of the earnest money to be paid to the seller, the provision shall appear in the listing agreement in letters larger than those generally used in the listing agreement.

Broker protection ("carryover") clause

Brokers are well-advised to protect their interests against possible fraud or a reluctant buyer's change of heart. There are various circumstances under which a broker is entitled to a commission for a specified amount of time after an agreement terminated.

Warranties by the owner

The owner is responsible for certain assurances and disclosures that are vital to the agent's ability to market the property successfully.

Indemnification ("hold harmless") wording

The seller and the broker may agree to hold each other harmless (i.e., not to sue one another) for any incorrect information supplied by one to the other. Indemnification may be offered regardless of whether the inaccuracies are intentional or unintentional.

A client shall not be vicariously liable in Illinois, for the acts or omissions of a licensee in providing brokerage services for or on behalf of the client.

Nondiscrimination (equal opportunity) wording

The seller must understand that **the property will be shown and offered without regard to the race, color, creed, or religious preference, national origin, family status, sex, age, or disability of the prospective buyer.** Federal, state, and local fair housing laws protect a variety of different groups and individuals. For instance, on the state and local level, sexual orientation and source of finances are also often protected.

All Illinois written listing agreements must clearly state that it is illegal for either the owner or the broker to refuse to sell or show property to any person because of race, color, religion, national origin, sex, familial status, ancestry, citizenship status, age 40 and over, marital status, physical or mental disability, military service, unfavorable military discharge, sexual orientation, and order of protected status.

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 to 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

This applies to listing (seller) agreements as well as buyer agency agreements

The signatures of the parties

All parties identified in the listing contract must sign the contract, including all individuals who have a legal interest in the property.

The date the contract is signed

This date may differ from the date the contract actually becomes effective (e.g., if a sponsored licensee takes the listing and then must have the sponsoring broker sign the contract to accept employment under its terms).

Additional information

Although not required on the listing agreement, the listing broker should also obtain any additional information that would make the property more appealing and marketable, such as neighborhood amenities. Such amenities might include information about schools, parks and recreational areas, places of worship, and public transportation.

Case Studies/Scenarios/Role-playing #4

Broker Kimberly has an exclusive right to sell listing agreement with her buyer on a house that is overpriced. The property has been on the market for more than six months with very little activity, despite broker Kimberly's efforts. Kimberly has hosted several open houses with little interest. A potential buyer, knowing that the property is overpriced, presents a low-ball offer through his agent. The buyer's agent told Kimberly that the seller should accept their offer as the property has been on the market for a long time and needs repairs.

What should Kimberly do?

- A. Broker Kimberly should present the offer to the seller and try to get a counteroffer.
- B. Broker Kimberly should tell the seller that if they don't take this offer, she will cancel the listing agreement.
- C. Broker Kimberly should refuse to present the offer and stop promoting a property she cannot sell.
- D. Broker Kimberly should get the seller to reduce the price so that it will sell

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**. The **buyer, rather than the seller, is the principal**. The purpose of the agreement is to find a suitable property. **A buyer agency agreement gives the buyer a degree of representation possible only in a fiduciary relationship**. A buyer's broker must protect the buyer's interests at all points in the transaction.

Three basic types of buyer agency agreements exist:

1. Exclusive-buyer-agency agreement (Like an exclusive-right-to-sell agreement for a Seller)
2. Exclusive-agency-buyer agreement (Like an exclusive agency agreement for a Seller)
3. Open buyer agency agreement (Like an open listing agreement with a Seller)

Exclusive buyer agency agreement

Also known as *an exclusive right to represent*, this is a **true exclusive agency agreement**. **The buyer is legally bound to compensate the broker whenever the buyer purchases a property of the type described in the contract. The broker is entitled to payment regardless of whether she or the buyer locates the property and signs a sales contract.**

Exclusive-agency buyer agency agreement

Like an exclusive buyer agency agreement, this is an **exclusive contract between the buyer and the broker**. **The buyer retains the right to locate and buy property without paying a commission to the broker.** Buyer brokers end up "educating" buyers about the process and show many homes only to find that the buyers avoid compensation by working directly with an unlisted property owner, (For Sale by Owner FSBO).

Open buyer agency agreement

This agreement is a **nonexclusive buyer representation agreement between a broker and a buyer**. It permits the buyer to enter into similar agreements with an unlimited number of brokers. The buyer is obligated to compensate only the broker who locates the property the buyer ultimately purchases.

Buyer Representation Issues

A broker and a buyer must discuss a number of issues after entering into a written buyer agency agreement. The broker should conduct a counseling session with the buyer to determine the **buyer's needs and goals, financial capabilities, and motivation**. This session gives the broker the ability to **educate the buyer on the buying process and market conditions and to formulate a strategy for finding the right property**. In addition, compensation needs to be addressed and negotiated in the event there is no offer of cooperative compensation from the listing broker to the buyer's broker.

