

Public Act 096-0856

SB1894 Enrolled

LRB096 09530 ASK 19687 b

AN ACT concerning professional regulation.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Regulatory Sunset Act is amended by changing Section 4.20 and by adding Section 4.30 as follows:

(5 ILCS 80/4.20)

Sec. 4.20. Acts repealed on January 1, 2010 and December 31, 2010.

(a) The following Acts are repealed on January 1, 2010:

The Auction License Act.

The Illinois Architecture Practice Act of 1989.

The Illinois Landscape Architecture Act of 1989.

The Illinois Professional Land Surveyor Act of 1989.

The Land Sales Registration Act of 1999.

The Orthotics, Prosthetics, and Pedorthics Practice

Act.

The Perfusionist Practice Act.

The Professional Engineering Practice Act of 1989.

~~The Real Estate License Act of 2000.~~

The Structural Engineering Practice Act of 1989.

(b) The following Act is repealed on December 31, 2010:

The Medical Practice Act of 1987.

(Source: P.A. 95-1018, eff. 12-18-08.)

(5 ILCS 80/4.30 new)

Sec. 4.30. Act repealed on January 1, 2020. The following Act is repealed on January 1, 2020:

The Real Estate License Act of 2000.

Section 10. The Illinois Municipal Code is amended by changing Sections 11-20-7, 11-20-8, 11-20-12, and 11-20-13 and by adding Sections 11-20-15, 11-20-15.1, and 11-31-1.01 as follows:

(65 ILCS 5/11-20-7) (from Ch. 24, par. 11-20-7)

Sec. 11-20-7. Cutting and removal of neglected weeds, grass, trees, and bushes.

(a) The corporate authorities of each municipality may

provide for the removal of nuisance greenery from any parcel of private property within the municipality if the owners of that parcel, after reasonable notice, refuse or neglect to remove the nuisance greenery. The municipality may collect, from the owners of that parcel, the reasonable removal cost.

(b) The municipality's removal cost under this Section is a lien upon the underlying parcel in accordance with Section 11-20-15.

(c) For the purpose of this Section:

"Removal of nuisance greenery" or "removal activities" means the cutting of weeds or grass, the trimming of trees or bushes, and the removal of nuisance bushes or trees.

"Removal cost" means the total cost of the removal activity.

(d) In the case of an abandoned residential property as defined in Section 11-20-15.1, the municipality may elect to obtain a lien for the removal cost pursuant to Section 11-20-15.1, in which case the provisions of Section 11-20-15.1 shall be the exclusive remedy for the removal cost.

The provisions of this subsection (d), other than this sentence, are inoperative upon certification by the Secretary of the Illinois Department of Financial and Professional Regulation, after consultation with the United States Department of Housing and Urban Development, that the Mortgage Electronic Registration System program is effectively registering substantially all mortgaged residential properties located in the State of Illinois, is available for access by all municipalities located in the State of Illinois without charge to them, and such registration includes the telephone number for the mortgage servicer.

(Source: P.A. 95-183, eff. 8-14-07; 96-462, eff. 8-14-09.)

(65 ILCS 5/11-20-8) (from Ch. 24, par. 11-20-8)

Sec. 11-20-8. Pest extermination; liens.

(a) The corporate authorities of each municipality may provide pest-control activities on any parcel of private property in the municipality if, after reasonable notice, the owners of that parcel refuse or neglect to prevent the ingress of pests to their property or to exterminate pests on their property. The municipality may collect, from the owners of the underlying parcel, the reasonable removal cost.

(b) The municipality's removal cost under this Section is a lien upon the underlying parcel in accordance with Section 11-20-15.

(c) For the purpose of this Section:

"Pests" means ~~mean~~ undesirable arthropods (including certain insects, spiders, mites, ticks, and related organisms), wood infesting organisms, rats, mice, and other obnoxious undesirable animals, but does not include a feral

cat, a "companion animal" as that term is defined in the Humane Care for Animals Act (510 ILCS 70/), "animals" as that term is defined in the Illinois Diseased Animals Act (510 ILCS 50/), or animals protected by the Wildlife Code (520 ILCS 5/).

"Pest-control activity" means the extermination of pests or the prevention of the ingress of pests.

"Removal cost" means the total cost of the pest-control activity.

(d) In the case of an abandoned residential property as defined in Section 11-20-15.1, the municipality may elect to obtain a lien for the removal cost pursuant to Section 11-20-15.1, in which case the provisions of Section 11-20-15.1 shall be the exclusive remedy for the removal cost.

The provisions of this subsection (d), other than this sentence, are inoperative upon certification by the Secretary of the Illinois Department of Financial and Professional Regulation, after consultation with the United States Department of Housing and Urban Development, that the Mortgage Electronic Registration System program is effectively registering substantially all mortgaged residential properties located in the State of Illinois, is available for access by all municipalities located in the State of Illinois without charge to them, and such registration includes the telephone number for the mortgage servicer.

(Source: P.A. 96-462, eff. 8-14-09.)

(65 ILCS 5/11-20-12) (from Ch. 24, par. 11-20-12)
Sec. 11-20-12. Removal of infected trees.

(a) The corporate authorities of each municipality may provide for the removal of elm trees infected with Dutch elm disease or ash trees infected with the emerald ash borer (*Agrilus planipennis* Fairmaire) from any parcel of private property within the municipality if the owners of that parcel, after reasonable notice, refuse or neglect to remove the infected trees. The municipality may collect, from the owners of the parcel, the reasonable removal cost.

(b) The municipality's removal cost under this Section is a lien upon the underlying parcel in accordance with Section 11-20-15.

(c) For the purpose of this Section, "removal cost" means the total cost of the removal of the infected trees.

(d) In the case of an abandoned residential property as defined in Section 11-20-15.1, the municipality may elect to obtain a lien for the removal cost pursuant to Section 11-20-15.1, in which case the provisions of Section 11-20-15.1 shall be the exclusive remedy for the removal cost.

The provisions of this subsection (d), other than this sentence, are inoperative upon certification by the Secretary of the Illinois Department of Financial and Professional

Regulation, after consultation with the United States Department of Housing and Urban Development, that the Mortgage Electronic Registration System program is effectively registering substantially all mortgaged residential properties located in the State of Illinois, is available for access by all municipalities located in the State of Illinois without charge to them, and such registration includes the telephone number for the mortgage servicer.

(Source: P.A. 95-183, eff. 8-14-07; 96-462, eff. 8-14-09.)

(65 ILCS 5/11-20-13) (from Ch. 24, par. 11-20-13)

Sec. 11-20-13. Removal of garbage, debris, and graffiti.

(a) The corporate authorities of each municipality may provide for the removal of garbage, debris, and graffiti from any parcel of private property within the municipality if the owner of that parcel, after reasonable notice, refuses or neglects to remove the garbage, debris, and graffiti. The municipality may collect, from the owner of the parcel, the reasonable removal cost.

(b) The municipality's removal cost under this Section is a lien upon the underlying parcel in accordance with Section 11-20-15.

(c) This amendatory Act of 1973 does not apply to any municipality which is a home rule unit.

(d) For the purpose of this Section, "removal cost" means the total cost of the removal of garbage and debris. The term "removal cost" does not include any cost associated with the removal of graffiti.

(e) In the case of an abandoned residential property as defined in Section 11-20-15.1, the municipality may elect to obtain a lien for the removal cost pursuant to Section 11-20-15.1, in which case the provisions of Section 11-20-15.1 shall be the exclusive remedy for the removal cost.

The provisions of this subsection (e), other than this sentence, are inoperative upon certification by the Secretary of the Illinois Department of Financial and Professional Regulation, after consultation with the United States Department of Housing and Urban Development, that the Mortgage Electronic Registration System program is effectively registering substantially all mortgaged residential properties located in the State of Illinois, is available for access by all municipalities located in the State of Illinois without charge to them, and such registration includes the telephone number for the mortgage servicer.

(Source: P.A. 96-462, eff. 8-14-09.)

(65 ILCS 5/11-20-15)

Sec. 11-20-15. Lien for removal costs.

(a) If the municipality incurs a removal cost under Section

11-20-7, 11-20-8, 11-20-12, or 11-20-13 with respect to any underlying parcel, then that cost is a lien upon that underlying parcel. This lien is superior to all other liens and encumbrances, except tax liens and as otherwise provided in subsection (c) of this Section.

(b) To perfect a lien under this Section, the municipality must, within one year after the removal cost is incurred, file notice of lien in the office of the recorder in the county in which the underlying parcel is located or, if the underlying parcel is registered under the Torrens system, in the office of the Registrar of Titles of that county. The notice must consist of a sworn statement setting out:

- (1) a description of the underlying parcel that sufficiently identifies the parcel;
- (2) the amount of the removal cost; and
- (3) the date or dates when the removal cost was incurred by the municipality.

If, for any one parcel, the municipality engaged in any removal activity on more than one occasion during the course of one year, then the municipality may combine any or all of the costs of each of those activities into a single notice of lien.

(c) A lien under this Section is not valid as to: (i) any purchaser whose rights in and to the underlying parcel arose after the removal activity but before the filing of the notice of lien; or (ii) any mortgagee, judgment creditor, or other lienor whose rights in and to the underlying parcel arose before the filing of the notice of lien.

(d) The removal cost is not a lien on the underlying parcel unless a notice is personally served on, or sent by certified mail to, the person to whom was sent the tax bill for the general taxes on the property for the taxable year immediately preceding the removal activities. The notice must be delivered or sent after the removal activities have been performed, and it must: (i) state the substance of this Section and the substance of any ordinance of the municipality implementing this Section; (ii) identify the underlying parcel, by common description; and (iii) describe the removal activity.

(e) A lien under this Section may be enforced by proceedings to foreclose as in case of mortgages or mechanics' liens. An action to foreclose a lien under this Section must be commenced within 2 years after the date of filing notice of lien.

(f) Any person who performs a removal activity by the authority of the municipality may, in his or her own name, file a lien and foreclose on that lien in the same manner as a municipality under this Section.

(g) A failure to file a foreclosure action does not, in any way, affect the validity of the lien against the underlying parcel.

(h) Upon payment of the lien cost by the owner of the underlying parcel after notice of lien has been filed, the municipality (or its agent under subsection (f)) shall release the lien, and the release may be filed of record by the owner at his or her sole expense as in the case of filing notice of lien.

(i) For the purposes of this Section:

"Lien cost" means the removal cost and the filing costs for any notice of lien under subsection (b).

"Removal activity" means any activity for which a removal cost was incurred.

"Removal cost" means a removal cost as defined under Section 11-20-7, 11-20-8, 11-20-12, or 11-20-13.

"Underlying parcel" means a parcel of private property upon which a removal activity was performed.

"Year" means a 365-day period.

(j) This Section applies only to liens filed after August 14, 2009 (the effective date of Public Act 96-462) ~~this amendatory Act of the 96th General Assembly.~~

(k) This Section shall not apply to a lien filed pursuant to Section 11-20-15.1.

(Source: P.A. 96-462, eff. 8-14-09; revised 10-7-09.)

(65 ILCS 5/11-20-15.1 new)

Sec. 11-20-15.1. Lien for costs of removal, securing, and enclosing on abandoned residential property.

(a) If the municipality elects to incur a removal cost pursuant to subsection (d) of Section 11-20-7, subsection (d) of Section 11-20-8, subsection (d) of Section 11-20-12, or subsection (e) of Section 11-20-13, or a securing or enclosing cost pursuant to Section 11-31-1.01 with respect to an abandoned residential property, then that cost is a lien upon the underlying parcel of that abandoned residential property. This lien is superior to all other liens and encumbrances, except tax liens and as otherwise provided in this Section.

(b) To perfect a lien under this Section, the municipality must, within one year after the cost is incurred for the activity, file notice of the lien in the office of the recorder in the county in which the abandoned residential property is located or, if the abandoned residential property is registered under the Torrens system, in the office of the Registrar of Titles of that county, a sworn statement setting out:

- (1) a description of the abandoned residential property that sufficiently identifies the parcel;
- (2) the amount of the cost of the activity;
- (3) the date or dates when the cost for the activity was incurred by the municipality; and
- (4) a statement that the lien has been filed pursuant to subsection (d) of Section 11-20-7, subsection (d) of

Section 11-20-8, subsection (d) of Section 11-20-12, subsection (e) of Section 11-20-13, or Section 11-31-1.01, as applicable.

If, for any abandoned residential property, the municipality engaged in any activity on more than one occasion during the course of one year, then the municipality may combine any or all of the costs of each of those activities into a single notice of lien.

(c) To enforce a lien pursuant to this Section, the municipality must maintain contemporaneous records that include, at a minimum: (i) a dated statement of finding by the municipality that the property for which the work is to be performed has become abandoned residential property, which shall include (1) the date when the property was first known or observed to be unoccupied by any lawful occupant or occupants, (2) a description of the actions taken by the municipality to contact the legal owner or owners of the property identified on the recorded mortgage, or, if known, any agent of the owner or owners, including the dates such actions were taken, and (3) a statement that no contacts were made with the legal owner or owners or their agents as a result of such actions, (ii) a dated certification by an authorized official of the municipality of the necessity and specific nature of the work to be performed, (iii) a copy of the agreement with the person or entity performing the work that includes the legal name of the person or entity, the rate or rates to be charged for performing the work, and an estimate of the total cost of the work to be performed, (iv) detailed invoices and payment vouchers for all payments made by the municipality for such work, and (v) a statement as to whether the work was engaged through a competitive bidding process, and if so, a copy of all proposals submitted by the bidders for such work.

(d) A lien under this Section shall be enforceable exclusively at the hearing for confirmation of sale of the abandoned residential property that is held pursuant to subsection (b) of Section 15-1508 of the Code of Civil Procedure and shall be limited to a claim of interest in the proceeds of the sale and subject to the requirements of this Section. Any mortgagee who holds a mortgage on the property, or any beneficiary or trustee who holds a deed of trust on the property, may contest the lien or the amount of the lien at any time during the foreclosure proceeding upon motion and notice in accordance with court rules applicable to motions generally. Grounds for forfeiture of the lien or the superior status of the lien granted by subsection (a) of this Section shall include, but not be limited to, a finding by the court that: (i) the municipality has not complied with subsection (b) or (c) of this Section, (ii) the scope of the work was not reasonable under the circumstances, (iii) the work exceeded the

authorization for the work to be performed under subsection (a) of Section 11-20-7, subsection (a) of Section 11-20-8, subsection (a) of Section 11-20-12, subsection (a) of Section 11-20-13, or subsection (a) of Section 11-31-1.01, as applicable, or (iv) the cost of the services rendered or materials provided was not commercially reasonable. Forfeiture of the superior status of the lien otherwise granted by this Section shall not constitute a forfeiture of the lien as a subordinate lien.

(e) Upon payment of the amount of a lien filed under this Section by the mortgagee, servicer, owner, or any other person, the municipality shall release the lien, and the release may be filed of record by the person making such payment at the person's sole expense as in the case of filing notice of lien.

(f) Notwithstanding any other provision of this Section, a municipality may not file a lien pursuant to this Section for activities performed pursuant to Section 11-20-7, Section 11-20-8, Section 11-20-12, Section 11-20-13, or Section 11-31-1.01, if: (i) the mortgagee or servicer of the abandoned residential property has provided notice to the municipality that the mortgagee or servicer has performed or will perform the remedial actions specified in the notice that the municipality otherwise might perform pursuant to subsection (d) of Section 11-20-7, subsection (d) of Section 11-20-8, subsection (d) of Section 11-20-12, subsection (e) of Section 11-20-13, or Section 11-31-1.01, provided that the remedial actions specified in the notice have been performed or are performed or initiated in good faith within 30 days of such notice; or (ii) the municipality has provided notice to the mortgagee or servicer of a problem with the property requiring the remedial actions specified in the notice that the municipality otherwise would perform pursuant to subsection (d) of Section 11-20-7, subsection (d) of Section 11-20-8, subsection (d) of Section 11-20-12, subsection (e) of Section 11-20-13, or Section 11-31-1.01, and the mortgagee or servicer has performed or performs or initiates in good faith the remedial actions specified in the notice within 30 days of such notice.

(g) This Section and subsection (d) of Section 11-20-7, subsection (d) of Section 11-20-8, subsection (d) of Section 11-20-12, subsection (e) of Section 11-20-13, or Section 11-31-1.01 shall apply only to activities performed, costs incurred, and liens filed after the effective date of this amendatory Act of the 96th General Assembly.

(h) For the purposes of this Section and subsection (d) of Section 11-20-7, subsection (d) of Section 11-20-8, subsection (d) of Section 11-20-12, subsection (e) of Section 11-20-13, or Section 11-31-1.01:

"Abandoned residential property" means any type of

permanent residential dwelling unit, including detached single family structures, and townhouses, condominium units and multifamily rental apartments covering the entire property, and manufactured homes treated under Illinois law as real estate and not as personal property, that has been unoccupied by any lawful occupant or occupants for at least 90 days, and for which after such 90 day period, the municipality has made good faith efforts to contact the legal owner or owners of the property identified on the recorded mortgage, or, if known, any agent of the owner or owners, and no contact has been made. A property for which the municipality has been given notice of the order of confirmation of sale pursuant to subsection (b-10) of Section 15-1508 of the Code of Civil Procedure shall not be deemed to be an abandoned residential property for the purposes of subsection (d) of Section 11-20-7, subsection (d) of Section 11-20-8, subsection (d) of Section 11-20-12, subsection (e) of Section 11-20-13, and Section 11-31-1.01 of this Code.

"MERS program" means the nationwide Mortgage Electronic Registration System approved by Fannie Mae, Freddie Mac, and Ginnie Mae that has been created by the mortgage banking industry with the mission of registering every mortgage loan in the United States to lawfully make information concerning each residential mortgage loan and the property securing it available by Internet access to mortgage originators, servicers, warehouse lenders, wholesale lenders, retail lenders, document custodians, settlement agents, title companies, insurers, investors, county recorders, units of local government, and consumers.

(i) Any entity or person who performs a removal, securing, or enclosing activity pursuant to the authority of a municipality under subsection (d) of Section 11-20-7, subsection (d) of Section 11-20-8, subsection (d) of Section 11-20-12, subsection (e) of Section 11-20-13, or Section 11-31-1.01, may, in its, his, or her own name, file a lien pursuant to subsection (b) of this Section and appear in a foreclosure action on that lien pursuant to subsection (d) of this Section in the place of the municipality, provided that the municipality shall remain subject to subsection (c) of this Section, and such party shall be subject to all of the provisions in this Section as if such party were the municipality.

(j) If prior to subsection (d) of Section 11-20-7, subsection (d) of Section 11-20-8, subsection (d) of Section 11-20-12, and subsection (e) of Section 11-20-13 becoming inoperative a lien is filed pursuant to any of those subsections, then the lien shall remain in full force and effect after the subsections have become inoperative, subject to all of the provisions of this Section. If prior to the repeal of Section 11-31-1.01 a lien is filed pursuant to

Section 11-31-1.01, then the lien shall remain in full force and effect after the repeal of Section 11-31-1.01, subject to all of the provisions of this Section.

(65 ILCS 5/11-31-1.01 new)

Sec. 11-31-1.01. Securing or enclosing abandoned residential property.

(a) In the case of securing or enclosing an abandoned residential property as defined in Section 11-20-15.1, the municipality may elect to secure or enclose the exterior of a building or the underlying parcel on which it is located under this Section without application to the circuit court, in which case the provisions of Section 11-20-15.1 shall be the exclusive remedy for the recovery of the costs of such activity.

(b) For the purposes of this Section:

(1) "Secure" or "securing" means boarding up, closing off, or locking windows or entrances or otherwise making the interior of a building inaccessible to the general public; and

(2) "Enclose" or "enclosing" means surrounding part or all of the abandoned residential property's underlying parcel with a fence or wall or otherwise making part or all of the abandoned residential property's underlying parcel inaccessible to the general public.

(c) This Section is repealed upon certification by the Secretary of the Illinois Department of Financial and Professional Regulation, after consultation with the United States Department of Housing and Urban Development, that the Mortgage Electronic Registration System program is effectively registering substantially all mortgaged residential properties located in the State of Illinois, is available for access by all municipalities located in the State of Illinois without charge to them, and such registration includes the telephone number for the mortgage servicer.

Section 15. The Illinois Banking Act is amended by changing Section 5c as follows:

(205 ILCS 5/5c) (from Ch. 17, par. 312.2)

Sec. 5c. Ownership of a bankers' bank. A bank may acquire shares of stock of a bank or holding company which owns or controls such bank if the stock of such bank or company is owned exclusively (except to the extent directors' qualifying shares are required by law) by depository institutions or depository institution holding companies and such bank or company and all subsidiaries thereof are engaged exclusively in providing services to or for other financial institutions,

their holding companies, and the officers, directors, and employees of such institutions and companies, and in providing services at the request of other financial institutions or their holding companies (also referred to as a "bankers' bank"). The bank may also provide products and services to its officers, directors, and employees. In no event shall the total amount of such stock held by a bank in such bank or holding company exceed 10 percent of its capital and surplus (including undivided profits) and in no event shall a bank acquire more than 15 ~~5~~ percent of any class of voting securities of such bank or company.

(Source: P.A. 95-924, eff. 8-26-08.)

Section 20. The Real Estate License Act of 2000 is amended by changing Sections 1-10, 5-5, 5-10, 5-15, 5-20, 5-25, 5-35, 5-40, 5-45, 5-50, 5-60, 5-65, 5-70, 5-80, 5-85, 10-15, 10-30, 15-15, 15-35, 15-45, 15-65, 20-5, 20-10, 20-20, 20-25, 20-50, 20-55, 20-60, 20-65, 20-75, 20-85, 20-90, 20-95, 20-100, 20-110, 20-115, 25-5, 25-10, 25-13, 25-14, 25-15, 25-20, 25-25, 25-30, 25-35, 25-37, 30-5, 30-10, 30-15, 30-20, and 30-25 and by adding Sections 5-6, 5-7, 5-26, 5-27, 5-28, 5-41, 5-46, 5-47, 10-35, 10-40, 20-21, 20-22, 20-62, 20-63, 20-64, 20-66, 20-67, 20-68, 20-69, 20-72, 20-73, 20-82, and 25-21 as follows:

(225 ILCS 454/1-10)

(Section scheduled to be repealed on January 1, 2010)

Sec. 1-10. Definitions. In this Act, unless the context otherwise requires:

"Act" means the Real Estate License Act of 2000.

"Address of Record" means the designated address recorded by the Department in the applicant's or licensee's application file or license file as maintained by the Department's licensure maintenance unit. It is the duty of the applicant or licensee to inform the Department of any change of address, and those changes must be made either through the Department's website or by contacting the Department.

"Advisory Council" means the Real Estate Education Advisory Council created under Section 30-10 of this Act.

"Agency" means a relationship in which a real estate broker or licensee, whether directly or through an affiliated licensee, represents a consumer by the consumer's consent, whether express or implied, in a real property transaction.

"Applicant" means any person, as defined in this Section, who applies to the Department ~~OPRE~~ for a valid license as a real estate broker, real estate salesperson, or leasing agent.

"Blind advertisement" means any real estate advertisement that does not include the sponsoring broker's business name and that is used by any licensee regarding the sale or lease of real estate, including his or her own, licensed activities, or

the hiring of any licensee under this Act. The broker's business name in the case of a franchise shall include the franchise affiliation as well as the name of the individual firm.

"Board" means the Real Estate Administration and Disciplinary Board of the Department as created by Section 25-10 of this Act ~~OERE~~.

"Branch office" means a sponsoring broker's office other than the sponsoring broker's principal office.

"Broker" means an individual, partnership, limited liability company, corporation, or registered limited liability partnership other than a real estate salesperson or leasing agent who, whether in person or through any media or technology, for another and for compensation, or with the intention or expectation of receiving compensation, either directly or indirectly:

(1) Sells, exchanges, purchases, rents, or leases real estate.

(2) Offers to sell, exchange, purchase, rent, or lease real estate.

(3) Negotiates, offers, attempts, or agrees to negotiate the sale, exchange, purchase, rental, or leasing of real estate.

(4) Lists, offers, attempts, or agrees to list real estate for sale, lease, or exchange.

(5) Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or improvements thereon.

(6) Supervises the collection, offer, attempt, or agreement to collect rent for the use of real estate.

(7) Advertises or represents himself or herself as being engaged in the business of buying, selling, exchanging, renting, or leasing real estate.

(8) Assists or directs in procuring or referring of leads or prospects, intended to result in the sale, exchange, lease, or rental of real estate.

(9) Assists or directs in the negotiation of any transaction intended to result in the sale, exchange, lease, or rental of real estate.

(10) Opens real estate to the public for marketing purposes.

(11) Sells, leases, or offers for sale or lease real estate at auction.

"Brokerage agreement" means a written or oral agreement between a sponsoring broker and a consumer for licensed activities to be provided to a consumer 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 broker and the broker's client depending upon the content of the brokerage agreement. All exclusive brokerage agreements shall be in writing.

"Client" means a person who is being represented by a licensee.

~~"Commissioner" means the Commissioner of Banks and Real Estate or a person authorized by the Commissioner, the Office of Banks and Real Estate Act, or this Act to act in the Commissioner's stead.~~

"Compensation" means the valuable consideration given by one person or entity to another person or entity in exchange for the performance of some activity or service. Compensation shall include the transfer of valuable consideration, including without limitation the following:

- (1) commissions;
- (2) referral fees;
- (3) bonuses;
- (4) prizes;
- (5) merchandise;
- (6) finder fees;
- (7) performance of services;
- (8) coupons or gift certificates;
- (9) discounts;
- (10) rebates;
- (11) a chance to win a raffle, drawing, lottery, or similar game of chance not prohibited by any other law or statute;
- (12) retainer fee; or
- (13) salary.

"Confidential information" means information obtained by a licensee from a client during the term of a brokerage agreement that (i) was made confidential by the written request or written instruction of the client, (ii) deals with the negotiating position of the client, or (iii) is information the disclosure of which could materially harm the negotiating position of the client, unless at any time:

- (1) the client permits the disclosure of information given by that client by word or conduct;
- (2) the disclosure is required by law; or
- (3) the information becomes public from a source other than the licensee.

"Confidential information" shall not be considered to include material information about the physical condition of the property.

"Consumer" means a person or entity seeking or receiving licensed activities.

"Continuing education school" means any person licensed by

the Department ~~OBRE~~ as a school for continuing education in accordance with Section 30-15 of this Act.

"Coordinator" means the Coordinator of Real Estate created in Section 25-15 of this Act.

"Credit hour" means 50 minutes of classroom instruction in course work that meets the requirements set forth in rules adopted by the Department OBRE.

"Customer" means a consumer who is not being represented by the licensee but for whom the licensee is performing ministerial acts.

"Department" means the Department of Financial and Professional Regulation.

"Designated agency" means a contractual relationship between a sponsoring broker and a client under Section 15-50 of this Act in which one or more licensees associated with or employed by the broker are designated as agent of the client.

"Designated agent" means a sponsored licensee named by a sponsoring broker as the legal agent of a client, as provided for in Section 15-50 of this Act.

~~"Director" means the Director of the Real Estate Division, OBRE.~~

"Dual agency" means an agency relationship in which a licensee is representing both buyer and seller or both landlord and tenant in the same transaction. When the agency relationship is a designated agency, the question of whether there is a dual agency shall be determined by the agency relationships of the designated agent of the parties and not of the sponsoring broker.

"Employee" or other derivative of the word "employee", when used to refer to, describe, or delineate the relationship between a real estate broker and a real estate salesperson, another real estate broker, or a leasing agent, shall be construed to include an independent contractor relationship, provided that a written agreement exists that clearly establishes and states the relationship. All responsibilities of a broker shall remain.

"Escrow moneys" means all moneys, promissory notes or any other type or manner of legal tender or financial consideration deposited with any person for the benefit of the parties to the transaction. A transaction exists once an agreement has been reached and an accepted real estate contract signed or lease agreed to by the parties. Escrow moneys includes without limitation earnest moneys and security deposits, except those security deposits in which the person holding the security deposit is also the sole owner of the property being leased and for which the security deposit is being held.

"Exclusive brokerage agreement" means a written brokerage agreement that provides that the sponsoring broker has the sole right, through one or more sponsored licensees, to act as the

exclusive designated agent or representative of the client and that meets the requirements of Section 15-75 of this Act.

"Inoperative" means a status of licensure where the licensee holds a current license under this Act, but the licensee is prohibited from engaging in licensed activities because the licensee is unsponsored or the license of the sponsoring broker with whom the licensee is associated or by whom he or she is employed is currently expired, revoked, suspended, or otherwise rendered invalid under this Act.

"Leads" means the name or names of a potential buyer, seller, lessor, lessee, or client of a licensee.

"Leasing Agent" means a person who is employed by a real estate broker to engage in licensed activities limited to leasing residential real estate who has obtained a license as provided for in Section 5-5 of this Act.

"License" means the document issued by the Department ~~OBRE~~ certifying that the person named thereon has fulfilled all requirements prerequisite to licensure under this Act.

"Licensed activities" means those activities listed in the definition of "broker" under this Section.

"Licensee" means any person, as defined in this Section, who holds a valid unexpired license as a real estate broker, real estate salesperson, or leasing agent.

"Listing presentation" means a communication between a real estate broker or salesperson and a consumer in which the licensee is attempting to secure a brokerage agreement with the consumer to market the consumer's real estate for sale or lease.

"Managing broker" means a broker who has supervisory responsibilities for licensees in one or, in the case of a multi-office company, more than one office and who has been appointed as such by the sponsoring broker.

"Medium of advertising" means any method of communication intended to influence the general public to use or purchase a particular good or service or real estate.

"Ministerial acts" means those acts that a licensee may perform for a consumer that are informative or clerical in nature and do not rise to the level of active representation on behalf of a consumer. Examples of these acts include without limitation (i) responding to phone inquiries by consumers as to the availability and pricing of brokerage services, (ii) responding to phone inquiries from a consumer concerning the price or location of property, (iii) attending an open house and responding to questions about the property from a consumer, (iv) setting an appointment to view property, (v) responding to questions of consumers walking into a licensee's office concerning brokerage services offered or particular properties, (vi) accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property,

(vii) describing a property or the property's condition in response to a consumer's inquiry, (viii) completing business or factual information for a consumer on an offer or contract to purchase on behalf of a client, (ix) showing a client through a property being sold by an owner on his or her own behalf, or (x) referral to another broker or service provider.

~~"OBRE" means the Office of Banks and Real Estate.~~

"Office" means a real estate broker's place of business where the general public is invited to transact business and where records may be maintained and licenses displayed, whether or not it is the broker's principal place of business.

"Person" means and includes individuals, entities, corporations, limited liability companies, registered limited liability partnerships, and partnerships, foreign or domestic, except that when the context otherwise requires, the term may refer to a single individual or other described entity.

"Personal assistant" means a licensed or unlicensed person who has been hired for the purpose of aiding or assisting a sponsored licensee in the performance of the sponsored licensee's job.

"Pocket card" means the card issued by the Department ~~OBRE~~ to signify that the person named on the card is currently licensed under this Act.

"Pre-license school" means a school licensed by the Department ~~OBRE~~ offering courses in subjects related to real estate transactions, including the subjects upon which an applicant is examined in determining fitness to receive a license.

"Pre-renewal period" means the period between the date of issue of a currently valid license and the license's expiration date.

"Proctor" means any person, including, but not limited to, an instructor, who has a written agreement to administer examinations fairly and impartially with a licensed pre-license school or a licensed continuing education school.

"Real estate" means and includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or non-freehold, including timeshare interests, and whether the real estate is situated in this State or elsewhere.

"Regular employee" means a person working an average of 20 hours per week for a person or entity who would be considered as an employee under the Internal Revenue Service eleven main tests in three categories being behavioral control, financial control and the type of relationship of the parties, formerly the twenty factor test.

~~"Real Estate Administration and Disciplinary Board" or "Board" means the Real Estate Administration and Disciplinary Board created by Section 25-10 of this Act.~~

"Salesperson" means any individual, other than a real estate broker or leasing agent, who is employed by a real estate broker or is associated by written agreement with a real estate broker as an independent contractor and participates in any activity described in the definition of "broker" under this Section.

"Secretary" means the Secretary of the Department of Financial and Professional Regulation, or a person authorized by the Secretary to act in the Secretary's stead.

"Sponsoring broker" means the broker who has issued a sponsor card to a licensed salesperson, another licensed broker, or a leasing agent.

"Sponsor card" means the temporary permit issued by the sponsoring real estate broker certifying that the real estate broker, real estate salesperson, or leasing agent named thereon is employed by or associated by written agreement with the sponsoring real estate broker, as provided for in Section 5-40 of this Act.

(Source: P.A. 92-217, eff. 8-2-01; 93-957, eff. 8-19-04.)

(225 ILCS 454/5-5)

(Section scheduled to be repealed on January 1, 2010)

Sec. 5-5. Leasing agent license.

(a) The purpose of this Section is to provide for a limited scope license to enable persons who wish to engage in activities limited to the leasing of residential real property for which a license is required under this Act, and only those activities, to do so by obtaining the license provided for under this Section.

(b) Notwithstanding the other provisions of this Act, there is hereby created a leasing agent license that shall enable the licensee to engage only in residential leasing activities for which a license is required under this Act. Such activities include without limitation leasing or renting residential real property, or 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. Nothing in this Section shall be construed to require a licensed real estate broker or salesperson to obtain a leasing agent license in order to perform leasing activities for which a license is required under this Act. Licensed leasing agents must be sponsored and employed by a sponsoring broker.

(c) The Department ~~OPRE~~, by rule, ~~with the advice of the Board~~, shall provide for the licensing of leasing agents, including the issuance, renewal, and administration of licenses.

(d) Notwithstanding any other provisions of this Act to the contrary, a person may engage in residential leasing activities

for which a license is required under this Act, 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 broker and the broker has notified the Department ~~OBRE~~ that the person is pursuing licensure under this Section. During the 120 day period all requirements of Sections 5-10 and 5-65 of this Act with respect to education, successful completion of an examination, and the payment of all required fees must be satisfied. The Department ~~OBRE~~ may adopt rules to ensure that the provisions of this subsection are not used in a manner that enables an unlicensed person to repeatedly or continually engage in activities for which a license is required under this Act.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/5-6 new)

Sec. 5-6. Social Security Number or Tax Identification Number on license application. In addition to any other information required to be contained in the application, every application for an original or renewal license under this Act shall include the applicant's Social Security Number or Tax Identification Number.

(225 ILCS 454/5-7 new)

Sec. 5-7. Application for leasing agent license. Every person who desires to obtain a leasing agent license shall apply to the Department in writing on forms provided by the Department which application shall be accompanied by the required non-refundable fee. Any such application shall require such information as in the judgment of the Department will enable the Department to pass on the qualifications of the applicant for licensure.

(225 ILCS 454/5-10)

(Section scheduled to be repealed on January 1, 2010)

Sec. 5-10. Requirements for license as leasing agent. Application for leasing agent license.

(a) Every applicant for licensure as a leasing agent must meet the following qualifications:

(1) Every person who desires to obtain a leasing agent license shall apply to OBRE in writing on forms provided by OBRE. In addition to any other information required to be contained in the application, every application for an original or renewed leasing agent license shall include the applicant's Social Security number. All application or license fees must accompany the application. Each applicant must be at least 18 years of age;

(2) ~~r~~ must be of good moral character; ~~r~~ shall have

(3) successfully complete ~~completed~~ a 4-year course of study in a high school or secondary school or an equivalent course of study approved by the Illinois State Board of Education; ~~and shall successfully complete~~

(4) personally take and pass a written examination authorized by the Department ~~OBRE~~ sufficient to demonstrate the applicant's knowledge of the provisions of this Act relating to leasing agents and the applicant's competence to engage in the activities of a licensed leasing agent; ~~Applicants must successfully complete~~

(5) provide satisfactory evidence of having completed 15 hours of instruction in an approved course of study relating to the leasing of residential real property. The course of study shall, among other topics, cover the provisions of this Act applicable to leasing agents; fair housing issues relating to residential leasing; advertising and marketing issues; leases, applications, and credit reports; owner-tenant relationships and owner-tenant laws; the handling of funds; and environmental issues relating to residential real property; ~~and~~

(6) complete any other requirements as set forth by rule; and

(7) present a valid application for issuance of an initial license accompanied by a sponsor card and the fees specified by rule.

(b) No applicant shall engage in any of the activities covered by this Act until a valid sponsor card has been issued to such applicant. The sponsor card shall be valid for a maximum period of 45 days after the date of issuance unless extended for good cause as provided by rule.

(c) Successfully completed course work, completed pursuant to the requirements of this Section, may be applied to the course work requirements to obtain a real estate broker's or salesperson's license as provided by rule. The Advisory Council may ~~shall~~ recommend through the Board to the Department ~~OBRE~~ and the Department may ~~OBRE shall~~ adopt requirements for approved courses, course content, and the approval of courses, instructors, and schools, as well as school and instructor fees. The Department ~~OBRE~~ may establish continuing education requirements for licensed leasing agents, by rule, with the advice of the Advisory Council and Board.

(Source: P.A. 91-245, eff. 12-31-99.)

(Section scheduled to be repealed on January 1, 2010)

Sec. 5-15. Necessity of managing broker, broker, salesperson, or leasing agent license or sponsor card; ownership restrictions.

(a) It is unlawful for any person, corporation, limited liability company, registered limited liability partnership, or partnership to act as a managing broker, real estate broker, real estate salesperson, or leasing agent or to advertise or assume to act as such broker, salesperson, or leasing agent without a properly issued sponsor card or a license issued under this Act by the Department ~~OBPE~~, either directly or through its authorized designee.

(b) No corporation shall be granted a license or engage in the business or capacity, either directly or indirectly, of a real estate broker, unless every officer of the corporation who actively participates in the real estate activities of the corporation holds a license as a managing broker or real estate broker and unless every employee who acts as a salesperson, or leasing agent for the corporation holds a license as a ~~real estate~~ broker, salesperson, or leasing agent.

(c) No partnership shall be granted a license or engage in the business or serve in the capacity, either directly or indirectly, of a real estate broker, unless every general partner in the partnership holds a license as a managing broker or real estate broker and unless every employee who acts as a salesperson or leasing agent for the partnership holds a license as a ~~real estate~~ broker, salesperson, or leasing agent. In the case of a registered limited liability partnership (LLP), every partner in the LLP must hold a license as a managing broker or real estate broker and every employee who acts as a salesperson or leasing agent must hold a license as a ~~real estate~~ broker, salesperson, or leasing agent.

(d) No limited liability company shall be granted a license or engage in the business or serve in the capacity, either directly or indirectly, of a ~~real estate~~ broker unless every manager in the limited liability company or every member in a member managed limited liability company holds a license as a managing broker or real estate broker and unless every other member and employee who acts as a salesperson or leasing agent for the limited liability company holds a license as a ~~real estate~~ broker, salesperson, or leasing agent.

(e) No partnership, limited liability company, or corporation shall be licensed to conduct a brokerage business where an individual salesperson or leasing agent, or group of salespersons or leasing agents, owns or directly or indirectly controls more than 49% of the shares of stock or other ownership in the partnership, limited liability company, or corporation.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/5-20)

(Section scheduled to be repealed on January 1, 2010)

Sec. 5-20. Exemptions from broker, salesperson, or leasing agent license requirement. The requirement for holding a license under this Article 5 shall not apply to:

(1) Any person, partnership, or corporation that as owner or lessor performs any of the acts described in the definition of "broker" under Section 1-10 of this Act with reference to property owned or leased by it, or to the regular employees thereof with respect to the property so owned or leased, where such acts are performed in the regular course of or as an incident to the management, sale, or other disposition of such property and the investment therein, provided that such regular employees do not perform any of the acts described in the definition of "broker" under Section 1-10 of this Act in connection with a vocation of selling or leasing any real estate or the improvements thereon not so owned or leased.

(2) An attorney in fact acting under a duly executed and recorded power of attorney to convey real estate from the owner or lessor or the services rendered by an attorney at law in the performance of the attorney's duty as an attorney at law.

(3) 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 testamentary trust.

(4) Any person acting as a resident manager for the owner or any employee acting as the resident manager for a broker managing an apartment building, duplex, or apartment complex, when the resident manager resides on the premises, the premises is his or her primary residence, and the resident manager is engaged in the leasing of the property of which he or she is the resident manager.

(5) Any officer or employee of a federal agency in the conduct of official duties.

(6) Any officer or employee of the State government or any political subdivision thereof performing official duties.

(7) Any multiple listing service or other similar information exchange that is engaged in the collection and dissemination of information concerning real estate available

for sale, purchase, lease, or exchange for the purpose of providing licensees with a system by which licensees may cooperatively share information along with which no other licensed activities, as defined in Section 1-10 of this Act, are provided.

(8) Railroads and other public utilities regulated by the State of Illinois, or the officers or full time employees thereof, unless the performance of any licensed activities is in connection with the sale, purchase, lease, or other disposition of real estate or investment therein not needing the approval of the appropriate State regulatory authority.

(9) Any medium of advertising in the routine course of selling or publishing advertising along with which no other licensed activities, as defined in Section 1-10 of this Act, are provided.

(10) 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 (i) refers no more than 3 prospective lessees in any 12-month period, (ii) receives compensation of no more than \$1,500 ~~\$1,000~~ or the equivalent of one month's rent, whichever is less, in any 12-month period, and (iii) 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.

(11) An exchange company registered under the Real Estate Timeshare Act of 1999 and the regular employees of that registered exchange company but only when conducting an exchange program as defined in that Act.

(12) An existing timeshare owner who, for compensation, refers prospective purchasers, but only if the existing timeshare owner (i) refers no more than 20 prospective purchasers in any calendar year, (ii) receives no more than \$1,000, or its equivalent, for referrals in any calendar year and (iii) limits his or her activities to referring prospective purchasers of timeshare interests to

the developer or the developer's employees or agents, and does not show, discuss terms or conditions of purchase or otherwise participate in negotiations with regard to timeshare interests.

(13) Any person who is licensed without examination under Section 10-25 (now repealed) of the Auction License Act is exempt from holding a broker's or salesperson's license under this Act for the limited purpose of selling or leasing real estate at auction, so long as:

(A) that person has made application for said exemption by July 1, 2000;

(B) that person verifies to the Department ~~OBRE~~ that he or she has sold real estate at auction for a period of 5 years prior to licensure as an auctioneer;

(C) the person has had no lapse in his or her license as an auctioneer; and

(D) the license issued under the Auction License Act has not been disciplined for violation of those provisions of Article 20 of the Auction License Act dealing with or related to the sale or lease of real estate at auction.

(14) 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.

(Source: P.A. 96-328, eff. 8-11-09.)

(225 ILCS 454/5-25)

(Section scheduled to be repealed on January 1, 2010)

Sec. 5-25. Good moral character. ~~Application for and issuance of broker or salesperson license.~~

~~(a) Every person who desires to obtain a license shall make application to OBRE in writing upon forms prepared and furnished by OBRE. In addition to any other information required to be contained in the application, every application for an original or renewed license shall include the applicant's Social Security number. Each applicant shall be at least 21 years of age, be of good moral character, and have successfully completed a 4 year course of study in a high school or secondary school approved by the Illinois State Board of Education or an equivalent course of study as determined by an examination conducted by the Illinois State Board of~~

~~Education and shall be verified under oath by the applicant. The minimum age of 21 years shall be waived for any person seeking a license as a real estate salesperson who has attained the age of 18 and can provide evidence of the successful completion of at least 4 semesters of post secondary school study as a full time student or the equivalent, with major emphasis on real estate courses, in a school approved by OBERE.~~

~~(b) When an applicant has had his or her license revoked on a prior occasion or when an applicant is found to have committed any of the practices enumerated in Section 20-20 of this Act or when an applicant has been convicted of or enters a plea of guilty or nolo contendere to forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any other similar offense or offenses or has been convicted of a felony involving moral turpitude in any court of competent jurisdiction in this or any other state, district, or territory of the United States or of a foreign country, the Board may consider the prior revocation, conduct, or conviction in its determination of the applicant's moral character and whether to grant the applicant a license. 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, and any other factors that the Board deems relevant. When an applicant has made a false statement of material fact on his or her application, the false statement may in itself be sufficient grounds to revoke or refuse to issue a license.~~

~~(c) Every valid application for issuance of an initial license shall be accompanied by a sponsor card and the fees specified by rule.~~

~~(d) No applicant shall engage in any of the activities covered by this Act until a valid sponsor card has been issued to such applicant. The sponsor card shall be valid for a maximum period of 45 days from the date of issuance unless extended for good cause as provided by rule.~~

~~(e) OBERE shall issue to each applicant entitled thereto a license in such form and size as shall be prescribed by OBERE. The procedure for terminating a license shall be printed on the reverse side of the license. Each license shall bear the name of the person so qualified, shall specify whether the person is qualified to act in a broker or salesperson capacity, and shall contain such other information as shall be recommended by the Board and approved by OBERE. Each person licensed under this Act shall display his or her license conspicuously in his or her place of business.~~

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/5-26 new)

Sec. 5-26. Requirements for license as a salesperson.