The broker should make the same disclosures to the buyer that the broker would make in a listing agreement. The broker should **explain the forms of agency available and the parties' rights and responsibilities under each type of agreement**. The specific services provided to a buyer-client need to be clearly explained.

A buyer's broker may be compensated by either the buyer or the seller. Compensation is always negotiable.

In Illinois, it is common for the listing broker to split the listing fee with the buyer's broker. Note that this is a **clear case where commission does not equate to agency or representation**. Discussions regarding a commission or fee provided by the buyer may still take place. A broker is free to negotiate for compensation from any buyer for whom service was provided in an agency capacity. However, if the broker receives compensation from more than one source in a transaction, it always needs to be disclosed in writing to the involved parties.

A buyer agent's duties include:

- using the broker's best efforts to identify properties listed in the MLS and in other databases that meet buyer's criteria,
- arrange for property inspections identified by buyer as potentially appropriate for purchase,
- advise buyer as to the pricing of comparable properties,
- assist buyer in the negotiation of a sales contract acceptable to buyer, and • to provide confidentiality on any information that buyer discloses to the broker.

Services Provided by a Buyer Broker

The buyer's broker provides the following services throughout the real estate transaction:

- **Needs assessment-** Determine and evaluate the needs and wants of the buyer.
- **Property selection** - Locate the best property for the buyer by notifying buyers of new listings and for-sale-by-owner properties. Remember, property selection need not be limited by price. In today's market, list prices can often be negotiated down.
- **Viewing properties** - Provide an objective evaluation of the property and show buyers how to compare properties. Disclose material facts that are pertinent to the property.
- **Negotiate** - Strategize with the buyer, suggesting techniques that strengthen the buyer's position. Then, implement those strategies on the buyer's behalf. Disclose any prior unsuccessful negotiations.
- **Price** - Provide price counseling and prepare a comparative market analysis (CMA) on the property the buyer is considering.
- **Follow-up** - Resolve any issues that could prevent a closing from occurring. Provide ongoing communications with the client, preferably by e-mail for maintaining records.
- **Short Sale** – Explain the operation of a short sale, the time frame for a decision from the Seller's lender, and other aspects of a Short Sale. Ask the Buyer's Lender for a possible extension of the Commitment Letter if a Short Sale takes longer than anticipated.

Case Studies/Scenarios/Role-playing #5

Agent Michelle is hosting an Open House on one of her listings. A potential buyer Sue attends the open house and doesn't have a real estate agent with her. Buyer Sue says, "I want to buy this house." The listing agent Michelle makes sure that the buyer Sue understands that broker Michelle represents the seller and not required to look out for the best interest and has Sue sign a Non-Agency Disclosure form.

Buyer Sue signs the Non-Agency Disclosure form and the purchase agreement to buy the property. There is no inspection by the buyer, and the property closes. Soon after the closing, a structure problem came to Sue's attention. The seller was not aware of any structure issue.

- A. Buyer Sue has a right to go after broker Michelle to correct this problem
- B. Sue has a right to go after the seller of the property.
- C. Sue can seek compensation from the seller and broker Michelle
- D. Broker Michelle and the seller have no liability to Sue for any repairs.

Buyers Representation/Agency Disclosures

Broker Vic was working with a buyer Sue and had the buyer sign an Exclusive Buyer Agency

Agreement. After working with the buyer for a few months, showing the buyer many properties making sure the buyer was qualified by a lender, broker Vic went out of town for 3 days. While broker Vic was out of town, the buyer Sue visited an Open House. Buyer Sue told the listing agent that she didn't have an agent representing her. The listing broker had Sue sign a non-agency disclosure form and purchased the property. When broker Vic returns from out of town, broker Vic told the listing agent Michelle that he has an exclusive buyer agency agreement and has been working with buyer Sue for many months.

What should Broker Vic do?

- A. Broker Vic should discuss any compensation with the buyer Sue.
- B. Broker Vic is entitled to a co-op commission from broker Michelle.
- C. Broker Michelle has no obligation to offer any compensation from broker Michelle.
- D. Broker Vic should refer to the Buyer Representation agreement and file a lawsuit against broker Michelle.

THE BUYING PROCESS

When the buyers have found the right property, the next step is to prepare and negotiate an offer that will lead to a signed sales contract between the seller and the buyer. The buyer's broker must prepare a CMA to establish a price for the buyer to offer. Factors to take into consideration include:

- **Property condition** - Does the property need a lot of repairs?
- **Length of time on the market** - This indicates the selling pace of the market, the level of inventory, or a potential problem with the property.
- **Supply and demand** - Essentially, when supply increases and demand remains stable, prices go down; when demand increases and supply remains stable, prices go up.
- **Seller's motivation** - Is the property in distress, pre-foreclosure, or requiring a short sale?
- **Terms and contingencies** - The fewer the contingencies, the stronger the offer, making it more attractive to the seller or bank (if property is bank-owned or requires bank approval for a short sale).

When buyer brokers are working with two or more clients who are seeking similar properties in the same price range, the buyer's broker is permitted to show alternative properties to any prospective buyer or tenant.

Specifically, the buyer's broker does not breach a duty or obligation to the client:

- by showing alternative properties to other prospective buyers or tenants,
- by showing properties in which the client is interested to other prospective buyers or tenants,
- by making or preparing contemporaneous offers or contracts to purchase or lease the same property.

However, brokers must provide written disclosure to all clients for whom the licensee is preparing or making contemporaneous offers or contracts to purchase or lease the same property and shall refer to another designated agent any client that requests such referral.

Presenting and Negotiating the Offer

Once an offer has been made and the buyer has signed the purchase agreement and disclosures, the buyer should immediately receive a copy of all of the documents that are signed. The real estate agent of the buyer should then promptly submit the signed purchase agreement along with the signed disclosures, pre-approval letter from the lender

or proof of funds and a copy of the earnest money check if any. This can be done in person or electronically to the agent of the seller. The agent of the buyer should be available if there are any questions regarding the offer.

Disclosure of Contemporaneous Offers

"Contemporaneous Offers" shall be offers to purchase or lease on behalf of two or more clients represented by the same designated agent for the same real estate parcel or rental unit that the designated agent knows or has reason to know will be taken under consideration by the owners or owners' representative at the same time. If there are contemporaneous offers from two or more clients of a designated agent, written disclosure shall be provided to the clients of the designated agent and referrals of clients to other designated agents shall be completed, if requested by the client.

The agent that is involved in a contemporaneous offer cannot disclose any information about the offers to any of the other clients. Oftentimes, the seller will counter the offer, typically asking for a higher purchase price or adjust the closing dates. The listing agent must promptly submit any counteroffer back to the buyer's agent.

Letter of Intent for Commercial Purchase

A letter of intent is a document outlining the intention of two or more parties to do business together. It is often non-binding unless the language in the document specifies that the companies are legally bound to the terms.

A letter of intent is likely to encompass a number of different aspects and it varies in length according to the level of specificity and the type of transaction. All letters of intent lay out the basis of a deal, including cost, time frame, and contingencies.

When negotiating a sale on commercial property, the initial stage of creating an offer is the preparation of the letter of intent. The letter of intent is generally not considered to be a contract and therefore not binding upon the parties. Buyers usually prepare the letter of intent to purchase commercial property. Lessees often prepare a letter of intent to lease commercial space.

The party that signs the Letter of Intent (LOI) may be legally bound to honor it unless it is stated that the letter is non-binding.

TERMINATION OF BROKER EMPLOYMENT AGREEMENTS

A broker employment agreement is a contract between a broker and a seller or buyer. Its success depends on the broker's personal and professional efforts.

Because broker services are unique, a broker cannot turn over the contract to another broker without the principal's written consent. The client cannot force the broker to perform, but the broker's **failure to work diligently toward fulfilling the contract's terms constitutes abandonment** of the contract. In the event the contract is abandoned or revoked by the broker, the principal is entitled to sue the broker for damages.

On the other hand, the principal might fail to fulfill the terms of the agreement. For instance, a property owner who refuses to cooperate with the broker's reasonable requests, such as allowing the broker to show the property to prospective buyers or refusing to proceed with a completed sales contract, could be liable for damages to the broker. If either party cancels the contract, one party may be liable for damages to the other.

An employment agreement may be canceled for the following reasons:

- When the agreement's purpose is fulfilled
- When the agreement's term expires without a successful transfer
- If the property is destroyed or its use is changed by some force outside the client's control, such as a zoning change or condemnation by eminent domain
- If title to the property is transferred by operation of law, as in the case of the client's bankruptcy or Foreclosure sale:
- If the broker and client mutually agree to end the agreement
- If either the broker or the client dies or becomes incapacitated
- If either the broker or client breaches the contract, the agreement is terminated and the breaching or canceling party may be liable to the other for damages.

In Illinois, **except as may be provided in a written agreement between the broker and the client, neither a sponsoring broker nor any licensee affiliated with the sponsoring broker owes any further duties to the client after termination, expiration, or completion of performance of the brokerage agreement except:**

- to account for all monies and property relating to the transaction,
- to keep confidential all confidential information received during the course of the brokerage agreement.