(a) Every applicant for licensure as a salesperson must meet the following qualifications:

(1) Be at least 21 years of age. The minimum age of 21 years shall be waived for any person seeking a license as a real estate salesperson who has attained the age of 18 and can provide evidence of the successful completion of at least 4 semesters of post-secondary school study as a full-time student or the equivalent, with major emphasis on real estate courses, in a school approved by the Department;

(2) Be of good moral character;

(3) Successfully complete a 4-year course of study in a high school or secondary school approved by the Illinois State Board of Education or an equivalent course of study as determined by an examination conducted by the Illinois State Board of Education, which shall be verified under oath by the applicant;

(4) Provide satisfactory evidence of having completed at least 45 hours of instruction in real estate courses approved by the Advisory Council, except applicants who are currently admitted to practice law by the Supreme Court of Illinois and are currently in active standing;

(5) Shall personally take and pass a written examination authorized by the Department; and

(6) Present a valid application for issuance of a license accompanied by a sponsor card and the fees specified by rule.

(b) No applicant shall engage in any of the activities covered by this Act until a valid sponsor card has been issued to the applicant. The sponsor card shall be valid for a maximum period of 45 days after the date of issuance unless extended for good cause as provided by rule.

(c) All licenses should be readily available to the public at their sponsoring place of business.

(d) No new salesperson licenses shall be issued after April 30, 2011 and all existing salesperson licenses shall terminate on May 1, 2012.

(225 ILCS 454/5-27 new)

Sec. 5-27. Requirements for licensure as a broker.

(a) Every applicant for licensure as a broker must meet the following qualifications:

(1) Be at least 21 years of age. After April 30, 2011,

the minimum age of 21 years shall be waived for any person seeking a license as a broker who has attained the age of 18 and can provide evidence of the successful completion of at least 4 semesters of post-secondary school study as a full-time student or the equivalent, with major emphasis on real estate courses, in a school approved by the Department;

(2) Be of good moral character;

(3) Successfully complete a 4-year course of study in a high school or secondary school approved by the Illinois State Board of Education or an equivalent course of study as determined by an examination conducted by the Illinois State Board of Education which shall be verified under oath by the applicant;

(4) Prior to May 1, 2011, provide (i) satisfactory evidence of having completed at least 120 classroom hours, 45 of which shall be those hours required to obtain a salesperson's license plus 15 hours in brokerage administration courses, in real estate courses approved by the Advisory Council or (ii) for applicants who currently hold a valid real estate salesperson's license, give satisfactory evidence of having completed at least 75 hours in real estate courses, not including the courses that are required to obtain a salesperson's license, approved by the Advisory Council;

(5) After April 30, 2011, provide satisfactory evidence of having completed 90 hours of instruction in real estate courses approved by the Advisory Council, 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;

(6) Personally take and pass a written examination authorized by the Department;

(7) Present a valid application for issuance of a license accompanied by a sponsor card and the fees specified by rule.

(b) The requirements specified in items (4) and (5) of subsection (a) of this Section do not apply to applicants who are currently admitted to practice law by the Supreme Court of Illinois and are currently in active standing.

(c) No applicant shall engage in any of the activities covered by this Act until a valid sponsor card has been issued

to such applicant. The sponsor card shall be valid for a maximum period of 45 days after the date of issuance unless extended for good cause as provided by rule.

(d) All licenses should be readily available to the public at their place of business.

(225 ILCS 454/5-28 new)

Sec. 5-28. Requirements for licensure as a managing broker.

(a) Effective May 1, 2012, every applicant for licensure as a managing broker must meet the following qualifications:

(1) be at least 21 years of age;

(2) be of good moral character;

(3) have been licensed at least 2 out of the preceding 3 years as a real estate broker or salesperson;

(4) successfully complete a 4-year course of study in high school or secondary school approved by the Illinois State Board of Education or an equivalent course of study as determined by an examination conducted by the Illinois State Board of Education, which shall be verified under oath by the applicant;

(5) provide satisfactory evidence of having completed at least 165 hours, 120 of which shall be those hours required pre and post-licensure to obtain a broker's license, and 45 additional hours completed within the year immediately preceding the filing of an application for a managing broker's license, which hours shall focus on brokerage administration and management and include at least 15 hours in the classroom or by other interactive delivery method presenting instructional and real time discussion between the instructor and the students;

(6) personally take and pass a written examination authorized by the Department; and

(7) present a valid application for issuance of a license accompanied by a sponsor card, an appointment as a managing broker, and the fees specified by rule.

(b) The requirements specified in item (5) of subsection (a) of this Section do not apply to applicants who are currently admitted to practice law by the Supreme Court of Illinois and are currently in active standing.

(c) No applicant shall act as a managing broker for more than 90 days after an appointment as a managing broker has been filed with the Department without obtaining a managing broker's license.

(225 ILCS 454/5-35)

(Section scheduled to be repealed on January 1, 2010)

Sec. 5-35. Examination; managing broker, broker, or
salesperson, or leasing agent.

(a) ~~The Department shall authorize Every person who makes application for an original license as a broker or salesperson shall personally take and pass a written examination authorized by OBRE and answer any questions that may be required to determine the good moral character of the applicant and the applicant's competency to transact the business of broker or salesperson, as the case may be, in such a manner as to safeguard the interests of the public. In determining this competency, OBRE shall require proof that the applicant has a good understanding and the knowledge to conduct real estate brokerage and of the provisions of this Act. The examination shall be prepared by an independent testing service designated by OBRE, subject to the approval of the examinations by the Board. The designated independent testing service shall conduct the examinations at such times and places as it may designate. The examination shall be of a character to give a fair test of the qualifications of the applicant to practice as a managing broker, broker, salesperson, or leasing agent. Applicants for examination as a managing broker, broker, salesperson, or leasing agent shall be required to pay, either to the Department or the designated testing service, a fee covering the cost of providing the examination. Failure to appear for the examination on the scheduled date, at the time and place specified, after the applicant's application for examination has been received and acknowledged by the Department or the designated testing service, shall result in the forfeiture of the examination fee. OBRE shall approve. In addition, every person who desires to take the written examination shall make application to do so to OBRE or to the designated independent testing service in writing upon forms approved by OBRE. An applicant shall be eligible to take the examination only after successfully completing the education requirements, set forth in Section 5-30 of this Act, and attaining the minimum age provided for specified in Article 5 of this Act. Each applicant shall be required to establish compliance with the eligibility requirements in the manner provided by the rules promulgated for the administration of this Act.~~

(b) If a person who has received a passing score on the written examination described in this Section fails to file an application and meet all requirements for a license under this Act within one year after receiving a passing score on the examination, credit for the examination shall terminate. The person thereafter may make a new application for examination.

(c) If an applicant has failed an examination 4 ~~3~~ times, the applicant must repeat the pre-license education required to sit for the examination. For the purposes of this Section, the

~~fifth~~ ~~fourth~~ attempt shall be the same as the first. Approved education, as prescribed by this Act for licensure as a salesperson or broker, shall be valid for ~~4~~ ~~3~~ years after the date of satisfactory completion of the education.

(d) The Department may employ consultants for the purposes of preparing and conducting examinations.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/5-40)

(Section scheduled to be repealed on January 1, 2010)

Sec. 5-40. Sponsor card; termination indicated by license endorsement; association with new broker.

(a) The sponsoring broker shall prepare upon forms provided by the Department ~~OBRE~~ and deliver to each licensee employed by or associated with the sponsoring broker a sponsor card certifying that the person whose name appears thereon is in fact employed by or associated with the sponsoring broker. The sponsoring broker shall send, ~~by certified mail, return receipt requested, or other delivery service requiring a signature upon delivery,~~ a duplicate of each sponsor card, along with a valid license or other authorization as provided by rule and the appropriate fee, to the Department ~~OBRE~~ within 24 hours of issuance of the sponsor card. It is a violation of this Act for any broker to issue a sponsor card to any licensee or applicant unless the licensee or applicant presents in hand a valid license or other authorization as provided by rule.

(b) When a licensee terminates his or her employment or association with a sponsoring broker or the employment is terminated by the sponsoring broker, the licensee shall obtain from the sponsoring broker his or her license endorsed by the sponsoring broker indicating the termination. The sponsoring broker shall surrender to the Department ~~OBRE~~ a copy of the license of the licensee within 2 days of the termination or shall notify the Department ~~OBRE~~ in writing of the termination and explain why a copy of the license is not surrendered. Failure of the sponsoring broker to surrender the license shall subject the sponsoring broker 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 inoperative immediately upon the termination unless the licensee accepts employment or becomes associated with a new sponsoring broker pursuant to subsection (c) of this Section.

(c) When a licensee accepts employment or association with a new sponsoring broker, the new sponsoring broker shall send to the Department, ~~by certified mail, return receipt requested, or other delivery service requiring a signature upon delivery,~~ ~~to~~ ~~OBRE~~ a duplicate sponsor card, along with the licensee's endorsed license or an affidavit of the licensee of why the endorsed license is not surrendered, and shall pay the

appropriate fee prescribed by rule to cover administrative expenses attendant to the changes in the registration of the licensee.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/5-41 new)

Sec. 5-41. Change of address. A licensee shall notify the Department of the address or addresses, and of every change of address, where the licensee practices as a leasing agent, salesperson, broker or managing broker.

(225 ILCS 454/5-45)

(Section scheduled to be repealed on January 1, 2010)

Sec. 5-45. Offices.

(a) If a sponsoring broker maintains more than one office within the State, the sponsoring broker shall apply for a branch office license for each office other than the sponsoring broker's principal place of business. The branch office license shall be displayed conspicuously in each branch office. The name of each branch office shall be the same as that of the sponsoring broker's principal office or shall clearly delineate the branch office's relationship with the principal office.

(b) The sponsoring broker shall name a managing broker for each branch office and the sponsoring broker shall be responsible for supervising all managing brokers. The sponsoring broker shall notify the Department ~~OBRE~~ in writing of the name of all managing brokers of the sponsoring broker and the office or offices they manage. Any person initially named as a managing broker after April 30, 2011 must either (i) be licensed as a managing broker or (ii) meet all the requirements to be licensed as a managing broker except the required education and examination and secure the managing broker's license within 90 days of being named as a managing broker. Any changes in managing brokers shall be reported to the Department ~~OBRE~~ in writing within 15 days of the change. Failure to do so shall subject the sponsoring broker to discipline under Section 20-20 of this Act.

(c) The sponsoring broker shall immediately notify the Department ~~OBRE~~ in writing of any opening, closing, or change in location of any principal or branch office.

(d) Except as provided in this Section, each sponsoring broker shall maintain a definite office, or place of business within this State for the transaction of real estate business, shall conspicuously display an identification sign on the outside of his or her office of adequate size and visibility, ~~and shall conspicuously display his or her license in his or her office or place of business and also the licenses of all persons associated with or employed by the sponsoring broker~~

~~who primarily work at that location.~~ The office or place of business shall not be located in any retail or financial business establishment unless it is separated from the other business by a separate and distinct area within the establishment. A broker who is licensed in this State by examination or pursuant to the provisions of Section 5-60 of this Act shall not be required to maintain a definite office or place of business in this State provided all of the following conditions are met:

(1) the broker maintains an active broker's license in the broker's state of domicile;

(2) the broker maintains an office in the broker's state of domicile; and

(3) the broker has filed with the Department ~~OBRE~~ written statements appointing the Secretary ~~Commissioner~~ to act as the broker's agent upon whom all judicial and other process or legal notices directed to the licensee may be served and agreeing to abide by all of the provisions of this Act with respect to his or her real estate activities within the State of Illinois and submitting to the jurisdiction of the Department ~~OBRE~~.

The statements under subdivision (3) of this Section shall be in form and substance the same as those statements required under Section 5-60 of this Act and shall operate to the same extent.

(e) Upon the loss of a managing broker who is not replaced by the sponsoring broker or in the event of the death or adjudicated disability of the sole proprietor of an office, a written request for authorization allowing the continued operation of the office may be submitted to the Department ~~OBRE~~ within 15 days of the loss. The Department ~~OBRE~~ may issue a written authorization allowing the continued operation, provided that a licensed broker, or in the case of the death or adjudicated disability of a sole proprietor, the representative of the estate, assumes responsibility, in writing, for the operation of the office and agrees to personally supervise the operation of the office. No such written authorization shall be valid for more than 60 days unless extended by the Department ~~OBRE~~ for good cause shown and upon written request by the broker or representative.
(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/5-46 new)

Sec. 5-46. Transition from salesperson's license to broker's license.

(a) No new salesperson licenses shall be issued by the Department after April 30, 2011 and existing salesperson

licenses shall end as of 11:59 p.m. on April 30, 2012. The following transition rules shall apply to individuals holding a salesperson's license as of April 30, 2011 and seeking to obtain a broker's license:

(1) provide evidence of having completed 30 hours of post-license education in courses approved by the Advisory Council and having passed a written examination approved by the Department and administered by a licensed pre-license school; or

(2) provide evidence of passing a Department-approved proficiency examination administered by a licensed pre-license school, which proficiency examination may only be taken one time by any one individual salesperson; and

(3) present a valid application for a broker's license no later than April 30, 2012 accompanied by a sponsor card and the fees specified by rule.

(b) The education requirements specified in clause (1) of subsection (a) of this Section do not apply to applicants who are currently admitted to practice law by the Supreme Court of Illinois and are currently in active standing.

(c) No applicant may engage in any of the activities covered by this Act until a valid sponsor card has been issued to such applicant. The sponsor card shall be valid for a maximum period of 45 days after the date of issuance unless extended for good cause as provided by rule.

(225 ILCS 454/5-47 new)

Sec. 5-47. Transition to managing broker's license.

(a) A new license for managing brokers is created effective May 1, 2011. The following transition rules shall apply for those brokers listed as managing brokers with the Department as of April 30, 2011. Those individuals licensed as brokers and listed as managing brokers with the Department as of April 30, 2011 must meet the following qualifications to obtain a managing broker's license:

(1) provide evidence of having completed the 45 hours of broker management education approved by the Advisory Council and having passed a written examination approved by the Department and administered by a licensed pre-license school; or

(2) provide evidence of passing a Department-approved proficiency examination administered by a licensed pre-license school, which proficiency examination may only be taken one time by any one individual broker; and

(3) present a valid application for a managing broker's license no later than April 30, 2012 accompanied by a

sponsor card and the fees specified by rule.

(b) The education requirements specified in item (1) of subsection (a) of this Section do not apply to applicants who are currently admitted to practice law by the Supreme Court of Illinois and are currently in active standing.

(225 ILCS 454/5-50)

(Section scheduled to be repealed on January 1, 2010)

Sec. 5-50. Expiration ~~date~~ and renewal ~~period~~ of managing broker, broker, salesperson, or leasing agent license; sponsoring broker; register of licensees; pocket card.

(a) The expiration date and renewal period for each license issued under this Act shall be set by rule, except that the first renewal period ending after the effective date of this Act for those licensed as a salesperson shall be extended through April 30, 2012. Except as otherwise provided in this Section 5-55 of this Act, the holder of a license may renew the license within 90 days preceding the expiration date thereof by completing the continuing education required by this Act and paying the fees specified by rule. ~~Upon written request from the sponsoring broker, OBRE shall prepare and mail to the sponsoring broker a listing of licensees under this Act who, according to the records of OBRE, are sponsored by that broker. Every licensee associated with or employed by a broker whose license is revoked, suspended, terminated, or expired shall be considered as inoperative until such time as the sponsoring broker's license is reinstated or renewed, or the licensee changes employment as set forth in subsection (c) of Section 5-40 of this Act.~~

(b) An individual whose first license is that of a broker received after April 30, 2011, must provide evidence of having completed 30 hours of post-license education in courses approved by the Advisory Council, 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, and personally take and pass an examination approved by the Department prior to the first renewal of their broker's license. ~~OBRE shall establish and maintain a register of all persons currently licensed by the State and shall issue and prescribe a form of pocket card. Upon payment by a licensee of the appropriate fee as prescribed by rule for engagement in the activity for which the licensee is qualified and holds a license for the current period, OBRE shall issue a pocket card to the licensee. The pocket card shall be verification that the required fee for the current period has been paid and shall indicate that the person named thereon is licensed for the current renewal period as a broker, salesperson, or leasing agent as the case may be. The pocket card shall further~~

~~indicate that the person named thereon is authorized by OBRE to engage in the licensed activity appropriate for his or her status (broker, salesperson, or leasing agent). Each licensee shall carry on his or her person his or her pocket card or, if such pocket card has not yet been issued, a properly issued sponsor card when engaging in any licensed activity and shall display the same on demand.~~

~~(c) Any managing broker, broker, salesperson or leasing agent whose license under this Act has expired shall be eligible to renew the license during the 2-year period following the expiration date, provided the managing broker, broker, salesperson or leasing agent pays the fees as prescribed by rule and completes continuing education and other requirements provided for by the Act or by rule. A managing broker, broker, salesperson or leasing agent whose license has been expired for more than 2 years shall be required to meet the requirements for a new license. Any person licensed as a broker shall be entitled at any renewal date to change his or her license status from broker to salesperson.~~

~~(d) Notwithstanding any other provisions of this Act to the contrary, any managing broker, broker, salesperson or leasing agent whose license expired while he or she was (i) on active duty with the Armed Forces of the United States or called into service or training by the state militia, (ii) engaged in training or education under the supervision of the United States preliminary to induction into military service, or (iii) serving as the Coordinator of Real Estate in the State of Illinois or as an employee of the Department may have his or her license renewed, reinstated or restored without paying any lapsed renewal fees if within 2 years after the termination of the service, training or education by furnishing the Department with satisfactory evidence of service, training, or education and it has been terminated under honorable conditions.~~

~~(e) The Department shall establish and maintain a register of all persons currently licensed by the State and shall issue and prescribe a form of pocket card. Upon payment by a licensee of the appropriate fee as prescribed by rule for engagement in the activity for which the licensee is qualified and holds a license for the current period, the Department shall issue a pocket card to the licensee. The pocket card shall be verification that the required fee for the current period has been paid and shall indicate that the person named thereon is licensed for the current renewal period as a managing broker, broker, salesperson, or leasing agent as the case may be. The pocket card shall further indicate that the person named thereon is authorized by the Department to engage in the licensed activity appropriate for his or her status (managing broker, broker, salesperson, or leasing agent). Each licensee shall carry on his or her person his or her pocket card or, if~~

such pocket card has not yet been issued, a properly issued sponsor card when engaging in any licensed activity and shall display the same on demand.

(f) The Department shall provide to the sponsoring broker a notice of renewal for all sponsored licensees by mailing the notice to the sponsoring broker's address of record, or, at the Department's discretion, by an electronic means as provided for by rule.

(g) Upon request from the sponsoring broker, the Department shall make available to the sponsoring broker, either by mail or by an electronic means at the discretion of the Department, a listing of licensees under this Act who, according to the records of the Department, are sponsored by that broker. Every licensee associated with or employed by a broker whose license is revoked, suspended, terminated, or expired shall be considered as inoperative until such time as the sponsoring broker's license is reinstated or renewed, or the licensee changes employment as set forth in subsection (c) of Section 5-40 of this Act.

(Source: P.A. 93-957, eff. 8-19-04.)

(225 ILCS 454/5-60)

(Section scheduled to be repealed on January 1, 2010)

Sec. 5-60. Managing broker ~~Broker~~ licensed in another state; broker licensed in another state; ~~nonresident~~ salesperson licensed in another state; reciprocal agreements; agent for service of process.

(a) Effective May 1, 2011, a managing broker's license may be issued by the Department to a managing broker or its equivalent licensed under the laws of another state of the United States, under the following conditions:

(1) the managing broker holds a managing broker's license in a state that has entered into a reciprocal agreement with the Department;

(2) the standards for that state for licensing as a managing broker are substantially equal to or greater than the minimum standards in the State of Illinois;

(3) the managing broker has been actively practicing as a managing broker in the managing broker's state of licensure for a period of not less than 2 years, immediately prior to the date of application;

(4) the managing broker furnishes the Department with a statement under seal of the proper licensing authority of the state in which the managing broker is licensed showing that the managing broker has an active managing broker's license, that the managing broker is in good standing, and that no complaints are pending against the managing broker

in that state;

(5) the managing broker passes a test on Illinois specific real estate brokerage laws; and

(6) the managing broker was licensed by an examination in the state that has entered into a reciprocal agreement with the Department.

(b) A broker's license may be issued by the Department ~~OBRE~~ to a broker or its equivalent licensed under the laws of another state of the United States, under the following conditions:

(1) the broker holds a broker's license in a state that has entered into a reciprocal agreement with the Department ~~his or her state of domicile;~~

(2) the standards for that state for licensing as a broker are substantially equivalent to or greater than the minimum standards in the State of Illinois;

(3) if the application is made prior to May 1, 2012, ~~then~~ the broker has been actively practicing as a broker in the broker's state of licensure ~~domicile~~ for a period of not less than 2 years, immediately prior to the date of application;

(4) the broker furnishes the Department ~~OBRE~~ 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;

(5) the broker ~~completes a course of education and~~ passes a test on Illinois specific real estate brokerage laws; and

(6) the broker was licensed by an examination in a state that has entered into ~~OBRE has~~ a reciprocal agreement with the Department ~~that state that includes the provisions of this Section.~~

(c) ~~(b)~~ Prior to May 1, 2011, a salesperson ~~A nonresident salesperson employed by or associated with a nonresident broker holding a broker's license in this State pursuant to this Section~~ may, in the discretion of the Department ~~OBRE~~, be issued a ~~nonresident~~ salesperson's license ~~under the nonresident broker~~ provided all of the following conditions are met:

(1) the salesperson maintains an active license in the state that has entered into a reciprocal agreement with the Department ~~in which he or she is domiciled;~~

(2) the salesperson passes a test on Illinois specific real estate brokerage laws; and is domiciled in the same state as the broker with whom he or she is associated;

(3) the salesperson was licensed by an examination in the state that has entered into a reciprocal agreement with the Department. completes a course of education and passes a test on Illinois specific real estate brokerage laws; and

~~(4) OEBRE has a reciprocal agreement with that state that includes the provisions of this Section.~~

The ~~nonresident~~ broker with whom the salesperson is associated shall comply with the provisions of this Act and issue the salesperson a sponsor card upon the form provided by the Department ~~OEBRE~~.

(d) ~~(e)~~ As a condition precedent to the issuance of a license to a managing broker, nonresident broker, or salesperson pursuant to this Section, the managing broker or salesperson shall agree in writing to abide by all the provisions of this Act with respect to his or her real estate activities within the State of Illinois and submit to the jurisdiction of the Department ~~OEBRE~~ as provided in this Act. The agreement shall be filed with the Department ~~OEBRE~~ and shall remain in force for so long as the managing broker, nonresident broker or salesperson is licensed by this State and thereafter with respect to acts or omissions committed while licensed as a broker or salesperson in this State.

(e) ~~(d)~~ Prior to the issuance of any license to any managing broker, broker, or salesperson licensed pursuant to this Section nonresident, verification of active licensure issued for the conduct of such business in any other state must be filed with the Department ~~OEBRE~~ by the managing broker, broker, or salesperson nonresident, and the same fees must be paid as provided in this Act for the obtaining of a managing broker's, broker's or salesperson's license in this State.

(f) ~~(e)~~ Licenses previously granted under reciprocal agreements with other states shall remain in force so long as the Department ~~OEBRE~~ has a reciprocal agreement with the state that includes the requirements of this Section, unless that license is suspended, revoked, or terminated by the Department ~~OEBRE~~ for any reason provided for suspension, revocation, or termination of a resident licensee's license. Licenses granted under reciprocal agreements may be renewed in the same manner as a resident's license.

(g) ~~(f)~~ Prior to the issuance of a license to a nonresident managing broker, broker or salesperson, the managing broker, broker or salesperson shall file with the Department ~~OEBRE~~ a designation in writing that appoints the Secretary Commissioner to act as his or her agent upon whom all judicial and other process or legal notices directed to the managing

broker, broker or salesperson may be served. Service upon the agent so designated shall be equivalent to personal service upon the licensee. Copies of the appointment, certified by the Secretary Commissioner, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. In the written designation, the managing broker, broker or salesperson shall agree that any lawful process against the licensee that is served upon the agent shall be of the same legal force and validity as if served upon the licensee and that the authority shall continue in force so long as any liability remains outstanding in this State. Upon the receipt of any process or notice, the Secretary Commissioner shall forthwith mail a copy of the same by certified mail to the last known business address of the licensee.

(h) ~~(g)~~ Any person holding a valid license under this Section shall be eligible to obtain a resident managing broker's license, a broker's license, or, prior to May 1, 2011, a salesperson's license without examination should that person change their state of domicile to Illinois and that person otherwise meets the qualifications for ~~or~~ licensure under this Act.

(Source: P.A. 91-245, eff. 12-31-99; 91-702, eff. 5-12-00.)

(225 ILCS 454/5-65)

(Section scheduled to be repealed on January 1, 2010)

Sec. 5-65. Fees. The Department ~~OBRE~~ shall provide by rule for fees to be paid by applicants and licensees to cover the reasonable costs of the Department ~~OBRE~~ in administering and enforcing the provisions of this Act. The Department ~~OBRE~~ may also provide by rule for general fees to cover the reasonable expenses of carrying out other functions and responsibilities under this Act.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/5-70)

(Section scheduled to be repealed on January 1, 2010)

Sec. 5-70. Continuing education requirement; managing broker, broker, or salesperson.

(a) The requirements of this Section apply to all managing brokers, brokers, and salespersons ~~licensees~~.

(b) Except as otherwise provided in this Section, each person who applies for renewal of his or her license as a managing broker, real estate broker, or real estate salesperson must successfully complete 6 hours of real estate continuing education courses approved by the Advisory Council for each year of the pre-renewal period. Broker licensees must successfully complete a 6-hour broker management continuing education course approved by the Department for the pre-renewal

~~period ending April 30, 2010 at the rate of 6 hours per year or its equivalent.~~ In addition, beginning with the pre-renewal period for managing broker licensees that begins after the effective date of this Act, those licensees renewing or obtaining a managing ~~amendatory Act of the 93rd General Assembly, to renew a real estate broker's license, the licensee~~ must successfully complete a 12-hour ~~6-hour~~ broker management continuing education course approved by the Department each pre-renewal period. The broker management continuing education course must be completed in the classroom or by other interactive delivery method presenting instruction and real time discussion between the instructor and the students ~~OBRE.~~ Successful completion of the course shall include achieving a passing score as provided by rule on a test developed and administered in accordance with rules adopted by the Department ~~OBRE.~~ ~~Beginning on the first day of the pre renewal period for broker licensees that begins after the effective date of this amendatory Act of the 93rd General Assembly, the 6 hour broker management continuing education course must be completed by all persons receiving their initial broker's license within 180 days after the date of initial licensure as a broker. 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 Secretary~~ Commissioner with the recommendation of the Advisory Council. The requirements of this Article are applicable to all managing brokers, brokers, and salespersons except those brokers and salespersons who, during the pre-renewal period:

- (1) serve in the armed services of the United States;
- (2) serve as an elected State or federal official;
- (3) serve as a full-time employee of the Department ~~OBRE;~~ or
- (4) are admitted to practice law pursuant to Illinois Supreme Court rule.

(c) A person licensed as a salesperson as of April 30, 2011 who is issued an initial license as a real estate salesperson less than one year prior to the expiration date of that license shall not be required to complete the 18 hours of continuing education for the pre-renewal period ending April 30, 2012 if that person takes the 30-hour post-licensing course to obtain a broker's license. A person licensed as a broker as of April 30, 2011 shall not be required to complete the 12 hours of broker management continuing education for the pre-renewal period ending April 30, 2012, unless that person passes the proficiency exam provided for in Section 5-47 of this Act to qualify for a managing broker's license ~~continuing education as a condition of license renewal. A person who is issued an initial license as a real estate broker less than one year prior to the expiration date of that license and who has not~~

~~been licensed as a real estate salesperson during the pre renewal period shall not be required to complete continuing education as a condition of license renewal.~~

(d) A person receiving an initial license ~~as a real estate broker~~ during the 90 days before the ~~broker~~ renewal date shall not be required to complete the ~~broker management~~ continuing education ~~courses~~ ~~course~~ provided for in subsection (b) of this Section as a condition of initial license renewal.

(e) ~~(d)~~ The continuing education requirement for salespersons, brokers and managing brokers shall consist of a core curriculum and an elective curriculum, to be established by the Advisory Council. In meeting the continuing education requirements of this Act, at least 3 hours per year or their equivalent, 6 hours for each two-year pre-renewal period, shall be required to be completed in the core curriculum. In establishing the core curriculum, the Advisory Council shall consider subjects that will educate licensees on recent changes in applicable laws and new laws and refresh the licensee on areas of the license law and the Department ~~ODRE~~ policy that the Advisory Council deems appropriate, and any other areas that the Advisory Council deems timely and applicable in order to prevent violations of this Act and to protect the public. In establishing the elective curriculum, the Advisory Council shall consider subjects that cover the various aspects of the practice of real estate that are covered under the scope of this Act. However, the elective curriculum shall not include any offerings referred to in Section 5-85 of this Act.

(f) ~~(e)~~ The subject areas of continuing education courses approved by the Advisory Council may include without limitation the following:

- (1) license law and escrow;
- (2) antitrust;
- (3) fair housing;
- (4) agency;
- (5) appraisal;
- (6) property management;
- (7) residential brokerage;
- (8) farm property management;
- (9) rights and duties of sellers, buyers, and brokers;
- (10) commercial brokerage and leasing; and
- (11) real estate financing.

(g) ~~(f)~~ In lieu of credit for those courses listed in subsection (f) ~~(e)~~ of this Section, credit may be earned for serving as a licensed instructor in an approved course of continuing education. The amount of credit earned for teaching a course shall be the amount of continuing education credit for which the course is approved for licensees taking the course.

(h) ~~(g)~~ Credit hours may be earned for self-study programs approved by the Advisory Council.

(i) ~~(h)~~ A broker or salesperson may earn credit for a specific continuing education course only once during the prerenewal period.

(j) ~~(i)~~ No more than 6 hours of continuing education credit may be taken or earned in one calendar day.

(k) ~~(j)~~ To promote the offering of a uniform and consistent course content, the Department ~~OBRE~~ may provide for the development of a single broker management course to be offered by all continuing education providers who choose to offer the broker management continuing education course. The Department ~~OBRE~~ may contract for the development of the 6-hour broker management continuing education course with an outside vendor or consultant and, if the course is developed in this manner, the Department or the outside consultant ~~OBRE~~ shall license the use of that course to all approved continuing education providers who wish to provide the course.

(l) Except as specifically provided in this Act, continuing education credit hours may not be earned for completion of pre or post-license courses. The approved 30-hour post-license course for broker licensees shall satisfy the continuing education requirement for the pre-renewal period in which the course is taken. The approved 45-hour brokerage administration and management course shall satisfy the 12-hour broker management continuing education requirement for the pre-renewal period in which the course is taken.

(Source: P.A. 93-957, eff. 8-19-04.)

(225 ILCS 454/5-80)

(Section scheduled to be repealed on January 1, 2010)

Sec. 5-80. Evidence of compliance with continuing education requirements.

(a) Each renewal applicant shall certify, on his or her renewal application, full compliance with continuing education requirements set forth in Section 5-70. The continuing education school shall retain and submit to the Department ~~OBRE~~ after the completion of each course evidence of those successfully completing the course as provided by rule.

(b) The Department ~~OBRE~~ may require additional evidence demonstrating compliance with the continuing education requirements. The renewal applicant shall retain and produce the evidence of compliance upon request of the Department ~~OBRE~~.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/5-85)

(Section scheduled to be repealed on January 1, 2010)

Sec. 5-85. Offerings not meeting continuing education requirements. The following offerings do not meet the continuing education requirements:

(1) Examination preparation offerings, except as

provided in Section 5-70 of this Act.

(2) Offerings in mechanical office and business skills such as typing, speed reading, memory improvement, advertising, or psychology of sales.

(3) Sales promotion or other meetings held in conjunction with the general business of the attendee or his or her employer.

(4) Meetings that are a normal part of in-house staff or employee training.

The offerings listed in this Section do not limit the Advisory Council's authority to disapprove any course that fails to meet the standards of this Article 5 or rules adopted by the Department ~~OBRE~~.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/10-15)

(Section scheduled to be repealed on January 1, 2010)

Sec. 10-15. No compensation to persons in violation of Act; compensation to unlicensed persons; consumer.

(a) No compensation may be paid to any unlicensed person in exchange for the person performing licensed activities in violation of this Act.

(b) No action or suit shall be instituted, nor recovery therein be had, in any court of this State by any person, partnership, registered limited liability partnership, limited liability company, or corporation for compensation for any act done or service performed, the doing or performing of which is prohibited by this Act to other than licensed managing brokers, brokers, salespersons, or leasing agents unless the person, partnership, registered limited liability partnership, limited liability company, or corporation was duly licensed hereunder as a managing broker, broker, salesperson, or leasing agent under this Act at the time that any such act was done or service performed that would give rise to a cause of action for compensation.

(c) A licensee may offer compensation, including prizes, merchandise, services, rebates, discounts, or other consideration to an unlicensed person who is a party to a contract to buy or sell real estate or is a party to a contract for the lease of real estate, so long as the offer complies with the provisions of subdivision (35) ~~(26)~~ of subsection (a) ~~(b)~~ of Section 20-20 of this Act.

(d) 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 or statute, to a consumer as an inducement to that consumer to use the services of the licensee even if the licensee and consumer do not ultimately enter into a broker-client relationship so long as

the offer complies with the provisions of subdivision (35) ~~(26)~~ of subsection (a) ~~(h)~~ of Section 20-20 of this Act.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/10-30)

(Section scheduled to be repealed on January 1, 2010)

Sec. 10-30. Advertising.

(a) No advertising, whether in print, via the Internet, or through any other media, shall be fraudulent, deceptive, inherently misleading, or proven to be misleading in practice. Advertising ~~It~~ shall be considered misleading or untruthful if, when taken as a whole, there is a distinct and reasonable possibility that it will be misunderstood or will deceive the ordinary purchaser, seller, lessee, lessor, or owner. Advertising shall contain all information necessary to communicate the information contained therein to the public in an accurate, a direct, and readily comprehensible manner.

(b) No blind advertisements may be used by any licensee, in any media, except as provided for in this Section.

(c) A licensee shall disclose, in writing, to all parties in a transaction his or her status as a licensee and any and all interest the licensee has or may have in the real estate constituting the subject matter thereof, directly or indirectly, according to the following guidelines:

(1) On broker yard signs or in broker advertisements, no disclosure of ownership is necessary. However, the ownership shall be indicated on any property data form and disclosed to persons responding to any advertisement or any sign. The term "broker owned" or "agent owned" is sufficient disclosure.

(2) A sponsored or inoperative licensee selling or leasing property, owned solely by the sponsored or inoperative licensee, without utilizing brokerage services of their sponsoring broker or any other licensee, may advertise "By Owner". For purposes of this Section, property is "solely owned" by a sponsored or inoperative licensee if he or she (i) has a 100% ownership interest alone, (ii) has ownership as a joint tenant or tenant by the entirety, or (iii) holds a 100% beneficial interest in a land trust. Sponsored or inoperative licensees selling or leasing "By Owner" shall comply with the following if advertising by owner:

(A) On "By Owner" yard signs, the sponsored or inoperative licensee shall indicate "broker owned" or "agent owned." "By Owner" advertisements used in any

medium of advertising shall include the term "broker owned" or "agent owned."

(B) If a sponsored or inoperative licensee runs advertisements, for the purpose of purchasing or leasing real estate, he or she shall disclose in the advertisements his or her status as a licensee.

(C) A sponsored or inoperative licensee shall not use the sponsoring broker's name or the sponsoring broker's company name in connection with the sale, lease, or advertisement of the property nor utilize the sponsoring broker's or company's name in connection with the sale, lease, or advertising of the property in a manner likely to create confusion among the public as to whether or not the services of a real estate company are being utilized or whether or not a real estate company has an ownership interest in the property.

(d) A sponsored licensee may not advertise under his or her own name. Advertising in any media shall be under the direct supervision of the sponsoring or managing broker and in the sponsoring broker's business name, which in the case of a franchise shall include the franchise affiliation as well as the name of the individual firm. This provision does not apply under the following circumstances:

(1) When a licensee enters into a brokerage agreement relating to his or her own real estate, or real estate in which he or she has an ownership interest, with another licensed broker; or

(2) When a licensee is selling or leasing his or her own real estate or buying or leasing real estate for himself or herself, after providing the appropriate written disclosure of his or her ownership interest as required in paragraph (2) of subsection (c) of this Section.

(e) No licensee shall list his or her name under the heading or title "Real Estate" in the telephone directory or otherwise advertise in his or her own name to the general public through any medium of advertising as being in the real estate business without listing his or her sponsoring broker's business name.

(f) The sponsoring broker's business name and the name of the licensee must appear in all advertisements, including business cards. Nothing in this Act shall be construed to require specific print size as between the broker's business name and the name of the licensee.

(g) Those individuals licensed as a managing broker and

designated with the Department as a managing broker by their sponsoring broker shall identify themselves to the public in advertising as a managing broker. No other individuals holding a managing broker's license may hold themselves out to the public or other licensees as a managing broker.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/10-35 new)

Sec. 10-35. Internet and related advertising.

(a) Licensees intending to sell or share consumer information gathered from or through the Internet or other electronic communication media shall disclose that intention to consumers in a timely and readily apparent manner.

(b) A licensee using Internet or other similar electronic advertising media must not:

(1) use a URL or domain name that is deceptive or misleading;

(2) deceptively or without authorization frame another real estate brokerage or multiple listing service website;
or

(3) engage in the deceptive use of metatags, keywords or other devices and methods to direct, drive or divert Internet traffic or otherwise mislead consumers.

(225 ILCS 454/10-40 new)

Sec. 10-40. Company policy. 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:

(1) the agency policy of the entity;

(2) fair housing, nondiscrimination and harassment;

(3) confidentiality of client information;

(4) advertising;

(5) training and supervision of sponsored licensees;

(6) required disclosures and use of forms;

(7) handling of risk management matters; and

(8) handling of earnest money and escrows.

These topics are provided as an example and are not intended to be inclusive or exclusive of other topics.

(225 ILCS 454/15-15)

(Section scheduled to be repealed on January 1, 2010)

Sec. 15-15. Duties of licensees representing clients.

(a) A licensee representing a client shall:

(1) Perform the terms of the brokerage agreement between a broker and the client.

(2) Promote the best interest of the client by:

(A) Seeking a transaction at the price and terms

stated in the brokerage agreement or at a price and terms otherwise acceptable to the client.

(B) Timely presenting all offers to and from the client, unless the client has waived this duty.

(C) Disclosing 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 the following when located on or related to real estate that is not the subject of the transaction: (i) physical conditions that do not have a substantial adverse effect on the value of the real estate, (ii) fact situations, or (iii) occurrences.

(D) Timely accounting for all money and property received in which the client has, may have, or should have had an interest.

(E) Obeying specific directions of the client that are not otherwise contrary to applicable statutes, ordinances, or rules.

(F) Acting in a manner consistent with promoting the client's best interests as opposed to a licensee's or any other person's self-interest.

(3) Exercise reasonable skill and care in the performance of brokerage services.

(4) Keep confidential all confidential information received from the client.

(5) Comply with all requirements of this Act and all applicable statutes and regulations, including without limitation fair housing and civil rights statutes.

(b) A licensee representing a client does not breach a duty or obligation to the client by showing alternative properties to prospective buyers or tenants, ~~or~~ by showing properties in which the client is interested to other prospective buyers or tenants, or by making or preparing contemporaneous offers or contracts to purchase or lease the same property. However, a licensee shall 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.

(c) A licensee representing a buyer or tenant client will not be presumed to have breached a duty or obligation to that client by working on the basis that the licensee will receive a higher fee or compensation based on higher selling price or lease cost.

(d) A licensee shall not be liable to a client for providing false information to the client if the false information was provided to the licensee by a customer unless the licensee knew or should have known the information was false.

(e) Nothing in the Section shall be construed as changing a licensee's duty under common law as to negligent or fraudulent misrepresentation of material information.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/15-35)

(Section scheduled to be repealed on January 1, 2010)

Sec. 15-35. Agency relationship disclosure.

(a) A licensee shall advise a consumer in writing ~~shall be advised~~ of the following no later than beginning to work as a designated agent on behalf of the consumer ~~entering into a brokerage agreement with the sponsoring broker~~:

(1) That a designated agency relationship exists, unless there is written agreement between the sponsoring broker and the consumer providing for a different brokerage relationship.

(2) The name or names of his or her designated agent or agents. The written disclosure can be included in a brokerage agreement or be a separate document, a copy of which is retained by the sponsoring broker for the licensee ~~in writing.~~

(b) ~~(3)~~ The licensee representing the consumer shall discuss with the consumer the sponsoring broker's compensation and policy with regard to cooperating with brokers who represent other parties in a transaction.

(c) ~~(b)~~ A licensee shall 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. This subsection (b) does not apply to residential lease or rental transactions unless the lease or rental agreement includes an option to purchase real estate.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/15-45)

(Section scheduled to be repealed on January 1, 2010)

Sec. 15-45. Dual agency.

(a) A licensee may act as a dual agent only with the informed written consent of all clients. Informed written consent shall be presumed to have been given by any client who signs a document that includes the following:

"The undersigned (insert name(s)), ("Licensee"), may

undertake a dual representation (represent both the seller or landlord and the buyer or tenant) for the sale or lease of property. The undersigned acknowledge they were informed of the possibility of this type of representation. Before signing this document please read the following: Representing more than one party to a transaction presents a conflict of interest since both clients may rely upon Licensee's advice and the client's respective interests may be adverse to each other. Licensee will undertake this representation only with the written consent of ALL clients in the transaction. Any agreement between the clients as to a final contract price and other terms is a result of negotiations between the clients acting in their own best interests and on their own behalf. You acknowledge that Licensee has explained the implications of dual representation, including the risks involved, and understand that you have been advised to seek independent advice from your advisors or attorneys before signing any documents in this transaction.

WHAT A LICENSEE CAN DO FOR CLIENTS
WHEN ACTING AS A DUAL AGENT

1. Treat all clients honestly.
2. Provide information about the property to the buyer or tenant.
3. Disclose all latent material defects in the property that are known to the Licensee.
4. Disclose financial qualification of the buyer or tenant to the seller or landlord.
5. Explain real estate terms.
6. Help the buyer or tenant to arrange for property inspections.
7. Explain closing costs and procedures.
8. Help the buyer compare financing alternatives.
9. Provide information about comparable properties that have sold so both clients may make educated decisions on what price to accept or offer.

WHAT LICENSEE CANNOT DISCLOSE TO CLIENTS WHEN
ACTING AS A DUAL AGENT

1. Confidential information that Licensee may know about a client, without that client's permission.
2. The price or terms the seller or landlord will take other than the listing price without permission of the seller or landlord.