Multiple Offers

The listing agent must present **all offers** to purchase or lease as soon as possible. When representing a buyer, seller, landlord, tenant, or other client as an agent they must protect and promote the best interest of their client.

The presentation of multiple offers and negotiations are often complex. Remember the decision on when multiple offers are presented and how they will be negotiated and which offer if any will be accepted or countered is made by the seller - not the buyer agent or listing agent.

The listing agent when presenting multiple offers should always explain the pluses and minuses of all the terms and price. The decision is the seller's. It is important for the agent to present all offers objectively and explain the options and any alternatives available and get directions from the seller.

The National Association of Realtors has designed a brochure for consumers titled "A Buyers' and Sellers' guide to Multiple Offer Negotiations" that can be downloaded and should be reviewed with their agent.

Case Studies/Scenarios/Role-playing #6

Handling Multiple Offers and Counteroffers

Seller Kelly listed her home with Broker Tiffany of Patton Realty Company. Broker Tiffany listed Kelly's property at a reasonable price, and the property attracted several offers, including an offer from broker Tiffany's own buyer. Broker Tiffany now has several offers, how should she proceed?

- A. Broker Tiffany should work with her own offer as a dual agent because she knows the buyer very well, and there will be no problem with this transaction if Tiffany controls both sides.
- B. Broker Tiffany should just go with the highest price offer.

- C. Broker Tiffany should give all of the offers to the seller and give the seller Kelly a few days to decide which one she wants to accept.
- D. Broker Tiffany should review, present, and discuss the terms of each offer and let the seller, Kelly, decide.

CHAPTER 3: ILLINOIS REAL ESTATE LICENSING LAW

ILLINOIS REAL ESTATE LAW

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

Federal Laws such as the **Truth-in-Lending Act (TILA)**, **Fair Housing Act**, the **Equal Credit Opportunity Act (ECOA)** and **Real Estate Settlement Procedures Act (RESPA)** regulate certain real estate business practices to ensure fair dealing, ethical conduct, and equal treatment. In addition, required disclosures are intended to inform and protect clients and consumers. State laws such as the

Illinois Residential Real Property Disclosure Act, the **Illinois Radon Awareness Act**, and the **Illinois Human Rights Act** are discussed earlier in this textbook and should be reviewed by the student.

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

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

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

The Department promulgates rules for the Act's implementation and enforcement. These are often referred to as "the rules," and they supply explanatory detail and guidelines for the Act. The Act, rules, and other significant legislation are available online at www.ilga.gov (click on Illinois

Compiled Statutes, Chapter 225; ILCS 454). These are essential for any real estate licensee to know.

ADMINISTRATION OF THE ILLINOIS REAL ESTATE LICENSE ACT

Division of Professional Regulation

The Department, through the Division of Professional Regulation (DPR) has primary authority to administer the Illinois Real Estate License Act of 2000. **It is also empowered to issue rules and regulations that implement and interpret the Act. The rules accompanying the Act are important to a full understanding of the Act's implications and applications.** The Department has the authority to contract with third parties for any services deemed necessary for proper administration of the Act, such as the Applied Measurement Professionals, Inc. (AMP) testing service for Illinois state testing.

The Department is responsible for administrative activities such as:

- Conducting license examinations
- Issuing and renewing licenses

- Preparing all forms, including applications, and licenses.
- Collecting fees from applicants and licensees

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

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

Real Estate Coordinator (Section 25-15)

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

The Real Estate Coordinator's duties include:

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

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

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

Composition of the Board

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

- **Twelve members shall have been actively engaged as managing brokers** or brokers for **at least 10 years prior to the appointment**, of which 2 must possess an active pre-licensing instructor license.
- Three members of the Board shall be public members who represents the consumers' interest.
- None of these members shall be:
 - A person who is licensed under this Act or similar Act under another jurisdiction.
 - The spouse or family member of a licensee.
 - A person who has an ownership interest in a real estate brokerage business.

- A person the Department determines to have any other connection with a real estate Brokerage business or license.
- Chair by statute is the Real Estate Coordinator, of IDFPR - (non-voting member)

There are four major funds administered through the Department:

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

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

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

OBTAINING AND KEEPING A REAL ESTATE LICENSE

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

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

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

- Wholesaling

What is Wholesaling?

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

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

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

Unlicensed Agent Act (Section 20-22) Violations

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

License Requirement Exemptions (Section 5-20)

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

- **Owners or lessors** (whether individuals or business entities) or their regular **employees** who sell, lease, or otherwise deal with **their own property** in the ways described under Article 1 definitions (This applies in the course of the management, the sale, or other disposition of their own [or their employer's] property).
- acting under duly executed and recorded power of attorney to convey real estate from the owner or lessor
- The services rendered by an **attorney at law** in the performance of her **duties as an attorney at law**
- Any person acting as **receiver, trustee in bankruptcy, administrator, executor, or guardian**, or while acting under a court order or under the authority of a will or a testamentary trust
- A **resident apartment manager** working for an owner or working for a broker managing the property, if the apartment is her primary residence and if she is engaged in leasing activities of the managed property
- **State and federal officers** and employees or state government or political subdivision representatives performing official duties
- **Any resident lessee** of a residential dwelling unit who refers for compensation to the owner of the dwelling unit, or to the owner's agent, prospective lessees of dwelling units in the same building or complex as the resident lessee's unit, but only if the resident lessee:
 - refers **no more than 3 prospective lessees in any 12-month period**,
 - receives compensation of **no more than \$5,000** or the equivalent of 2 months' rent, whichever is less, in any 12-month period, and

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

Broker's License (Article 5)

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

Broker Requirements

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

- Be at least 18 years of age and willing to supply a Social Security number.
- Be of good moral character
- Have graduated from high school or obtained the equivalent of a high school diploma verified under oath by the applicant
- Provide satisfactory evidence of having completed 75 hours of instruction, 15 hours of which must consist of situational and case studies presented in the classroom or by other interactive delivery method presenting instruction and real time discussion between the instructor and the students.
- Satisfactorily pass a state-sponsored written examination
- 45-hour of post-broker is required before first renewal, it consists of three 15-hour courses covering:
 - Applied brokerage principles
 - Risk management/discipline
 - Transactional issues
- 50 question tests after each section given by the education provider
- Will have, at most, 2.5 years to complete the 45 hours prior to first or second renewal date

Managing Broker's License (Article 5)

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

- be 20 years old or older,
- be of good moral character,

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

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

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

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

Education exemptions: broker, managing broker

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

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

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

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

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

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

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

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

Residential Leasing Agent's License (Article 5)

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

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

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

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

Period in which to obtain a Residential Leasing Agent License

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

THE LICENSING EXAMINATION

Requirements to take the State Exam

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

- they must also be able to demonstrate that they have met the other requirements set out by the Illinois Real Estate License Act of 2000 and any associated rules.
- The test may be administered only at times and places approved by the Department.
- Each test taker must pay the required fee to the appropriate testing center but will forfeit the fee if failing to appear at the scheduled time, date, and place to take the exam following receipt and acknowledgment of one's application by the Department or testing center.
- Candidates must register with the testing service in advance of the test and pay any fees to reserve a spot at one of many convenient locations throughout Illinois on a day that is convenient to them.
- All candidates must bring to the testing center two pieces of current identification. The first MUST be a driver's license with photograph, a passport or military identification with photograph, or an official state identification card with photograph. The second form of identification must display the name and signature of the candidate for signature verification.
- All examinations are given on a computer that displays all the test questions on a monitor and records all the answers. No special knowledge of computers is necessary.
- After completing the test, candidates are immediately informed if they passed or failed.
- Score reports will be emailed to candidates after the exam. A paper copy will no longer be provided after the exam.
- Passing candidates also receive a license application, including directions for applying for a real estate license.
- Passing candidates have one year in which to apply for a license, after which time a new examination will be required.
- Candidates who fail the examination will be told their score and are given diagnostic information in addition to directions on how to apply for a future test.
- Candidates who fail only one portion (either the state or national portion) of the exam are required to retake only the failed portion within 1 year.
- After four failures from the date that the first real estate test was taken, the applicant must successfully repeat all pre-license education before further testing. The fifth attempt to pass the exam is then treated by the Department as if it were a first attempt (**Section 5-35c**).

THE REAL ESTATE LICENSE

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

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

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

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

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

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

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

New Broker

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

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

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

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

Expiration and Renewal

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

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

Nonresidents and License by Reciprocity (Section 5-60)

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

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

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

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

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

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

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

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

Renewal without Fee (Section 5-50)

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

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

LICENSE FEES

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

Initial Fees

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

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

Returned check penalties and failure to pay (**Section 20-25**) Anyone who delivers a check or other payment to the Department that is returned for insufficient funds must pay a **returned check fine of \$50**, plus the amount originally owed. If the licensee **fails to make full payment of all fees and fines owed within 30 calendar days of the notification that payment is due, the Department will automatically terminate the license or deny the application without a hearing**. The licensee may apply for restoration or issuance of the license and pay all fees and fines due the Department.