3. The price or terms the buyer or tenant is willing to pay without permission of the buyer or tenant.

4. A recommended or suggested price or terms the buyer or tenant should offer.

5. A recommended or suggested price or terms the seller or landlord should counter with or accept.

If either client is uncomfortable with this disclosure and dual representation, please let Licensee know. You are not required to sign this document unless you want to allow Licensee to proceed as a Dual Agent in this transaction. By signing below, you acknowledge that you have read and understand this form and voluntarily consent to Licensee acting as a Dual Agent (that is, to represent BOTH the seller or landlord and the buyer or tenant) should that become necessary."

(b) The dual agency disclosure form provided for in subsection (a) of this Section must be presented by a licensee, who offers dual representation, to the client at the time the brokerage agreement is entered into and may be signed by the client at that time or at any time before the licensee acts as a dual agent as to the client.

(c) A licensee acting in a dual agency capacity in a transaction must obtain a written confirmation from the licensee's clients of their prior consent for the licensee to act as a dual agent in the transaction. This confirmation should be obtained at the time the clients are executing any offer or contract to purchase or lease in a transaction in which the licensee is acting as a dual agent. This confirmation may be included in another document, such as a contract to purchase, in which case the client must not only sign the document but also initial the confirmation of dual agency provision. That confirmation must state, at a minimum, the following:

"The undersigned confirm that they have previously consented to (insert name(s)), ("Licensee"), acting as a Dual Agent in providing brokerage services on their behalf and specifically consent to Licensee acting as a Dual Agent in regard to the transaction referred to in this document."

(d) No cause of action shall arise on behalf of any person against a dual agent for making disclosures allowed or required by this Article, and the dual agent does not terminate any agency relationship by making the allowed or required disclosures.

(e) In the case of dual agency, each client and the licensee possess only actual knowledge and information. There shall be no imputation of knowledge or information among or

between clients, brokers, or their affiliated licensees.

(f) In any transaction, a licensee may without liability withdraw from representing a client who has not consented to a disclosed dual agency. The withdrawal shall not prejudice the ability of the licensee to continue to represent the other client in the transaction or limit the licensee from representing the client in other transactions. When a withdrawal as contemplated in this subsection (f) occurs, the licensee shall not receive a referral fee for referring a client to another licensee unless written disclosure is made to both the withdrawing client and the client that continues to be represented by the licensee.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/15-65)

(Section scheduled to be repealed on January 1, 2010)

Sec. 15-65. Regulatory enforcement. Nothing contained in this Article limits the Department ~~OBRE~~ in its regulation of licensees under other Articles of this Act and the substantive rules adopted by the Department ~~OBRE~~. The Department ~~OBRE~~, with the advice of the Board, is authorized to promulgate any rules that may be necessary for the implementation and enforcement of this Article 15.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/20-5)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-5. Index of decisions. The Department ~~OBRE~~ shall maintain an index of formal decisions regarding the issuance, refusal to issue, renewal, refusal to renew, revocation, and suspension of licenses and probationary or other disciplinary action taken under this Act on or after December 31, 1999. ~~The decisions shall be indexed according to the Sections of statutes and the administrative rules, if any, that are the basis for the decision.~~ The index shall be available to the public during regular business hours.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/20-10)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-10. Unlicensed practice; civil penalty.

(a) Any person who practices, offers to practice, attempts to practice, or holds oneself out to practice as a real estate broker, real estate salesperson, or leasing agent without being licensed under this Act shall, in addition to any other penalty provided by law, pay a civil penalty ~~fine~~ to the Department ~~OBRE~~ in an amount not to exceed \$25,000 for each offense as determined by the Department ~~OBRE~~. The civil penalty ~~fine~~ shall be assessed by the Department ~~OBRE~~ after a hearing is held in

accordance with the provisions set forth in this Act regarding the provision of a hearing for the discipline of a license.

(b) The Department ~~OBRE~~ has the authority and power to investigate any and all unlicensed activity.

(c) The civil penalty ~~fine~~ shall be paid within 60 days after the effective date of the order imposing the civil penalty ~~fine~~. The order shall constitute a judgment ~~judgement~~ and may be filed and execution had thereon in the same manner from any court of record.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/20-20)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-20. Grounds for discipline ~~Disciplinary actions;~~
~~causes.~~

(a) The Department ~~OBRE~~ may refuse to issue or renew a license, may place on probation, suspend, or revoke any license, ~~or may censure,~~ reprimand, or take any other disciplinary or non-disciplinary action as the Department may deem proper ~~otherwise discipline~~ or impose a ~~civil~~ fine not to exceed \$25,000 upon any licensee under this Act or against a licensee in handling his or her own property, whether held by deed, option, or otherwise, ~~hereunder~~ for any one or any combination of the following causes:

(1) Fraud or misrepresentation in applying for, or procuring, a license under this Act or in connection with applying for renewal of a license under this Act. ~~(a) When the applicant or licensee has, by false or fraudulent representation, obtained or sought to obtain a license.~~

(2) The conviction of, plea of guilty or plea of nolo contendere to a felony or misdemeanor ~~(b) When the applicant or licensee has been convicted of any crime, an essential element of which is dishonesty or fraud or larceny, embezzlement, or obtaining money, property, or credit by false pretenses or by means of a confidence game, in has been convicted in this or another state of a crime that is a felony under the laws of this State, or any other jurisdiction has been convicted of a felony in a federal court.~~

(3) Inability to practice the profession with reasonable judgment, skill, or safety as a result of a physical illness, including, but not limited to, deterioration through the aging process or loss of motor skill, or a mental illness or disability ~~(c) When the applicant or licensee has been adjudged to be a person~~

~~under legal disability or subject to involuntary admission or to meet the standard for judicial admission as provided in the Mental Health and Developmental Disabilities Code.~~

(4) Practice under this Act as a ~~(d) When the licensee performs or attempts to perform any act as a broker or salesperson~~ in a retail sales establishment from an office, desk, or space that is not separated from the main retail business by a separate and distinct area within the establishment.

(5) Disciplinary action of another state or jurisdiction against the license or other authorization to practice as a managing broker, broker, salesperson, or leasing agent ~~(e) Discipline of a licensee by another state, the District of Columbia, a territory, a foreign nation, a governmental agency, or any other entity authorized to impose discipline~~ if at least one of the grounds for that discipline is the same as or the equivalent of one of the grounds for discipline set forth in this Act. A certified copy of the record of the action by the other state or jurisdiction shall be prima facie evidence thereof, ~~in which case the only issue will be whether one of the grounds for that discipline is the same or equivalent to one of the grounds for discipline under this Act.~~

(6) Engaging in the practice of ~~(f) When the applicant or licensee has engaged in real estate brokerage activity~~ without a license or after the licensee's license was expired or while the license was inoperative.

(7) Cheating on or attempting ~~(g) When the applicant or licensee attempts to subvert or cheat on the Real Estate License Exam or continuing education exam.~~

(8) Aiding or abetting ~~aids and abets~~ an applicant to subvert or cheat on the Real Estate License Exam or continuing education exam administered pursuant to this Act.

(9) Advertising that is inaccurate, misleading, or contrary to the provisions of the Act. ~~(h) When the licensee in performing, attempting to perform, or pretending to perform any act as a broker, salesperson, or leasing agent or when the licensee in handling his or her own property, whether held by deed, option, or otherwise, is found guilty of:~~

(10) ~~(1)~~ Making any substantial misrepresentation or untruthful advertising.

(11) ~~(2)~~ Making any false promises of a character likely to influence, persuade, or induce.

(12) ~~(3)~~ Pursuing a continued and flagrant course of misrepresentation or the making of false promises through licensees, employees, agents, advertising, or otherwise.

(13) ~~(4)~~ Any misleading or untruthful advertising, or using any trade name or insignia of membership in any real estate organization of which the licensee is not a member.

(14) ~~(5)~~ Acting for more than one party in a transaction without providing written notice to all parties for whom the licensee acts.

(15) ~~(6)~~ Representing or attempting to represent a broker other than the sponsoring broker.

(16) ~~(7)~~ Failure to account for or to remit any moneys or documents coming into his or her possession that belong to others.

(17) ~~(8)~~ Failure to maintain and deposit in a special account, separate and apart from personal and other business accounts, all escrow moneys belonging to others entrusted to a licensee while acting as a real estate broker, escrow agent, or temporary custodian of the funds of others or failure to maintain all escrow moneys on deposit in the account until the transactions are consummated or terminated, except to the extent that the moneys, or any part thereof, shall be:

(A) disbursed prior to the consummation or termination (i) in accordance with the written direction of the principals to the transaction or their duly authorized agents, (ii) in accordance with directions providing for the release, payment, or distribution of escrow moneys contained in any written contract signed by the principals to the transaction or their duly authorized agents, or (iii) pursuant to an order of a court of competent jurisdiction; or

(B) deemed abandoned and transferred to the Office of the State Treasurer to be handled as unclaimed property pursuant to the Uniform Disposition of Unclaimed Property Act. Escrow moneys may be deemed abandoned under this subparagraph (B) only: (i) in the absence of disbursement under subparagraph (A); (ii) in the absence of notice of the filing of any claim in

a court of competent jurisdiction; and (iii) if 6 months have elapsed after the receipt of a written demand for the escrow moneys from one of the principals to the transaction or the principal's duly authorized agent.

The account shall 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.

(18) ~~(9)~~ Failure to make available to the Department ~~real estate enforcement personnel of OBRE during normal business hours~~ all escrow records and related documents maintained in connection with the practice of real estate within 24 hours of a request for those documents by Department ~~OBRE~~ personnel.

(19) ~~(10)~~ Failing to furnish copies upon request of ~~all~~ documents relating to a real estate transaction to a party who has executed that document ~~all parties executing them~~.

(20) ~~(11)~~ Failure of a sponsoring broker to timely provide information, sponsor cards, or termination of licenses to the Department ~~OBRE~~.

(21) ~~(12)~~ Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public.

(22) ~~(13)~~ Commingling the money or property of others with his or her own money or property.

(23) ~~(14)~~ Employing any person on a purely temporary or single deal basis as a means of evading the law regarding payment of commission to nonlicensees on some contemplated transactions.

(24) ~~(15)~~ Permitting the use of his or her license as a broker to enable a salesperson or unlicensed person to operate a real estate business without actual participation therein and control thereof by the broker.

(25) ~~(16)~~ Any other conduct, whether of the same or a different character from that specified in this Section, that constitutes dishonest dealing.

(26) ~~(17)~~ Displaying a "for rent" or "for sale" sign on any property without the written consent of an owner or his or her duly authorized agent or advertising by any means

that any property is for sale or for rent without the written consent of the owner or his or her authorized agent.

(27) ~~(18)~~ Failing to provide information requested by the Department, or otherwise respond to that request ~~OBRE,~~ within 30 days of the request, ~~either as the result of a formal or informal complaint to OBRE or as a result of a random audit conducted by OBRE, which would indicate a violation of this Act.~~

(28) ~~(19)~~ Advertising by means of a blind advertisement, except as otherwise permitted in Section 10-30 of this Act.

(29) ~~(20)~~ Offering guaranteed sales plans, as defined in clause (A) of this subdivision (29) ~~(20)~~, except to the extent hereinafter set forth:

(A) A "guaranteed sales plan" is any real estate purchase or sales plan whereby a licensee enters into a conditional or unconditional written contract with a seller, prior to entering into a brokerage agreement with the seller, by the terms of which a licensee agrees to purchase a property of the seller 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 ~~listing contract~~ between the sponsoring broker and the seller ~~or on other terms acceptable to the seller.~~

(B) A licensee offering a guaranteed sales plan shall provide the details and conditions of the plan in writing to the party to whom the plan is offered.

(C) 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.

(D) Any 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.

(E) The licensee cannot purchase seller's property until the brokerage agreement has ended according to its terms or is otherwise terminated.

(F) 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.

(30) ~~(21)~~ Influencing or attempting to influence, by any words or acts, a prospective seller, purchaser, occupant, landlord, or tenant of real estate, in connection with viewing, buying, or leasing real estate, so as to promote or tend to promote the continuance or maintenance of racially and religiously segregated housing or so as to retard, obstruct, or discourage racially integrated housing on or in any street, block, neighborhood, or community.

(31) ~~(22)~~ Engaging in any act that constitutes a violation of any provision of Article 3 of the Illinois Human Rights Act, whether or not a complaint has been filed with or adjudicated by the Human Rights Commission.

(32) ~~(23)~~ Inducing any party to a contract of sale or lease or brokerage agreement to break the contract of sale or lease or brokerage agreement for the purpose of substituting, in lieu thereof, a new contract for sale or lease or brokerage agreement with a third party.

(33) ~~(24)~~ Negotiating a sale, exchange, or lease of real estate directly with any person if the licensee knows that the person has an ~~a written~~ exclusive brokerage agreement with another broker, unless specifically authorized by that broker.

(34) ~~(25)~~ When a licensee is also an attorney, acting as the attorney for either the buyer or the seller in the same transaction in which the licensee is acting or has acted as a broker or salesperson.

(35) ~~(26)~~ Advertising or offering merchandise or services as free if any conditions or obligations necessary for receiving the merchandise or services are not disclosed in the same advertisement or offer. These conditions or obligations include without limitation the requirement that the recipient attend a promotional activity or visit a real estate site. As used in this subdivision (35) ~~(26)~~, "free" includes terms such as "award", "prize", "no charge", "free of charge", "without charge", and similar

words or phrases that reasonably lead a person to believe that he or she may receive or has been selected to receive something of value, without any conditions or obligations on the part of the recipient.

(36) ~~(27)~~ Disregarding or violating any provision of the Land Sales Registration Act of 1989, the Illinois Real Estate Time-Share Act, or the published rules promulgated by the Department ~~OBRE~~ to enforce those Acts.

(37) ~~(28)~~ Violating the terms of a disciplinary order issued by the Department ~~OBRE~~.

(38) ~~(29)~~ Paying or failing to disclose compensation in violation of Article 10 of this Act.

(39) ~~(30)~~ Requiring a party to a transaction who is not a client of the licensee to allow the licensee to retain a portion of the escrow moneys for payment of the licensee's commission or expenses as a condition for release of the escrow moneys to that party.

(40) ~~(31)~~ Disregarding or violating any provision of this Act or the published rules promulgated by the Department ~~OBRE~~ to enforce this Act or aiding or abetting any individual, partnership, registered limited liability partnership, limited liability company, or corporation in disregarding any provision of this Act or the published rules promulgated by the Department ~~OBRE~~ to enforce this Act.

(41) ~~(32)~~ Failing to provide the minimum services required by Section 15-75 of this Act when acting under an exclusive brokerage agreement.

(42) Habitual or excessive use or addiction to alcohol, narcotics, stimulants, or any other chemical agent or drug that results in a managing broker, broker, salesperson, or leasing agent's inability to practice with reasonable skill or safety.

(b) The Department may refuse to issue or renew or may suspend the license of any person who fails to file a return, pay the tax, penalty or interest shown in a filed return, or pay any final assessment of tax, penalty, or interest, as required by any tax Act administered by the Department of Revenue, until such time as the requirements of that tax Act are satisfied in accordance with subsection (g) of Section 2105-15 of the Civil Administrative Code of Illinois.

(c) The Department shall deny a license or renewal authorized by this Act to a person who has defaulted on an educational loan or scholarship provided or guaranteed by the

Illinois Student Assistance Commission or any governmental agency of this State in accordance with item (5) of subsection (g) of Section 2105-15 of the Civil Administrative Code of Illinois.

(d) In cases where the Department of Healthcare and Family Services (formerly Department of Public Aid) has previously determined that a licensee or a potential licensee is more than 30 days delinquent in the payment of child support and has subsequently certified the delinquency to the Department may refuse to issue or renew or may revoke or suspend that person's license or may take other disciplinary action against that person based solely upon the certification of delinquency made by the Department of Healthcare and Family Services in accordance with item (5) of subsection (g) of Section 2105-15 of the Civil Administrative Code of Illinois.

(e) In enforcing this Section, the Department or Board upon a showing of a possible violation may compel an individual licensed to practice under this Act, or who has applied for licensure under this Act, to submit to a mental or physical examination, or both, as required by and at the expense of the Department. The Department or Board may order the examining physician to present testimony concerning the mental or physical examination of the licensee or applicant. No information shall be excluded by reason of any common law or statutory privilege relating to communications between the licensee or applicant and the examining physician. The examining physicians shall be specifically designated by the Board or Department. The individual to be examined may have, at his or her own expense, another physician of his or her choice present during all aspects of this examination. Failure of an individual to submit to a mental or physical examination, when directed, shall be grounds for suspension of his or her license until the individual submits to the examination if the Department finds, after notice and hearing, that the refusal to submit to the examination was without reasonable cause.

If the Department or Board finds an individual unable to practice because of the reasons set forth in this Section, the Department or Board may require that individual to submit to care, counseling, or treatment by physicians approved or designated by the Department or Board, as a condition, term, or restriction for continued, reinstated, or renewed licensure to practice; or, in lieu of care, counseling, or treatment, the Department may file, or the Board may recommend to the Department to file, a complaint to immediately suspend, revoke, or otherwise discipline the license of the individual. An individual whose license was granted, continued, reinstated, renewed, disciplined or supervised subject to such terms, conditions, or restrictions, and who fails to comply with such terms, conditions, or restrictions, shall be referred to the

Secretary for a determination as to whether the individual shall have his or her license suspended immediately, pending a hearing by the Department.

In instances in which the Secretary immediately suspends a person's license under this Section, a hearing on that person's license must be convened by the Department within 30 days after the suspension and completed without appreciable delay. The Department and Board shall have the authority to review the subject individual's record of treatment and counseling regarding the impairment to the extent permitted by applicable federal statutes and regulations safeguarding the confidentiality of medical records.

An individual licensed under this Act and affected under this Section shall be afforded an opportunity to demonstrate to the Department or Board that he or she can resume practice in compliance with acceptable and prevailing standards under the provisions of his or her license.

(Source: P.A. 95-851, eff. 1-1-09.)

(225 ILCS 454/20-21 new)

Sec. 20-21. Injunctions; cease and desist order.

(a) If any person violates the provisions of this Act, the Secretary may, in the name of the People of the State of Illinois, through the Attorney General of the State of Illinois or the State's Attorney for any county in which the action is brought, petition for an order enjoining the violation or for an order enforcing compliance with this Act. Upon the filing of a verified petition in court, the court may issue a temporary restraining order, without notice or condition, and may preliminarily and permanently enjoin the violation. If it is established that the person has violated or is violating the injunction, the Court may punish the offender for contempt of court. Proceedings under this Section shall be in addition to, and not in lieu of, all other remedies and penalties provided by this Act.

(b) Whenever in the opinion of the Department a person violates a provision of this Act, the Department may issue a ruling to show cause why an order to cease and desist should not be entered against that person. The rule shall clearly set forth the grounds relied upon by the Department and shall allow at least 7 days from the date of the rule to file an answer to the satisfaction of the Department. Failure to answer to the satisfaction of the Department shall cause an order to cease and desist to be issued immediately.

(c) Other than as provided in Section 5-20 of this Act, if any person practices as a real estate broker, real estate salesperson or leasing agent or holds himself or herself out as a licensed sponsoring broker, managing broker, real estate broker, real estate salesperson or leasing agent under this Act

without being issued a valid existing license by the Department, then any licensed sponsoring broker, managing broker, real estate broker, real estate salesperson, leasing agent, any interested party, or any person injured thereby may, in addition to the Secretary, petition for relief as provided in subsection (a) of this Section.

(225 ILCS 454/20-22 new)

Sec. 20-22. Violations. Any person who is found working or acting as a managing broker, real estate broker, real estate salesperson, or leasing agent or holding himself or herself out as a licensed sponsoring broker, managing broker, real estate broker, real estate salesperson, or 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 shall be guilty of a Class 4 felony.

(225 ILCS 454/20-25)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-25. Returned checks; fees. Any person who delivers a check or other payment to the Department ~~OBRE~~ that is returned to the Department ~~OBRE~~ unpaid by the financial institution upon which it is drawn shall pay to the Department ~~OBRE~~, in addition to the amount already owed to the Department ~~OBRE~~, a fee of \$50. The Department ~~OBRE~~ shall notify the person that payment of fees and fines shall be paid to the Department ~~OBRE~~ by certified check or money order within 30 calendar days of the notification. If, after the expiration of 30 days from the date of the notification, the person has failed to submit the necessary remittance, the Department ~~OBRE~~ shall automatically terminate the license or deny the application, without hearing. If, after termination or denial, the person seeks a license, he or she shall apply to the Department ~~OBRE~~ for restoration or issuance of the license and pay all fees and fines due to the Department ~~OBRE~~. The Department ~~OBRE~~ may establish a fee for the processing of an application for restoration of a license to pay all expenses of processing this application. The Secretary ~~Commissioner~~ may waive the fees due under this Section in individual cases where the Secretary ~~Commissioner~~ finds that the fees would be unreasonable or unnecessarily burdensome.

(Source: P.A. 91-245, eff. 12-31-99; 92-146, eff. 1-1-02.)

(225 ILCS 454/20-50)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-50. Illegal discrimination. When there has been an adjudication in a civil or criminal proceeding that a licensee has illegally discriminated while engaged in any activity for which a license is required under this Act, the Department

~~OBRE~~, upon the recommendation of the Board as to the extent of the suspension or revocation, shall suspend or revoke the license of that licensee in a timely manner, unless the adjudication is in the appeal process. When there has been an order in an administrative proceeding finding that a licensee has illegally discriminated while engaged in any activity for which a license is required under this Act, the Department ~~OBRE~~, upon recommendation of the Board as to the nature and extent of the discipline, shall take one or more of the disciplinary actions provided for in Section 20-20 of this Act in a timely manner, unless the administrative order is in the appeal process.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/20-55)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-55. Illinois Administrative Procedure Act. The Illinois Administrative Procedure Act is hereby expressly adopted and incorporated herein as if all of the provisions of that Act were included in this Act, except that the provision of subsection (d) of Section 10-65 of the Illinois Administrative Procedure Act that provides that at hearings the licensee has the right to show compliance with all lawful requirements for retention, continuation, or renewal of the license is specifically excluded. For the purposes of this Act, the notice required under the Illinois Administrative Procedure Act is deemed sufficient when mailed to the last known address of record ~~a party~~.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/20-60)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-60. Investigations ~~Hearing; investigation; notice and hearing; disciplinary consent order~~. The Department may investigate the actions of any applicant or of any person or persons rendering or offering to render services or any person holding or claiming to hold a license under this Act. The Department shall, before revoking, ~~(a) OBRE may conduct hearings through the Board or a duly appointed hearing officer on proceedings to suspend, revoke, or to refuse to issue or renew licenses of persons applying for licensure or licensed under this Act or to censure, reprimand, or impose a civil fine not to exceed \$25,000 upon any licensee hereunder and may revoke, suspend, or refuse to issue or renew these licenses or censure, reprimand, or impose a civil fine not to exceed \$25,000 upon any licensee hereunder. (b) Upon the motion of either OBRE or the Board or upon the verified complaint in writing of any persons setting forth facts that if proven would constitute grounds for suspension or revocation under this Act,~~

~~OBRE, the Board, or its subcommittee shall cause to be investigated the actions of any person so accused who holds a license or is holding himself or herself out to be a licensee. This person is hereinafter called the accused. (c) Prior to initiating any formal disciplinary proceedings resulting from an investigation conducted pursuant to subsection (b) of this Section, that matter shall be reviewed by a subcommittee of the Board according to procedures established by rule. The subcommittee shall make a recommendation to the full Board as to the validity of the complaint and may recommend that the Board not proceed with formal disciplinary proceedings if the complaint is determined to be frivolous or without merit. (d) Except as provided for in Section 20-65 of this Act, OBRE shall, before suspending, revoking, placing on probation, reprimanding probationary status, or taking any other disciplinary action under Article 20 of this Act, at least 30 days before the date set for the hearing, (i) as OBRE may deem proper with regard to any license: (1) notify the accused in writing of the at least 30 days prior to the date set for the hearing of any charges made and the time and place for the hearing on of the charges, (ii) direct him or her to file a written answer to the charges with to be heard before the Board under oath within 20 days after the service on him or her of the notice, and (iii) ; and (2) inform the accused that if he or she fails to answer upon failure to file an answer and request a hearing before the date originally set for the hearing, default will be taken against him or her or that the accused and his or her license may be suspended, revoked, or placed on probationary status, or other disciplinary action taken with regard to the license, including limiting the scope, nature, or extent of his or her practice, as the Department may consider proper. At the time and place fixed in the notice, the Board shall proceed to hear the charges and the parties or their counsel shall be accorded ample opportunity to present any pertinent statements, testimony, evidence, and arguments. The Board may continue the hearing from time to time. In case the person, after receiving the the accused's practice, as OBRE may deem proper, may be taken with regard thereto. In case the person fails to file an answer after receiving notice, fails to file an answer, his or her license may, in the discretion of the Department OBRE, be suspended, revoked, or placed on probationary status, or the Department OBRE may take whatever disciplinary action considered deemed proper, including limiting the scope, nature, or extent of the person's practice or the imposition of a fine, without a hearing, if the act or acts charged constitute sufficient grounds for that such action under this Act. The written notice may be served by personal delivery or by certified mail to the address specified by the accused in his or her last notification with the Department.~~

~~(e) At the time and place fixed in the notice, the Board shall proceed to hearing of the charges and both the accused person and the complainant shall be accorded ample opportunity to present in person or by counsel such statements, testimony, evidence and argument as may be pertinent to the charges or to any defense thereto. The Board or its hearing officer may continue a hearing date upon its own motion or upon an accused's motion for one period not to exceed 30 days. The Board or its hearing officer may grant further continuances for periods not to exceed 30 days only upon good cause being shown by the moving party. The non moving party shall have the opportunity to object to a continuance on the record at a hearing upon the motion to continue. All motions for continuances and any denial or grant thereof shall be in writing. All motions shall be submitted not later than 48 hours before the scheduled hearing unless made upon an emergency basis. In determining whether good cause for a continuance is shown, the Board or its hearing officer shall consider such factors as the volume of cases pending, the nature and complexity of legal issues raised, the diligence of the party making the request, the availability of party's legal representative or witnesses, and the number of previous requests for continuance.~~

~~(f) Any unlawful act or violation of any of the provisions of this Act upon the part of any licensees employed by a real estate broker or associated by written agreement with the real estate broker, or unlicensed employee of a licensed broker, shall not be cause for the revocation of the license of any such broker, partial or otherwise, unless it appears to the satisfaction of OBRE that the broker had knowledge thereof.~~

~~(g) OBRE or the Board has power to subpoena any persons or documents for the purpose of investigation or hearing with the same fees and mileage and in the same manner as prescribed by law for judicial procedure in civil cases in courts of this State. The Commissioner, the Director, any member of the Board, a certified court reporter, or a hearing officer shall each have power to administer oaths to witnesses at any hearing which OBRE is authorized under this Act to conduct.~~

~~(h) Any circuit court or any judge thereof, upon the application of the accused person, complainant, OBRE, or the Board, may, by order entered, require the attendance of witnesses and the production of relevant books and papers before the Board in any hearing relative to the application for or refusal, recall, suspension, or revocation of a license, and the court or judge may compel obedience to the court's or the judge's order by proceedings for contempt.~~

~~(i) OBRE, at its expense, shall preserve a record of all proceedings at the formal hearing of any case involving the refusal to issue or the revocation, suspension, or other~~

~~discipline of a licensee. The notice of hearing, complaint and all other documents in the nature of pleadings and written motions filed in the proceedings, the transcript of testimony, the report of the Board, and the orders of OBRE shall be the record of the proceeding. At all hearings or pre hearing conferences, OBRE and the accused shall be entitled to have a court reporter in attendance for purposes of transcribing the proceeding or pre hearing conference at the expense of the party requesting the court reporter's attendance. A copy of the transcribed proceeding shall be available to the other party for the cost of a copy of the transcript.~~

~~(j) The Board shall present to the Commissioner its written report of its findings and recommendations. A copy of the report shall be served upon the accused, either personally or by certified mail as provided in this Act for the service of the citation. Within 20 days after the service, the accused may present to the Commissioner a motion in writing for a rehearing that shall specify the particular grounds therefor. If the accused shall order and pay for a transcript of the record as provided in this Act, the time elapsing thereafter and before the transcript is ready for delivery to the accused shall not be counted as part of the 20 days. Whenever the Commissioner is satisfied that substantial justice has not been done, the Commissioner may order a rehearing by the Board or other special committee appointed by the Commissioner or may remand the matter to the Board for their reconsideration of the matter based on the pleadings and evidence presented to the Board. In all instances, under this Act, in which the Board has rendered a recommendation to the Commissioner with respect to a particular licensee or applicant, the Commissioner shall, in the event that he or she disagrees with or takes action contrary to the recommendation of the Board, file with the Board and the Secretary of State his specific written reasons of disagreement with the Board. The reasons shall be filed within 60 days of the Board's recommendation to the Commissioner and prior to any contrary action. At the expiration of the time specified for filing a motion for a rehearing, the Commissioner shall have the right to take the action recommended by the Board. Upon the suspension or revocation of a license, the licensee shall be required to surrender his or her license to OBRE, and upon failure or refusal to do so, OBRE shall have the right to seize the license.~~

~~(k) At any time after the suspension, temporary suspension, or revocation of any license, OBRE may restore it to the accused without examination, upon the written recommendation of the Board.~~

~~(l) An order of revocation or suspension or a certified copy thereof, over the seal of OBRE and purporting to be signed~~

~~by the Commissioner, shall be prima facie proof that:~~

~~(1) The signature is the genuine signature of the Commissioner.~~

~~(2) The Commissioner is duly appointed and qualified.~~

~~(3) The Board and the members thereof are qualified.~~

~~Such proof may be rebutted.~~

~~(m) Notwithstanding any provisions concerning the conduct of hearings and recommendations for disciplinary actions, OBRE as directed by the Commissioner has the authority to negotiate agreements with licensees and applicants resulting in disciplinary consent orders. These consent orders may provide for any of the forms of discipline provided in this Act. These consent orders shall provide that they were not entered into as a result of any coercion by OBRE. Any such consent order shall be filed with the Commissioner along with the Board's recommendation and accepted or rejected by the Commissioner within 60 days of the Board's recommendation.~~

~~(Source: P.A. 91-245, eff. 12-31-99; 92-217, eff. 8-2-01.)~~

(225 ILCS 454/20-62 new)

Sec. 20-62. Record of proceedings; transcript. The Department, at its expense, shall preserve a record of all proceedings at the formal hearing of any case. The notice of hearing, complaint, all other documents in the nature of pleadings, written motions filed in the proceedings, the transcripts of testimony, the report of the Board, and orders of the Department shall be in the record of the proceeding.

(225 ILCS 454/20-63 new)

Sec. 20-63. Subpoenas; depositions; oaths. The Department has the power to subpoena documents, books, records, or other materials and to bring before it any person and to take testimony either orally or by deposition, or both, with the same fees and mileage and in the same manner as prescribed in civil cases in the courts of this State. The Secretary, the designated hearing officer, and every member of the Board has the power to administer oaths to witnesses at any hearing that the Department is authorized to conduct, and any other oaths authorized in an Act that is administered by the Department.

(225 ILCS 454/20-64 new)

Sec. 20-64. Board; rehearing. At the conclusion of a hearing, a copy of the Board's report shall be served upon the applicant or licensee by the Department, either personally or as provided in this Act for the service of a notice of hearing. Within 20 days after service, the applicant or licensee may present to the Department a motion in writing for a rehearing, which shall specify the particular grounds for rehearing. The Department may respond to the motion, or if a motion for

rehearing is denied, then upon denial, and except as provided in Section 20-72 of this Act, the Secretary may enter an order in accordance with the recommendations of the Board. If the applicant or licensee orders from the reporting service and pays for a transcript of the record within the time for filing a motion for rehearing, then the 20-day period within which a motion may be filed shall commence upon the delivery of the transcript to the applicant or licensee.

(225 ILCS 454/20-65)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-65. Temporary suspension. The Secretary ~~Commissioner~~ may temporarily suspend the license of a licensee without a hearing, simultaneously with the institution of proceedings for a hearing provided for in Section 20-61 ~~20-60~~ of this Act, if the Secretary ~~Commissioner~~ finds that the evidence indicates that the public interest, safety, or welfare imperatively requires emergency action. In the event that the Secretary ~~Commissioner~~ temporarily suspends the license without a hearing before the Board, a hearing shall be commenced ~~held~~ within 30 days after the suspension has occurred. The suspended licensee may seek a continuance of the hearing during which the suspension shall remain in effect. The proceeding shall be concluded without appreciable delay.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/20-66 new)

Sec. 20-66. Appointment of a hearing officer. The Secretary has the authority to appoint any attorney licensed to practice law in the State of Illinois to serve as the hearing officer in any action for refusal to issue, restore, or renew a license or to discipline a licensee. The hearing officer has full authority to conduct the hearing. Any Board member may attend the hearing. The hearing officer shall report his or her findings of fact, conclusions of law, and recommendations to the Board. The Board shall review the report of the hearing officer and present its findings of fact, conclusions of law, and recommendations to the Secretary and all parties to the proceeding. If the Secretary disagrees with a recommendation of the Board or of the hearing officer, then the Secretary may issue an order in contravention of the recommendation.

(225 ILCS 454/20-67 new)

Sec. 20-67. Order or certified copy; prima facie proof. An order, or certified copy of an order, over the seal of the Department and purporting to be signed by the Secretary is prima facie proof that (i) the signature is the genuine signature of the Secretary, (ii) the Secretary is duly appointed and qualified, and (iii) the Board and its members

are qualified to act.

(225 ILCS 454/20-68 new)

Sec. 20-68. Surrender of license. Upon the revocation or suspension of a license, the licensee shall immediately surrender his or her license to the Department. If the licensee fails to do so, the Department has the right to seize the license.

(225 ILCS 454/20-69 new)

Sec. 20-69. Restoration of a suspended or revoked license. At any time after the successful completion of a term of suspension or revocation of a license, the Department may restore it to the licensee, upon the written recommendation of the Board, unless after an investigation and a hearing the Board determines that restoration is not in the public interest.

(225 ILCS 454/20-72 new)

Sec. 20-72. Secretary; rehearing. If the Secretary believes that substantial justice has not been done in the revocation, suspension, or refusal to issue, restore, or renew a license, or any other discipline of an applicant or licensee, then he or she may order a rehearing by the same or other examiners.

(225 ILCS 454/20-73 new)

Sec. 20-73. Certifications of record; costs. The Department shall not be required to certify any record to the court, to file an answer in court, or to otherwise appear in any court in a judicial review proceeding unless there is filed in the court, with the complaint, a receipt from the Department acknowledging payment of the costs of furnishing and certifying the record, which costs shall be determined by the Department. Failure on the part of the plaintiff to file the receipt in court is grounds for dismissal of the action.

(225 ILCS 454/20-75)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-75. Administrative Review ~~venue Law; certification fee; summary report of final disciplinary actions.~~

(a) All final administrative decisions of the Department are ~~OBRE~~ shall be subject to judicial review ~~under~~ pursuant to the provisions of the Administrative Review Law and its the rules adopted pursuant thereto. The term "administrative decision" is defined in Section 3-101 of the Code of Civil Procedure ~~Administrative Review Law.~~

(b) Proceedings for judicial review shall be commenced in the circuit court of the court in which the party applying for

~~review resides, but if the party is not a resident of Illinois, the venue shall be in Sangamon County. OEBRE shall not be required to certify any record or file any answer or otherwise appear unless the party filing the complaint pays to OEBRE the certification fee provided for by rule representing costs of the certification. Failure on the part of the plaintiff to make such a deposit shall be grounds for dismissal of the action. OEBRE shall prepare from time to time, but in no event less often than once every other month, a summary report of final disciplinary actions taken since the previous summary report. The summary report shall contain a brief description of the action that brought about the discipline and the final disciplinary action taken. The summary report shall be made available upon request.~~

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/20-82 new)

Sec. 20-82. Fines and penalties; Real Estate Recovery Fund. All fines and penalties collected under this Act by the Department shall be deposited in the Real Estate Recovery Fund.

(225 ILCS 454/20-85)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-85. Recovery from Real Estate Recovery Fund. The Department ~~OEBRE~~ shall maintain a Real Estate Recovery Fund from which any person aggrieved by an act, representation, transaction, or conduct of a licensee or unlicensed employee of a licensee that is in violation of this Act or the rules promulgated pursuant thereto, constitutes embezzlement of money or property, or results in money or property being unlawfully obtained from any person by false pretenses, artifice, trickery, or forgery or by reason of any fraud, misrepresentation, discrimination, or deceit by or on the part of any such licensee or the unlicensed employee of a licensee and that results in a loss of actual cash money, as opposed to losses in market value, may recover. The aggrieved person may recover, by order of the circuit court of the county where the violation occurred, an amount of not more than \$25,000 ~~\$10,000~~ from the Fund for damages sustained by the act, representation, transaction, or conduct, together with costs of suit and attorney's fees incurred in connection therewith of not to exceed 15% of the amount of the recovery ordered paid from the Fund. However, no licensee ~~licensed broker or salesperson~~ may recover from the Fund unless the court finds that the person suffered a loss resulting from intentional misconduct. The court order shall not include interest on the judgment. The maximum liability against the Fund arising out of any one act shall be as provided in this Section, and the judgment order shall spread the award equitably among all co-owners or

otherwise aggrieved persons, if any. The maximum liability against the Fund arising out of the activities of any one licensee or one unlicensed employee of a licensee, since January 1, 1974, shall be \$100,000 ~~\$50,000~~. Nothing in this Section shall be construed to authorize recovery from the Fund unless the loss of the aggrieved person results from an act or omission of a licensee under this Act ~~licensed broker, salesperson, or unlicensed employee~~ who was at the time of the act or omission acting in such capacity or was apparently acting in such capacity and unless the aggrieved person has obtained a valid judgment as provided in Section 20-90 of this Act. No person aggrieved by an act, representation, or transaction that is in violation of the Illinois Real Estate Time-Share Act or the Land Sales Registration Act of 1989 may recover from the Fund.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/20-90)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-90. Collection from Real Estate Recovery Fund;

procedure.

(a) No action for a judgment that subsequently results in an order for collection from the Real Estate Recovery Fund shall be started later than 2 years after the date on which the aggrieved person knew, or through the use of reasonable diligence should have known, of the acts or omissions giving rise to a right of recovery from the Real Estate Recovery Fund.

(b) When any aggrieved person commences action for a judgment that may result in collection from the Real Estate Recovery Fund, the aggrieved person must name as parties defendant to that action any and all individual licensees ~~real estate brokers, real estate salespersons,~~ or their employees who allegedly committed or are responsible for acts or omissions giving rise to a right of recovery from the Real Estate Recovery Fund. Failure to name as parties defendant such licensees ~~individual brokers, salespersons,~~ or their employees shall preclude recovery from the Real Estate Recovery Fund of any portion of any judgment received in such an action. The aggrieved party may also name as additional parties defendant any corporations, limited liability companies, partnerships, registered limited liability partnership, or other business associations that may be responsible for acts giving rise to a right of recovery from the Real Estate Recovery Fund.

(c) When any aggrieved person commences action for a judgment that may result in collection from the Real Estate Recovery Fund, the aggrieved person must notify the Department ~~OBRE~~ in writing to this effect within 7 days of the commencement of the action. Failure to so notify the Department ~~OBRE~~ shall preclude recovery from the Real Estate Recovery Fund

of any portion of any judgment received in such an action. After receiving notice of the commencement of such an action, the Department ~~OBRE~~ upon timely application shall be permitted to intervene as a party defendant to that action.

(d) When any aggrieved person commences action for a judgment that may result in collection from the Real Estate Recovery Fund, and the aggrieved person is unable to obtain legal and proper service upon the defendant under the provisions of Illinois law concerning service of process in civil actions, the aggrieved person may petition the court where the action to obtain judgment was begun for an order to allow service of legal process on the Secretary ~~Commissioner~~. Service of process on the Secretary ~~Commissioner~~ shall be taken and held in that court to be as valid and binding as if due service had been made upon the defendant. In case any process mentioned in this Section is served upon the Secretary ~~Commissioner~~, the Secretary ~~Commissioner~~ shall forward a copy of the process by certified mail to the licensee's last address on record with the Department ~~OBRE~~. Any judgment obtained after service of process on the Secretary ~~Commissioner~~ under this Act shall apply to and be enforceable against the Real Estate Recovery Fund only. OBRE may intervene in and defend any such action.

(e) When an aggrieved party commences action for a judgment that may result in collection from the Real Estate Recovery Fund, and the court before which that action is commenced enters judgment by default against the defendant and in favor of the aggrieved party, the court shall upon motion of the Department ~~OBRE~~ set aside that judgment by default. After such a judgment by default has been set aside, the Department ~~OBRE~~ shall appear as party defendant to that action, and thereafter the court shall require proof of the allegations in the pleadings upon which relief is sought.

(f) The aggrieved person shall give written notice to the Department ~~OBRE~~ within 30 days of the entry of any judgment that may result in collection from the Real Estate Recovery Fund. The aggrieved person shall provide OBRE within 20 days prior written notice of all supplementary proceedings so as to allow the Department ~~OBRE~~ to participate in all efforts to collect on the judgment.

(g) When any aggrieved person recovers a valid judgment in any court of competent jurisdiction against any licensee or an unlicensed employee of any broker, upon the grounds of fraud, misrepresentation, discrimination, or deceit, the aggrieved person may, upon the termination of all proceedings, including review and appeals in connection with the judgment, file a verified claim in the court in which the judgment was entered and, upon 30 days' written notice to the Department ~~OBRE~~, and to the person against whom the judgment was obtained, may apply

to the court for an order directing payment out of the Real Estate Recovery Fund of the amount unpaid upon the judgment, not including interest on the judgment, and subject to the limitations stated in Section 20-85 of this Act. The aggrieved person must set out in that verified claim and at an evidentiary hearing to be held by the court upon the application the aggrieved party shall be required to show that the aggrieved person:

(1) Is not a spouse of the debtor or the personal representative of such spouse.

(2) Has complied with all the requirements of this Section.

(3) Has obtained a judgment stating the amount thereof and the amount owing thereon, not including interest thereon, at the date of the application.

(4) Has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment.

(5) By such search has discovered no personal or real property or other assets liable to be sold or applied, or has discovered certain of them, describing them as owned by the judgment debtor and liable to be so applied and has taken all necessary action and proceedings for the realization thereof, and the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized.

(6) Has diligently pursued all remedies against all the judgment debtors and all other persons liable to the aggrieved person in the transaction for which recovery is sought from the Real Estate Recovery Fund, including the filing of an adversary action to have the debts declared non-dischargeable in any bankruptcy petition matter filed by any judgment debtor or person liable to the aggrieved person.

The aggrieved person shall also be required to prove the amount of attorney's fees sought to be recovered and the reasonableness of those fees up to the maximum allowed pursuant to Section 20-85 of this Act.

(h) The court shall make an order directed to the Department ~~OBRE~~ requiring payment from the Real Estate Recovery Fund of whatever sum it finds to be payable upon the claim, pursuant to and in accordance with the limitations contained in Section 20-85 of this Act, if the court is satisfied, upon the

hearing, of the truth of all matters required to be shown by the aggrieved person under subsection (g) of this Section and that the aggrieved person has fully pursued and exhausted all remedies available for recovering the amount awarded by the judgment of the court.

(i) Should the Department ~~OBRE~~ pay from the Real Estate Recovery Fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed broker or salesperson or an unlicensed employee of a broker, the licensee's license shall be automatically terminated upon the issuance of a court order authorizing payment from the Real Estate Recovery Fund. No petition for restoration of a license shall be heard until repayment has been made in full, plus interest at the rate prescribed in Section 12-109 of the Code of Civil Procedure of the amount paid from the Real Estate Recovery Fund on their account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection (i).