Renewal Fees

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

License Renewal Dates

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

CONTINUING EDUCATION

Continuing Education Hours — Requirements

- Residential Leasing Agent — 8 hours of continuing education in the core curriculum for each 2-year renewal period

- Broker — 12 hours each 2-year renewal. 4-Hour CORE and 8 Hours of Elective – one hour of elective must include Sexual Harassment Prevention Training
- Managing Broker — 4-Hour CORE and 8 Hours of Elective – one hour of elective must include Sexual Harassment Prevention Training, plus 12 hours of specific broker management continuing education courses.

IDFPR Citations provides an abbreviated, non-disciplinary process for failure to complete Continuing Education in a timely manner. The licensee pay and complete Continuing Education or ask for a hearing. They cannot practice real estate; their license is considered inactive if they did not complete their Continuing Education by the deadline date. All brokers and managing brokers must complete the required courses or equivalent before their licenses may be renewed.

Managing brokers seeking to renew their licenses, beginning with the first renewal period following obtaining a Managing Broker's License, complete a 24-hour Department-approved CE course on broker management during each renewal period and, at the conclusion of the course, take and pass a test developed and administered according to Department specifications.

Managing Broker CE course material shall also include

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

Instructors

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

Other Continuing Education Rules:

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

Exempt from the CE requirement

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

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

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

YOUR REAL ESTATE BUSINESS AND THE ACT

Place of Business (Section 5-45)

Any sponsoring broker actively engaged in the real estate business must maintain a definite office or place of business within Illinois. The sponsoring broker must display a visible, conspicuous identification sign outside the office. Inside, the sponsoring broker must conspicuously display the branch office license she sponsors. The sponsoring broker's office or place of business may not be located in any retail or financial establishment unless it is set apart as a clearly separate and distinct area within that establishment.

Branch offices

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

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

Exceptions to required place of business

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

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

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

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

Employment Agreements (Section 10-20)

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

employment or independent contractor relationship terms. A sponsoring broker must also have a written agreement with any licensed broker acting as an assistant of licensees sponsored by the broker.

Agency Relationships (Article 15)

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

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

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

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

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

- It is considered reasonable to show available properties to various prospects without being viewed as breaching duty to a given client.
- A licensee must provide written disclosure to all clients for whom the licensee is preparing or making contemporaneous offers or contract to purchase or lease the same property and must refer any client that requests a referral to another designated agent.
- It is not considered a conflict for a buyer's agent to show homes wherein the commission is based on the ultimate sales price (in other words, where a higher price creates a higher commission).
- Unless a licensee "knew or should have known the information was false," a licensee is not considered responsible or liable for false information passed on to the client from a customer via the licensee, or vice versa.
- The licensee remains responsible under common law "for negligent or fraudulent misrepresentation of material information."

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

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

Dual Agency Disclosure

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

Designated Agency

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

Article 15 (Agency) also clearly notes the following:

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

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

Real estate disclosure means an acknowledgment, stated clearly and usually in writing, of certain key facts that the law holds might, if left unknown or if unclear, unfairly influence the course of events.

Failure to disclose is an increasingly serious issue in a consumer-based society and under consumer-driven laws.

Article 15, material facts disclosure

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

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

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

Section 15-35, Agency Relationship Disclosure

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

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

Section 10-5, Disclosure of Compensation

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

Handling Client Funds (Section 20-20)

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

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

Receipts must be made, and a duplicate kept by the sponsoring broker for any escrow monies received

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

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

A Sponsoring Broker does not have to have an Escrow Account.

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

Dispute over Disbursement of Escrow Funds

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

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

Escrow Account Records

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

Journal

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

For funds received, the journal shall include:

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

For fund disbursement, the journal shall include:

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

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

Ledger

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

For funds received, the ledger shall include:

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

For fund disbursement, the ledger shall show:

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

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

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

- bank disbursement slips,
- other bank receipts

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

Monthly Reconciliation Statement

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

Master Escrow Account Log

Each sponsoring broker shall maintain a master escrow account log identifying all escrow bank account numbers and the name and address of the bank where the escrow accounts are located. The master escrow account log must specifically

include all bank account numbers opened for the individual transactions, even if such account numbers fall under another umbrella account number.

If the Department requests to view or audit escrow records, they must be supplied within 24 hours of the request to the Department personnel. Escrow records must be **maintained for five years**. The escrow records for the **immediate prior two years shall be maintained in the office location**, and the balance of the records can be maintained at another location.

THE LICENSE ACT AND ASSISTANTS

Unlicensed assistants

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

Licensed broker as assistants

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

ADVERTISING REGULATIONS (SECTION 10-30)

Advertising is expanded to include social media and digital forums.