(j) If, at any time, the money deposited in the Real Estate Recovery Fund is insufficient to satisfy any duly authorized claim or portion thereof, the Department ~~OBRE~~ shall, when sufficient money has been deposited in the Real Estate Recovery Fund, satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate prescribed in Section 12-109 of the Code of Civil Procedure.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/20-95)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-95. Power of the Department ~~OBRE~~ to defend. When the Department ~~OBRE~~ receives any process, notice, order, or other document provided for or required under Section 20-90 of this Act, it may enter an appearance, file an answer, appear at the court hearing, defend the action, or take whatever other action it deems appropriate on behalf and in the name of the defendant and take recourse through any appropriate method of review on behalf of and in the name of the defendant.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/20-100)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-100. Subrogation of the Department ~~OBRE~~ to rights of judgment creditor. When, upon the order of the court, the Department ~~OBRE~~ has paid from the Real Estate Recovery Fund any sum to the judgment creditor, the Department ~~OBRE~~ shall be subrogated to all of the rights of the judgment creditor and the judgment creditor shall assign all rights, title, and interest in the judgment to the Department ~~OBRE~~ and any amount

and interest so recovered by the Department ~~OBRE~~ on the judgment shall be deposited in the Real Estate Recovery Fund. (Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/20-110)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-110. Disciplinary actions of the Department ~~OBRE~~ not limited. Nothing contained in Sections 20-80 through 20-100 of this Act limits the authority of the Department ~~OBRE~~ to take disciplinary action against any licensee for a violation of this Act or the rules of the Department ~~OBRE~~, nor shall the repayment in full of all obligations to the Real Estate Recovery Fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to this Act. (Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/20-115)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-115. Time limit on action. No action may be taken by the Department ~~OBRE~~ against any person for violation of the terms of this Act or its rules unless the action is commenced within 5 years after the occurrence of the alleged violation. (Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/25-5)

(Section scheduled to be repealed on January 1, 2010)

Sec. 25-5. The Department ~~OBRE~~; powers and duties. The Department ~~OBRE~~ shall exercise the powers and duties prescribed by the Civil Administrative Code of Illinois for the administration of licensing acts and shall exercise such other powers and duties as are prescribed by this Act. The Department ~~OBRE~~ may contract with third parties for services or the development of courses necessary for the proper administration of this Act. (Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/25-10)

(Section scheduled to be repealed on January 1, 2010)

Sec. 25-10. Real Estate Administration and Disciplinary Board; duties. There is created the Real Estate Administration and Disciplinary Board. The Board shall be composed of 9 persons appointed by the Governor. Members shall be appointed to the Board subject to the following conditions:

(1) All members shall have been residents and citizens of this State for at least 6 years prior to the date of appointment.

(2) Six members shall have been actively engaged as brokers or salespersons or both for at least the 10 years

prior to the appointment.

(3) Three members of the Board shall be public members who represent consumer interests.

None of these members shall be (i) a person who is licensed under this Act or a similar Act of another jurisdiction, (ii) the spouse or family member of a licensee, (iii) ~~the spouse of a person licensed under this Act,~~ or a person who has an ownership interest in a real estate brokerage business, or (iv) a person the Department determines to have any other connection with a real estate brokerage business or a licensee. The members' terms shall be 4 years or until their successor is appointed, and the expiration of their terms shall be staggered. Appointments to fill vacancies shall be for the unexpired portion of the term. No A member shall be reappointed to the Board for a term that would cause his or her service on the Board to be longer than 12 years in a lifetime ~~may be reappointed for successive terms but no person shall be appointed to more than 2 terms or any part thereof in his or her lifetime. Persons holding office as members of the Board immediately prior to December 31, 1999 under the Real Estate License Act of 1983 shall continue as members of the Board until the expiration of the term for which they were appointed and until their successors are appointed and qualified.~~ The membership of the Board should reasonably reflect the geographic distribution of the licensee population in this State. In making the appointments, the Governor shall give due consideration to the recommendations by members and organizations of the profession. The Governor may terminate the appointment of any member for cause that in the opinion of the Governor reasonably justifies the termination. Cause for termination shall include without limitation misconduct, incapacity, neglect of duty, or missing 4 board meetings during any one calendar year. Each member of the Board may ~~shall~~ receive a per diem stipend in an amount to be determined by the Secretary ~~Commissioner~~. Each member shall be paid his or her necessary expenses while engaged in the performance of his or her duties. Such compensation and expenses shall be paid out of the Real Estate License Administration Fund. The Secretary ~~Commissioner~~ shall consider the recommendations of the Board on questions involving standards of professional conduct, discipline, and examination of candidates under this Act. The Department ~~OBRE~~, after notifying and considering the recommendations of the Board, if any, may issue rules, consistent with the provisions of this Act, for the administration and enforcement thereof and may prescribe forms that shall be used in connection therewith. Five Board members shall constitute a quorum. A quorum is required for all Board decisions ~~None of the functions, powers, or duties enumerated in Sections 20 20 and 30 5 and subsections (a) and (j) of~~

~~Section 20-60 of this Act shall be exercised by OEBRE except upon the action and report in writing of the Board.~~

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/25-13)

(Section scheduled to be repealed on January 1, 2010)

Sec. 25-13. Rules. The Department OEBRE, after notifying and considering the recommendations of the Board, if any, shall adopt, promulgate, and issue any rules that may be necessary for the implementation and enforcement of this Act.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/25-14)

(Section scheduled to be repealed on January 1, 2010)

Sec. 25-14. Reliance on advisory letters. Licensees or their representatives may seek an advisory letter from the Department OEBRE as to matters arising under this Act or the rules promulgated pursuant to this Act. The Department OEBRE shall promulgate rules as to the process of seeking and obtaining an advisory letter and topics and areas on which advisory rules will be issued by the Department OEBRE. A licensee is entitled to rely upon an advisory letter from the Department OEBRE and will not be disciplined by the Department OEBRE for actions taken in reliance on the advisory letter.

(Source: P.A. 92-217, eff. 8-2-01.)

(225 ILCS 454/25-15)

(Section scheduled to be repealed on January 1, 2010)

Sec. 25-15. ~~Director of Real Estate Coordinator~~; duties. There shall be in the Department a OEBRE a Director and a Deputy Director of Real Estate Coordinator, appointed by the Secretary Commissioner, who shall hold a currently valid broker's license, which shall be surrendered to the Department OEBRE during the appointment. ~~The Director of Real Estate Coordinator shall have report to the Commissioner and shall do the following duties and responsibilities:~~

- (1) act as Chairperson of the Board, ex-officio, without vote;
- (2) be the direct liaison between the Department OEBRE, the profession, and real estate organizations and associations;
- (3) prepare and circulate to licensees any educational and informational material that the Department OEBRE deems necessary for providing guidance or assistance to licensees;
- (4) appoint any necessary committees to assist in the performance of the functions and duties of the Department OEBRE under this Act; and

(5) subject to the administrative approval of the Secretary Commissioner, supervise all real estate activities ~~of OBRE~~.

~~The Commissioner shall appoint, for a term of 4 years, a Deputy Director of Real Estate who shall hold a currently valid broker's license, which shall be surrendered to OBRE during the appointment. Under direction of the Director of Real Estate, the Deputy Director of Real Estate shall be responsible for the administration of the licensing, disciplinary, and education provisions of this Act. The Deputy Director shall also assist the Director of Real Estate in the performance of his or her duties.~~

In designating the ~~Director and Deputy Director of Real Estate Coordinator~~, the Secretary Commissioner shall give due consideration to recommendations by members and organizations of the profession.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/25-20)

(Section scheduled to be repealed on January 1, 2010)

Sec. 25-20. Staff. The Department ~~OBRE~~ shall employ a minimum of one investigator per 10,000 licensees and one prosecutor per 20,000 licensees in order to have sufficient staff to perform the Department's obligations under the Act. carry out the provisions of this Act.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/25-21 new)

Sec. 25-21. Peer review advisors. The Department may contract with licensees meeting qualifications established by the Department to serve as peer review advisors for complaints and alleged violations of the Act. A peer review advisor is authorized to investigate and determine the facts of a complaint. The peer review advisor shall, at the direction of the Department, interview witnesses, the complainant and any licensees involved in the alleged matter and make a recommendation as to the findings of fact to the Department. The Department shall have 30 days from receipt of the recommendation to accept, reject or modify the recommended findings of fact. Peer review advisors shall be compensated from the Real Estate Audit Fund at a rate of not to exceed \$15,000.00 per advisor annually. A peer review advisor shall not investigate a complaint from a marketplace in which the peer review advisor does business.

(225 ILCS 454/25-25)

(Section scheduled to be repealed on January 1, 2010)

Sec. 25-25. Real Estate Research and Education Fund. A special fund to be known as the Real Estate Research and

Education Fund is created and shall be held in trust in the State Treasury. Annually, on September 15th, the State Treasurer shall cause a transfer of \$125,000 to the Real Estate Research and Education Fund from the Real Estate License Administration Fund. The Real Estate Research and Education Fund shall be administered by the Department ~~OBRE~~. Money deposited in the Real Estate Research and Education Fund may be used for research and education at state institutions of higher education or other organizations for research and the advancement of education in the real estate industry. Of the \$125,000 annually transferred into the Real Estate Research and Education Fund, \$15,000 shall be used to fund a scholarship program for persons of minority racial origin who wish to pursue a course of study in the field of real estate. For the purposes of this Section, "course of study" means a course or courses that are part of a program of courses in the field of real estate designed to further an individual's knowledge or expertise in the field of real estate. These courses shall include without limitation courses that a salesperson licensed under this Act must complete to qualify for a real estate broker's license, courses that a broker licensed under this Act must complete to qualify for a managing broker's license, courses required to obtain the Graduate Realtors Institute designation, and any other courses or programs offered by accredited colleges, universities, or other institutions of higher education in Illinois. The scholarship program shall be administered by the Department ~~OBRE~~ or its designee. Moneys in the Real Estate Research and Education Fund may be invested and reinvested in the same manner as funds in the Real Estate Recovery Fund and all earnings, interest, and dividends received from such investments shall be deposited in the Real Estate Research and Education Fund and may be used for the same purposes as moneys transferred to the Real Estate Research and Education Fund. Moneys in the Real Estate Research and Education Fund may be transferred to the Professions Indirect Cost Fund as authorized under Section 2105-300 of the Department of Professional Regulation Law of the Civil Administrative Code of Illinois.

(Source: P.A. 94-91, eff. 7-1-05.)

(225 ILCS 454/25-30)

(Section scheduled to be repealed on January 1, 2010)

Sec. 25-30. Real Estate License Administration Fund; audit. A special fund to be known as the Real Estate License Administration Fund is created in the State Treasury. All fees received by the Department ~~OBRE~~ under this Act shall be deposited in the Real Estate License Administration Fund. The moneys deposited in the Real Estate License Administration Fund shall be appropriated to the Department ~~OBRE~~ for expenses of

the Department ~~OBRE~~ and the Board in the administration of this Act and for the administration of any Act administered by the Department ~~OBRE~~ providing revenue to this Fund. Moneys in the Real Estate License Administration Fund may be invested and reinvested in the same manner as funds in the Real Estate Recovery Fund. All earnings received from such investment shall be deposited in the Real Estate License Administration Fund and may be used for the same purposes as fees deposited in the Real Estate License Administration Fund. Moneys in the Real Estate License Administration Fund may be transferred to the Professions Indirect Cost Fund as authorized under Section 2105-300 of the Department of Professional Regulation Law of the Civil Administrative Code of Illinois. Upon the completion of any audit of the Department ~~OBRE~~, as prescribed by the Illinois State Auditing Act, which includes an audit of the Real Estate License Administration Fund, the Department ~~OBRE~~ shall make the audit open to inspection by any interested person.

(Source: P.A. 94-91, eff. 7-1-05.)

(225 ILCS 454/25-35)

(Section scheduled to be repealed on January 1, 2010)

Sec. 25-35. Real Estate Recovery Fund. A special fund to be known as the Real Estate Recovery Fund is created in the State Treasury. ~~All fines and penalties The sums~~ received by the Department ~~OBRE~~ pursuant to Article 20 ~~the provisions of Sections 20-20, 20-30, and 20-80 through 20-100~~ of this Act shall be deposited into the State Treasury and held in the Real Estate Recovery Fund. The money in the Real Estate Recovery Fund shall be used by the Department ~~OBRE~~ exclusively for carrying out the purposes established by this Act. If, at any time, the balance remaining in the Real Estate Recovery Fund is less than \$750,000, the State Treasurer shall cause a transfer of moneys to the Real Estate Recovery Fund from the Real Estate License Administration Fund in an amount necessary to establish a balance of \$800,000 in the Real Estate Recovery Fund. These funds may be invested and reinvested in the same manner as authorized for pension funds in Article ~~1 14~~ of the Illinois Pension Code. All earnings, interest, and dividends received from investment of funds in the Real Estate Recovery Fund shall be deposited into the Real Estate License Administration Fund and shall be used for the same purposes as other moneys deposited in the Real Estate License Administration Fund.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/25-37)

(Section scheduled to be repealed on January 1, 2010)

Sec. 25-37. Real Estate Audit Fund; audit of special accounts; audit of fund.

(a) A special fund to be known as the Real Estate Audit Fund is created in the State Treasury. ~~The State Treasurer shall cause a transfer of \$200,000 from the Real Estate License Administration Fund to the Real Estate Audit Fund on January 1, 2002.~~ If, at any time, the balance in the Real Estate Audit Fund is less than \$25,000, the State Treasurer shall cause a transfer of \$200,000 from the Real Estate License Administration Fund to the Real Estate Audit Fund. The moneys held in the Real Estate Audit Fund shall be used exclusively by the Department OEBRE to conduct audits of special accounts of moneys belonging to others held by a broker.

(b) Upon receipt of a complaint or evidence by the Department OEBRE sufficient to cause the Department OEBRE to reasonably believe that funds required to be maintained in a special account by a broker have been misappropriated, the broker shall, within 30 days of written notice, submit to an audit of all special accounts. Such audit shall be performed by a licensed certified public accountant, shall result in a written report by the accountant, and shall specifically refer to the escrow and record-keeping requirements of this Act and the rules adopted under this Act. If it is found, pursuant to an order issued by the Secretary Commissioner, that moneys required to be maintained in a special account by a broker were misappropriated, as further defined by rule, the broker shall reimburse the Department OEBRE, in addition to any other discipline or civil penalty imposed, for the cost of the audit performed pursuant to this Section. The Department OEBRE may file in circuit court for a judgment to enforce the collection of the reimbursement of the cost of such audit. Any reimbursement collected by the Department OEBRE shall be deposited into the Real Estate Audit Fund.

(c) Moneys in the Real Estate Audit Fund may be invested and reinvested in the same manner as funds in the Real Estate Recovery Fund. All earnings received from such investment shall be deposited in the Real Estate Audit Fund and may be used for the same purpose as other moneys deposited in the Real Estate Audit Fund. Moneys in the Real Estate Audit Fund may be transferred to the Professions Indirect Cost Fund as authorized under Section 2105-300 of the Department of Professional Regulation Law of the Civil Administrative Code of Illinois. Upon completion of any audit of the Department OEBRE, prescribed by the Illinois State Auditing Act, which includes an audit of the Real Estate Audit Fund, the Department OEBRE shall make the audit open to inspection by any interested person.

(Source: P.A. 94-91, eff. 7-1-05.)

(225 ILCS 454/30-5)

(Section scheduled to be repealed on January 1, 2010)

Sec. 30-5. Licensing of pre-license schools, school

branches, and instructors.

(a) No person shall operate a pre-license school or school branch without possessing a valid pre-license school or school branch license issued by the Department ~~OBRE~~. No person shall act as a pre-license instructor at a pre-license school or school branch without possessing a valid pre-license instructor license issued by the Department ~~OBRE~~. Every person who desires to obtain a pre-license school, school branch, or pre-license instructor license shall make application to the Department ~~OBRE~~ in writing in form and substance satisfactory to the Department ~~OBRE~~ and pay the required fees prescribed by rule. In addition to any other information required to be contained in the application, every application for an original or renewed license shall include the applicant's Social Security number. The Department ~~OBRE~~ shall issue a pre-license school, school branch, or pre-license instructor license to applicants who meet qualification criteria established by rule. The Department ~~OBRE~~ may refuse to issue, suspend, revoke, or otherwise discipline a pre-license school, school branch, or pre-license instructor license or may withdraw approval of a course offered by a pre-license school for good cause. Disciplinary proceedings shall be conducted by the Board in the same manner as other disciplinary proceedings under this Act.

(b) All pre-license instructors must teach at least one course within the period of licensure or take an instructor training program approved by the Department ~~OBRE~~ in lieu thereof. A pre-license instructor may teach at more than one licensed pre-license school.

(c) The term of license for pre-license schools, branches, and instructors shall be 2 years as established by rule.

(d) The Department ~~OBRE~~ or the Advisory Council may, after notice, cause a pre-license school to attend an informal conference before the Advisory Council for failure to comply with any requirement for licensure or for failure to comply with any provision of this Act or the rules for the administration of this Act. The Advisory Council shall make a recommendation to the Board as a result of its findings at the conclusion of any such informal conference.

(e) For purposes of this Section, the term "pre-license" shall also include the 30-hour post-license course required to be taken to retain a broker's license.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/30-10)

(Section scheduled to be repealed on January 1, 2010)

Sec. 30-10. Advisory Council; powers and duties. There is created within the Department ~~OBRE~~ an Advisory Council to be comprised of 5 ~~7~~ members appointed by the Governor. The members' terms shall be 4 years or until their successor is

appointed and the expiration of their terms shall be staggered
for 4 year staggered terms. No member shall be reappointed to
the Advisory Council for a term that would cause his or her
service on the Advisory Council to be longer than 12 ~~serve more~~
~~than 8~~ years in a lifetime. Two ~~Three~~ of the members shall be
licensees who are current members of the Board, one member
shall be a representative of an Illinois real estate trade
organization who is not a member of the Board, one member shall
be a representative of a licensed pre-license school or
continuing education school, and one member shall be a
representative of an institution of higher education that
offers pre-license and continuing education courses. The Real
Estate Coordinator ~~Director~~ shall serve as the chairman of the
Advisory Council, ex officio, without vote. Three ~~Advisory~~
Council members shall constitute a quorum. A quorum is required
for all Advisory Council decisions. The Advisory Council shall
recommend criteria for the licensing and renewal of pre-license
schools, pre-license instructors, continuing education
schools, and continuing education instructors; review
applications for these licenses to determine if the applicants
meet the qualifications for licensure established in this Act
and by rule; approve pre-license school and continuing
education curricula; and make recommendations to the Board
regarding rules to be adopted for the conduct of schools and
instructors and the administration of the education provisions
of this Act.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/30-15)

(Section scheduled to be repealed on January 1, 2010)

Sec. 30-15. Licensing of continuing education schools;
approval of courses.

(a) Only continuing education schools in possession of a
valid continuing education school license may provide real
estate continuing education courses that will satisfy the
requirements of this Act. Pre-license schools licensed to offer
pre-license education courses for salespersons, brokers and
managing brokers shall qualify for a continuing education
school license upon completion of an application and the
submission of the required fee. Every entity that desires to
obtain a continuing education school license shall make
application to the Department ~~OBRE~~ in writing in forms
prescribed by the Department ~~OBRE~~ and pay the fee prescribed by
rule. In addition to any other information required to be
contained in the application, every application for an original
or renewed license shall include the applicant's Social
Security number.

(b) The criteria for a continuing education license shall
include the following:

(1) A sound financial base for establishing, promoting, and delivering the necessary courses. Budget planning for the School's courses should be clearly projected.

(2) A sufficient number of qualified, licensed instructors as provided by rule.

(3) Adequate support personnel to assist with administrative matters and technical assistance.

(4) Maintenance and availability of records of participation for licensees.

(5) The ability to provide each participant who successfully completes an approved program with a certificate of completion signed by the administrator of a licensed continuing education school on forms provided by the Department ~~ODPE~~.

(6) The continuing education school must have a written policy dealing with procedures for the management of grievances and fee refunds.

(7) The continuing education school shall maintain lesson plans and examinations for each course.

(8) The continuing education school shall require a 70% passing grade for successful completion of any continuing education course.

(9) The continuing education school shall identify and use instructors who will teach in a planned program.

Suggested criteria for instructor selections include:

- (A) appropriate credentials;
- (B) competence as a teacher;
- (C) knowledge of content area; and
- (D) qualification by experience.

(10) The continuing education school shall provide a proctor or an electronic means of proctoring for each examination. The continuing education school shall be responsible for the conduct of the proctor. The duties and responsibilities of a proctor shall be established by rule.

(11) The continuing education school must provide for closed book examinations for each course unless the Advisory Council excuses this requirement based on the complexity of the course material.

(c) Advertising and promotion of continuing education activities must be carried out in a responsible fashion, clearly showing the educational objectives of the activity, the nature of the audience that may benefit from the activity, the cost of the activity to the participant and the items covered

by the cost, the amount of credit that can be earned, and the credentials of the faculty.

(d) The Department ~~OBRE~~ may or upon request of the Advisory Council shall, after notice, cause a continuing education school to attend an informal conference before the Advisory Council for failure to comply with any requirement for licensure or for failure to comply with any provision of this Act or the rules for the administration of this Act. The Advisory Council shall make a recommendation to the Board as a result of its findings at the conclusion of any such informal conference.

(e) All continuing education schools shall maintain these minimum criteria and pay the required fee in order to retain their continuing education school license.

(f) All continuing education schools shall submit, at the time of initial application and with each license renewal, a list of courses with course materials to be offered by the continuing education school. The Department ~~OBRE~~, however, shall establish a mechanism whereby continuing education schools may apply for and obtain approval for continuing education courses that are submitted after the time of initial application or renewal. The Department ~~OBRE~~ shall provide to each continuing education school a certificate for each approved continuing education course. All continuing education courses shall be valid for the period coinciding with the term of license of the continuing education school. All continuing education schools shall provide a copy of the certificate of the continuing education course within the course materials given to each student or shall display a copy of the certificate of the continuing education course in a conspicuous place at the location of the class.

(g) Each continuing education school shall provide to the Department ~~OBRE~~ a monthly report in a format determined by the Department ~~OBRE~~, with information concerning students who successfully completed all approved continuing education courses offered by the continuing education school for the prior month.

(h) The Department ~~OBRE~~, upon the recommendation of the Advisory Council, may temporarily suspend a licensed continuing education school's approved courses without hearing and refuse to accept successful completion of or participation in any of these continuing education courses for continuing education credit from that school upon the failure of that continuing education school to comply with the provisions of this Act or the rules for the administration of this Act, until such time as the Department ~~OBRE~~ receives satisfactory assurance of compliance. The Department ~~OBRE~~ shall notify the continuing education school of the noncompliance and may initiate disciplinary proceedings pursuant to this Act. The

Department ~~OBRE~~ may refuse to issue, suspend, revoke, or otherwise discipline the license of a continuing education school or may withdraw approval of a continuing education course for good cause. Failure to comply with the requirements of this Section or any other requirements established by rule shall be deemed to be good cause. Disciplinary proceedings shall be conducted by the Board in the same manner as other disciplinary proceedings under this Act.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/30-20)

(Section scheduled to be repealed on January 1, 2010)

Sec. 30-20. Fees for continuing education school license; renewal; term. All applications for a continuing education school license shall be accompanied by a nonrefundable application fee in an amount established by rule. All continuing education schools shall be required to submit a renewal application, the required fee as established by rule, and a listing of the courses to be offered during the year to renew their continuing education school licenses. The term for a continuing education school license shall be 2 years and as established by rule. The fees collected under this Article 30 shall be deposited in the Real Estate License Administration Fund and shall be used to defray the cost of administration of the program and per diem of the Advisory Council as determined by the ~~Secretary~~ Commissioner.

(Source: P.A. 91-245, eff. 12-31-99.)

(225 ILCS 454/30-25)

(Section scheduled to be repealed on January 1, 2010)

Sec. 30-25. Licensing of continuing education instructors.

(a) No such person shall act as a continuing education instructor at a continuing education school or branch without possessing Only persons approved by the Advisory Council and in possession of a valid continuing education instructor license and satisfying any other qualification criteria established by the Department by rule issued by OBRE may instruct continuing education courses.

(b) After the effective date of this Act, every person who desires to obtain a continuing education instructor's license shall attend and successfully complete a one-day instructor development workshop, as approved by the Department. The term of licensure for a continuing education instructor shall be 2 years and as established by rule. Every person who desires to obtain a continuing education instructor license shall make application to the Department ~~OBRE~~ in writing on forms prescribed by the Office, accompanied by the fee prescribed by rule. In addition to any other information required to be contained in the application, every application for an original

or renewed license shall include the applicant's Social Security number. The Department ~~OBERE~~ shall issue a continuing education instructor license to applicants who meet qualification criteria established by this Act or rule.

(c) The Department ~~OBERE~~ may refuse to issue, suspend, revoke, or otherwise discipline a continuing education instructor for good cause. Disciplinary proceedings shall be conducted by the Board in the same manner as other disciplinary proceedings under this Act. ~~All The term of a license for a continuing education instructors instructor shall be 2 years and as established by rule. All Continuing Education Instructors~~ must teach at least one course within the period of licensure or take an instructor training program approved by the Department ~~OBERE~~ in lieu thereof.

(Source: P.A. 91-245, eff. 12-31-99.)

Section 25. The Code of Civil Procedure is amended by changing Sections 15-1503 and 15-1508 as follows:

(735 ILCS 5/15-1503) (from Ch. 110, par. 15-1503)

Sec. 15-1503. Notice of Foreclosure.

(a) A notice of foreclosure, whether the foreclosure is initiated by complaint or counterclaim, made in accordance with this Section and recorded in the county in which the mortgaged real estate is located shall be constructive notice of the pendency of the foreclosure to every person claiming an interest in or lien on the mortgaged real estate, whose interest or lien has not been recorded prior to the recording of such notice of foreclosure. Such notice of foreclosure must be executed by any party or any party's attorney and shall include (i) the names of all plaintiffs and the case number, (ii) the court in which the action was brought, (iii) the names of title holders of record, (iv) a legal description of the real estate sufficient to identify it with reasonable certainty, (v) a common address or description of the location of the real estate and (vi) identification of the mortgage sought to be foreclosed. An incorrect common address or description of the location, or an immaterial error in the identification of a plaintiff or title holder of record, shall not invalidate the lis pendens effect of the notice under this Section. A notice which complies with this Section shall be deemed to comply with Section 2-1901 of the Code of Civil Procedure and shall have the same effect as a notice filed pursuant to that Section; however, a notice which complies with Section 2-1901 shall not be constructive notice unless it also complies with the requirements of this Section.

(b) With respect to residential real estate, a copy of the notice of foreclosure described in subsection (a) of Section 15-1503 shall be sent by first class mail, postage prepaid, to

the municipality within the boundary of which the mortgaged real estate is located, or to the county within the boundary of which the mortgaged real estate is located if the mortgaged real estate is located in an unincorporated territory. A municipality or county must clearly publish on its website a single address to which such notice shall be sent. If a municipality or county does not maintain a website, then the municipality or county must publicly post in its main office a single address to which such notice shall be sent. In the event that a municipality or county has not complied with the publication requirement in this subsection (b), then such notice to the municipality or county shall be provided pursuant to Section 2-211 of the Code of Civil Procedure.

(Source: P.A. 86-974.)

(735 ILCS 5/15-1508) (from Ch. 110, par. 15-1508)

Sec. 15-1508. Report of Sale and Confirmation of Sale.

(a) Report. The person conducting the sale shall promptly make a report to the court, which report shall include a copy of all receipts and, if any, certificate of sale.

(b) Hearing. Upon motion and notice in accordance with court rules applicable to motions generally, which motion shall not be made prior to sale, the court shall conduct a hearing to confirm the sale. Unless the court finds that (i) a notice required in accordance with subsection (c) of Section 15-1507 was not given, (ii) the terms of sale were unconscionable, (iii) the sale was conducted fraudulently or (iv) that justice was otherwise not done, the court shall then enter an order confirming the sale. The confirmation order shall include a name, address, and telephone number of the holder of the certificate of sale or deed issued pursuant to that certificate or, if no certificate or deed was issued, the purchaser, whom a municipality or county may contact with concerns about the real estate. The confirmation order may also:

(1) approve the mortgagee's fees and costs arising between the entry of the judgment of foreclosure and the confirmation hearing, those costs and fees to be allowable to the same extent as provided in the note and mortgage and in Section 15-1504;

(2) provide for a personal judgment against any party for a deficiency; and

(3) determine the priority of the judgments of parties who deferred proving the priority pursuant to subsection (h) of Section 15-1506, but the court shall not defer confirming the sale pending the determination of such priority.

(b-5) Notice with respect to residential real estate. With

respect to residential real estate, the notice required under subsection (b) of this Section shall be sent to the mortgagor even if the mortgagor has previously been held in default. In the event the mortgagor has filed an appearance, the notice shall be sent to the address indicated on the appearance. In all other cases, the notice shall be sent to the mortgagor at the common address of the foreclosed property. The notice shall be sent by first class mail. Unless the right to possession has been previously terminated by the court, the notice shall

include the following language in 12-point boldface capitalized type:

IF YOU ARE THE MORTGAGOR (HOMEOWNER), YOU HAVE THE RIGHT TO REMAIN IN POSSESSION FOR 30 DAYS AFTER ENTRY OF AN ORDER OF POSSESSION, IN ACCORDANCE WITH SECTION 15-1701(c) OF THE ILLINOIS MORTGAGE FORECLOSURE LAW.

(b-10) Notice of confirmation order sent to municipality or county. A copy of the confirmation order required under subsection (b) shall be sent to the municipality in which the foreclosed property is located, or to the county within the boundary of which the foreclosed property is located if the foreclosed property is located in an unincorporated territory. A municipality or county must clearly publish on its website a single address to which such notice shall be sent. If a municipality or county does not maintain a website, then the municipality or county must publicly post in its main office a single address to which such notice shall be sent. In the event that a municipality or county has not complied with the publication requirement in this subsection (b-10), then such notice to the municipality or county shall be provided pursuant to Section 2-211 of the Code of Civil Procedure.

(c) Failure to Give Notice. If any sale is held without compliance with subsection (c) of Section 15-1507 of this Article, any party entitled to the notice provided for in paragraph (3) of that subsection (c) who was not so notified may, by motion supported by affidavit made prior to confirmation of such sale, ask the court which entered the judgment to set aside the sale. Any such party shall guarantee or secure by bond a bid equal to the successful bid at the prior sale, unless the party seeking to set aside the sale is the mortgagor, the real estate sold at the sale is residential real estate, and the mortgagor occupies the residential real estate at the time the motion is filed. In that event, no guarantee or bond shall be required of the mortgagor. Any subsequent sale is subject to the same notice requirement as the original sale.

(d) Validity of Sale. Except as provided in subsection (c) of Section 15-1508, no sale under this Article shall be held invalid or be set aside because of any defect in the notice thereof or in the publication of the same, or in the

proceedings of the officer conducting the sale, except upon good cause shown in a hearing pursuant to subsection (b) of Section 15-1508. At any time after a sale has occurred, any party entitled to notice under paragraph (3) of subsection (c) of Section 15-1507 may recover from the mortgagee any damages caused by the mortgagee's failure to comply with such paragraph (3). Any party who recovers damages in a judicial proceeding brought under this subsection may also recover from the mortgagee the reasonable expenses of litigation, including reasonable attorney's fees.

(e) Deficiency Judgment. In any order confirming a sale pursuant to the judgment of foreclosure, the court shall also enter a personal judgment for deficiency against any party (i) if otherwise authorized and (ii) to the extent requested in the complaint and proven upon presentation of the report of sale in accordance with Section 15-1508. Except as otherwise provided in this Article, a judgment may be entered for any balance of money that may be found due to the plaintiff, over and above the proceeds of the sale or sales, and enforcement may be had for the collection of such balance, the same as when the judgment is solely for the payment of money. Such judgment may be entered, or enforcement had, only in cases where personal service has been had upon the persons personally liable for the mortgage indebtedness, unless they have entered their appearance in the foreclosure action.

(f) Satisfaction. Upon confirmation of the sale, the judgment stands satisfied to the extent of the sale price less expenses and costs. If the order confirming the sale includes a deficiency judgment, the judgment shall become a lien in the manner of any other judgment for the payment of money.

(g) The order confirming the sale shall include, notwithstanding any previous orders awarding possession during the pendency of the foreclosure, an award to the purchaser of possession of the mortgaged real estate, as of the date 30 days after the entry of the order, against the parties to the foreclosure whose interests have been terminated.

An order of possession authorizing the removal of a person from possession of the mortgaged real estate shall be entered and enforced only against those persons personally named as individuals in the complaint or the petition under subsection (h) of Section 15-1701 and in the order of possession and shall not be entered and enforced against any person who is only generically described as an unknown owner or nonrecord claimant or by another generic designation in the complaint.

Notwithstanding the preceding paragraph, the failure to personally name, include, or seek an award of possession of the mortgaged real estate against a person in the confirmation order shall not abrogate any right that the purchaser may have to possession of the mortgaged real estate and to maintain a

proceeding against that person for possession under Article 9 of this Code or subsection (h) of Section 15-1701; and possession against a person who (1) has not been personally named as a party to the foreclosure and (2) has not been provided an opportunity to be heard in the foreclosure proceeding may be sought only by maintaining a proceeding under Article 9 of this Code or subsection (h) of Section 15-1701. (Source: P.A. 95-826, eff. 8-14-08; 96-265, eff. 8-11-09.)

Section 30. The Residential Real Property Disclosure Act is amended by changing Section 70 as follows:

(765 ILCS 77/70)

Sec. 70. Predatory lending database program.

(a) As used in this Article:

"Adjustable rate mortgage" or "ARM" means a closed-end mortgage transaction that allows adjustments of the loan interest rate during the first 3 years of the loan term.

"Borrower" means a person seeking a mortgage loan.

"Broker" means a "broker" or "loan broker", as defined in subsection (p) of Section 1-4 of the Residential Mortgage License Act of 1987.

"Closing agent" means an individual assigned by a title insurance company or a broker or originator to ensure that the execution of documents related to the closing of a real estate sale or the refinancing of a real estate loan and the disbursement of closing funds are in conformity with the instructions of the entity financing the transaction.

"Counseling" means in-person counseling provided by a counselor employed by a HUD-certified counseling agency to all borrowers, or documented telephone counseling where a hardship would be imposed on one or more borrowers. A hardship shall exist in instances in which the borrower is confined to his or her home due to medical conditions, as verified in writing by a physician, or the borrower resides 50 miles or more from the nearest participating HUD-certified housing counseling agency. In instances of telephone counseling, the borrower must supply all necessary documents to the counselor at least 72 hours prior to the scheduled telephone counseling session.

"Counselor" means a counselor employed by a HUD-certified housing counseling agency.

"Credit score" means a credit risk score as defined by the Fair Isaac Corporation, or its successor, and reported under such names as "BEACON", "EMPIRICA", and "FAIR ISAAC RISK SCORE" by one or more of the following credit reporting agencies or their successors: Equifax, Inc., Experian Information Solutions, Inc., and TransUnion LLC. If the borrower's credit report contains credit scores from 2 reporting agencies, then the broker or loan originator shall report the lower score. If

the borrower's credit report contains credit scores from 3 reporting agencies, then the broker or loan originator shall report the middle score.

"Department" means the Department of Financial and Professional Regulation.

"Exempt person" means that term as it is defined in subsections (d)(1) and (d)(1.5) of Section 1-4 of the Residential Mortgage License Act of 1987.

"First-time homebuyer" means a borrower who has not held an ownership interest in residential property.

"HUD-certified counseling" or "counseling" means counseling given to a borrower by a counselor employed by a HUD-certified housing counseling agency.

"Interest only" means a closed-end loan that permits one or more payments of interest without any reduction of the principal balance of the loan, other than the first payment on the loan.

"Lender" means that term as it is defined in subsection (g) of Section 1-4 of the Residential Mortgage License Act of 1987.

"Licensee" means that term as it is defined in subsection (e) of Section 1-4 of the Residential Mortgage License Act of 1987.

"Mortgage loan" means that term as it is defined in subsection (f) of Section 1-4 of the Residential Mortgage License Act of 1987.

"Negative amortization" means an amortization method under which the outstanding balance may increase at any time over the course of the loan because the regular periodic payment does not cover the full amount of interest due.

"Originator" means a "loan originator" as defined in subsection (hh) of Section 1-4 of the Residential Mortgage License Act of 1987, except an exempt person.

"Points and fees" has the meaning ascribed to that term in Section 10 of the High Risk Home Loan Act.

"Prepayment penalty" means a charge imposed by a lender under a mortgage note or rider when the loan is paid before the expiration of the term of the loan.

"Refinancing" means a loan secured by the borrower's or borrowers' primary residence where the proceeds are not used as purchase money for the residence.

"Title insurance company" means any domestic company organized under the laws of this State for the purpose of conducting the business of guaranteeing or insuring titles to real estate and any title insurance company organized under the laws of another State, the District of Columbia, or a foreign government and authorized to transact the business of guaranteeing or insuring titles to real estate in this State.

(a-5) A predatory lending database program shall be established within Cook County. The program shall be

administered in accordance with this Article. The inception date of the program shall be July 1, 2008. A predatory lending database program shall be expanded to include Kane, Peoria, and Will counties. The inception date of the expansion of the program as it applies to Kane, Peoria, and Will counties shall be July 1, 2010. Until the inception date, none of the duties, obligations, contingencies, or consequences of or from the program shall be imposed. The program shall apply to all mortgage applications that are governed by this Article and that are made or taken on or after the inception of the program.

(b) The database created under this program shall be maintained and administered by the Department. The database shall be designed to allow brokers, originators, counselors, title insurance companies, and closing agents to submit information to the database online. The database shall not be designed to allow those entities to retrieve information from the database, except as otherwise provided in this Article. Information submitted by the broker or originator to the Department may be used to populate the online form submitted by a counselor, title insurance company, or closing agent.

(c) Within 10 days after taking a mortgage application, the broker or originator for any mortgage on residential property within the program area must submit to the predatory lending database all of the information required under Section 72 and any other information required by the Department by rule. Within 7 days after receipt of the information, the Department shall compare that information to the housing counseling standards in Section 73 and issue to the borrower and the broker or originator a determination of whether counseling is recommended for the borrower. The borrower may not waive counseling. If at any time after submitting the information required under Section 72 the broker or originator (i) changes the terms of the loan or (ii) issues a new commitment to the borrower, then, within 5 days thereafter, the broker or originator shall re-submit all of the information required under Section 72 and, within 4 days after receipt of the information re-submitted by the broker or originator, the Department shall compare that information to the housing counseling standards in Section 73 and shall issue to the borrower and the broker or originator a new determination of whether re-counseling is recommended for the borrower based on the information re-submitted by the broker or originator. The Department shall require re-counseling if the loan terms have been modified to meet another counseling standard in Section 73, or if the broker has increased the interest rate by more than 200 basis points.

(d) If the Department recommends counseling for the borrower under subsection (c), then the Department shall notify

the borrower of all participating HUD-certified counseling agencies located within the State and direct the borrower to interview with a counselor associated with one of those agencies. Within 10 days after receipt of the notice of HUD-certified counseling agencies, the borrower shall select one of those agencies and shall engage in an interview with a counselor associated with that agency. Within 7 days after interviewing the borrower, the counselor must submit to the predatory lending database all of the information required under Section 74 and any other information required by the Department by rule. Reasonable and customary costs not to exceed \$300 associated with counseling provided under the program shall be paid by the broker or originator. The Department shall annually calculate to the nearest dollar an adjusted rate for inflation. A counselor shall not recommend or suggest that a borrower contact any specific mortgage origination company, financial institution, or entity that deals in mortgage finance to obtain a loan, another quote, or for any other reason related to the specific mortgage transaction; however, a counselor may suggest that the borrower seek an opinion or a quote from another mortgage origination company, financial institution, or entity that deals in mortgage finance. A counselor or housing counseling agency that in good faith provides counseling shall not be liable to a broker or originator or borrower for civil damages, except for willful or wanton misconduct on the part of the counselor in providing the counseling.

(e) The broker or originator and the borrower may not take any legally binding action concerning the loan transaction until the later of the following:

(1) the Department issues a determination not to recommend HUD-certified counseling for the borrower in accordance with subsection (c); or

(2) the Department issues a determination that HUD-certified counseling is recommended for the borrower and the counselor submits all required information to the database in accordance with subsection (d).

(f) Within 10 days after closing, the title insurance company or closing agent must submit to the predatory lending database all of the information required under Section 76 and any other information required by the Department by rule.

(g) The title insurance company or closing agent shall attach to the mortgage a certificate of compliance with the requirements of this Article, as generated by the database. If the title insurance company or closing agent fails to attach the certificate of compliance, then the mortgage is not recordable. In addition, if any lis pendens for a residential mortgage foreclosure is recorded on the property within the

program area, a certificate of service must be simultaneously recorded that affirms that a copy of the lis pendens was filed with the Department. If the certificate of service is not recorded, then the lis pendens pertaining to the residential mortgage foreclosure in question is not recordable and is of no force and effect.

(h) All information provided to the predatory lending database under the program is confidential and is not subject to disclosure under the Freedom of Information Act, except as otherwise provided in this Article. Information or documents obtained by employees of the Department in the course of maintaining and administering the predatory lending database are deemed confidential. Employees are prohibited from making disclosure of such confidential information or documents. Any request for production of information from the predatory lending database, whether by subpoena, notice, or any other source, shall be referred to the Department of Financial and Professional Regulation. Any borrower may authorize in writing the release of database information. The Department may use the information in the database without the consent of the borrower: (i) for the purposes of administering and enforcing the program; (ii) to provide relevant information to a counselor providing counseling to a borrower under the program; or (iii) to the appropriate law enforcement agency or the applicable administrative agency if the database information demonstrates criminal, fraudulent, or otherwise illegal activity.

(i) Nothing in this Article is intended to prevent a borrower from making his or her own decision as to whether to proceed with a transaction.

(j) Any person who violates any provision of this Article commits an unlawful practice within the meaning of the Consumer Fraud and Deceptive Business Practices Act.

(k) During the existence of the program, the Department shall submit semi-annual reports to the Governor and to the General Assembly by May 1 and November 1 of each year detailing its findings regarding the program. The report shall include, by county, at least the following information for each reporting period:

- (1) the number of loans registered with the program;
- (2) the number of borrowers receiving counseling;
- (3) the number of loans closed;
- (4) the number of loans requiring counseling for each

of the standards set forth in Section 73;

(5) the number of loans requiring counseling where the mortgage originator changed the loan terms subsequent to counseling; -

- (6) the number of licensed mortgage brokers and loan

originators entering information into the database;

(7) the number of investigations based on information obtained from the database, including the number of licensees fined, the number of licenses suspended, and the number of licenses revoked;

(8) a summary of the types of non-traditional mortgage products being offered; and

(9) a summary of how the Department is actively utilizing the program to combat mortgage fraud.

(Source: P.A. 95-691, eff. 6-1-08; 96-328, eff. 8-11-09.)

(225 ILCS 454/5-30 rep.)

(225 ILCS 454/5-55 rep.)

(225 ILCS 454/20-30 rep.)

(225 ILCS 454/20-35 rep.)

(225 ILCS 454/20-40 rep.)

(225 ILCS 454/20-45 rep.)

(225 ILCS 454/20-80 rep.)

(225 ILCS 454/20-120 rep.)

(225 ILCS 454/30-30 rep.)

Section 95. The Real Estate License Act of 2000 is amended by repealing Sections 5-30, 5-55, 20-30, 20-35, 20-40, 20-45, 20-80, 20-120, and 30-30.

Section 97. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

Section 99. Effective date. This Act takes effect upon becoming law, except that Sections 5, 20, and 95 take effect on December 31, 2009 and Sections 10 and 25 take effect 60 days after becoming law.