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

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

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

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

Ads prepared by licensees should at least include:

- Property for sale,
- licensee name,

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

All other ads:

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

A licensee must:

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

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

Social Media and Text

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

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

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

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

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

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

Advertising on the Internet

Ads prepared for the Internet must adhere to the following:

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

In Internet advertising situations, the rules do not allow:

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

Painting a True Picture

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

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

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

Phone book listings

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

Selling your own property

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

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

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

A licensee must:

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

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

Compensation and Business Practice (Article 10)

- **Section 10-5:** A licensee may not receive compensation from anyone other than her sponsoring broker. In turn, sponsoring brokers may compensate only licensees whom they personally sponsor (including licensed brokers working as assistants). The one exception is a former licensee now working for another sponsoring broker but who is due a commission from work completed while still at the first firm.
- Sponsoring brokers may directly compensate other sponsoring brokers (as in a cooperative commission arrangement for the listing broker to pay commission to the firm with the buyer).
- **Section 10-10:** Disclosure of compensation is a significant issue. The Act holds that clients must be made aware of compensation, source of compensation, and the sponsoring broker's policy on sharing commission with cooperating sponsoring brokers.
- If compensation is being issued to an agent from both buyer and seller in one transaction, this must be disclosed. Any third-party compensation must also be disclosed.
- If a licensee refers a client to a service in which the licensee has greater than 1 percent interest (title, legal, mortgage), the interest must be disclosed.
- **Section 10-15:** It is illegal to compensate unlicensed persons or anyone being held in violation of the Act.
 - To sue for commission in Illinois, one must be a licensed real estate sponsoring broker. **Funds from sellers or buyers always go through the sponsoring broker.** (S)he is the only one who issues compensation to brokers, managing brokers, residential leasing agents, or licensed brokers working as assistants working under him/her.
- **No licensee may pay a referral fee to an unlicensed person who is not a principal to the transaction.** A licensee may not request a referral fee unless *reasonable cause* for payment of the fee exists (a contractual referral fee arrangement).
- **Section 10-15** also states that a licensee "may **offer cash, gifts, prizes, awards, coupons, merchandise, rebates or chances to win a game of chance**, if not prohibited by any other law" to consumers as a legitimate approach to garnering business
- Additionally, it is perfectly legal to share commission compensation with a principal to a given transaction.
- It now is legal for a sponsoring broker to pay a corporation set up by the licensee, rather than the licensee directly, if desired. They cannot sell under the corporate name; they must sell under their own name.
- The law allows formation of an entity to receive licensee compensation from the sponsoring broker where licensee is sole owner; or licensee spouses sponsored by the same sponsoring broker are owners; or licensee and unlicensed spouse are owners of the entity.

DISCIPLINARY PROVISIONS AND LOSS OF LICENSE

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

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

Causes for Discipline

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

- makes a false or fraudulent representation in attempting to obtain or renew a license,
- has been convicted of a felony or of a crime involving dishonesty, fraud, larceny, embezzlement, or obtaining money, property, or credit by false pretenses or by means of a confidence game,
- is unable to practice the profession with reasonable judgment, skill, or safety as a result of a physical illness,
- practices as a licensee in a retail sales establishment from an office, desk, or space that is not separated from the main retail business and in a separate and distinct area,
- has been subjected to disciplinary action by another state, the District of Columbia, a territory, a foreign nation, a government agency, or any other entity authorized to impose discipline if at least one of the grounds for that discipline is the same as or equivalent to a cause for discipline in Illinois,
 - has engaged in real estate brokerage without a license or with an expired or inactive license,
- attempts to subvert or cheat on the licensing exam or assists someone else in doing so, or
- advertises in a way that is inaccurate, misleading, or contrary to provisions of the act.

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

- Making any false promises to influence, persuade, or induce
- Pursuing a continued and flagrant course of misrepresentation or making false promises through licensee, employees, agents, advertising, or otherwise
- Using any trade name or insignia of membership in any real estate organization of which the licensee is not a member
- Acting for more than one party in a transaction without providing written agency disclosure
- Representing or attempting to represent a broker other than the sponsoring broker
- Failing to account for or remit any monies or documents belonging to others that come into the licensee's possession
- Failing to properly maintain and deposit escrow monies in a separate account
- Failing to make all escrow records maintained in connection with the practice of real estate available during normal business hours and within 24 hours of submitted request
- Failing to keep all records for 5 years – can be kept electronically but must be backed up on a regular basis.
- Failing to furnish, on request, copies of all documents relating to a real estate transaction to all parties executing them

- Failure of the sponsoring broker to provide appropriate licensing documents (license termination information) in a timely way
- Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public
- Commingling the money or property of others with one's own
- Employing any person on a purely temporary or single-deal basis as a means of evading the law regarding illegal payment of fees to non-licensees
- Permitting the use of one's managing broker's license by another person in order to operate a real estate office
- Displaying a *For Rent* or *For Sale* sign on any property, or advertising in any fashion, without the written consent of the owner
- Failing to provide information requested within 30 days of the request as related to audits or complaints made against the licensee based on the Act
- Utilizing blind advertising
- Offering an improperly constructed guaranteed sales plan, one that does not meet the Act's requirements for such plans
- Intending to promote racial or religious segregation by use of actions or words or behaving or speaking in such a way as to discourage integration
- Violating the Illinois Human Rights Act
- Inducing any individual to break out of an existing contract to enter into a new one, whether a sales contract or a listing contract
- Negotiating directly with the client of another agent
- Acting as an attorney in the same transaction in which one acts as a real estate licensee
If merchandise or services are advertised for free, any conditions or obligations necessary for receiving the merchandise or services must appear in the same ad or offer
- Disregarding or violating any provisions of the Land Sales Registration Act or the Time-Share Act
- Violating a disciplinary order
- Paying or failing to disclose compensation that violates the Act
- Disregarding or violating any provision of this act or the published rules or any regulations promulgated to enforce the Act
- Failing to provide the minimum services required under an exclusive brokerage agreement
- Violating the terms of a disciplinary order issued by the Department
- Forcing any party to a transaction to compensate the licensee as a requirement for releasing earnest money
- Habitual use or addiction to alcohol, narcotics, stimulants, or any other chemical agent that results in licensee's inability to practice with skill and safety
- Failure to disclose the licensee status on the Multiple Listing Service data form that is accessible to the public if the licensee have any ownership interest in the property

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

Discrimination

Licensee guilty of discrimination (**Section 20-50**) If there has been a civil or criminal trial in which a licensee has been found to have engaged in illegal discrimination in the course of a licensed activity, the Department must suspend or revoke the licensee's license unless the adjudication is in appeal. Similarly, if an administrative agency finds that a licensee has engaged in illegal discriminatory activities, the Department must take disciplinary action against the licensee unless the administrative order is in appeal.

Guaranteed sales plans

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

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

Unlawful actions by associates if no sponsoring broker knowledge

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

Disciplinary Procedures

Any person providing or offering to provide real estate services, or who is licensed or claims to be licensed under the Act, may be investigated by the Department. At least 30 days before the date of a hearing

set for examination of such an issue, and prior to taking any disciplinary action (including but not limited to reprimand, probation, or revocation or suspension of license), the Department will do the following:

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

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

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

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

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

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

Once the order to suspend or revoke a license has been put through, the licensee is required to immediately hand over her license. If the licensee fails to surrender her license, the Department is empowered to seize it. **If the Board so recommends (in writing), the Department can restore the suspended or revoked**

license at any time following the event. The exception to this is any instance in which the Board further investigates the issue, holds a hearing, and decides that restoring the license would not serve the public interest.

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

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

All final administrative decisions are subject to judicial review under the provisions of the

Administrative Review Law and its rules. The accused may request a judicial review by petitioning the circuit court of the county of her residence. If the party is not a resident of Illinois, the venue will be in Sangamon County.

NONPAYMENT ISSUES WHEN OBTAINING A LICENSE OR RENEWING ONE

Nonpayment of child support

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

Nonpayment of State Income Tax

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

Nonpayment of Student Loans

If student loans were provided or guaranteed by the Illinois Student Assistance Commission or any governmental agency of the state, and not paid back, the Department will not grant a real estate license to that individual. For an existing licensee, a hearing is made available, after which, if no satisfactory repayment plan has been made, the license may be suspended or revoked.

Good Moral Character (Section 5-25)

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

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

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

Violations (Section 20-22)

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

Injunctions

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

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

Disciplinary Statute of Limitations (Section 20-115)

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

Index of Decisions (Section 20-5)

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

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

THE REAL ESTATE RECOVERY FUND

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

- a violation of the Real Estate License Act of 2000, its rules and regulations,
- act of embezzlement of money or property,
- obtaining money or property by:
 - false pretenses,
 - artifice,
 - trickery,
 - forgery,

- fraud,
- misrepresentation,
- deceit,
- discrimination

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

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

A claim against the Fund does not need to arise from a loss resulting from intentional misconduct.

The Department will determine by rule the maximum amount an aggrieved person may recover from the Fund, as well as the maximum liability arising out of a licensee's activities. There is no longer a cap on attorney's fees. The Act removes certain barriers to be eligible to recover from the Fund.

Collection from the Recovery Fund (Section 20-90)

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

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

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

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

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

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

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

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

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

Financing the Recovery Fund (Sections 25-35)

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

NOTES:
