



COR 1685 – 564002077

Core A: Fair Housing, Agency, License Law & Escrow – License Act Violations



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Pat Trombello, Author

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NO REFUNDS ARE AVAILABLE FOR HOME STUDY TUITION AND MATERIALS

Core A courses contain very important information on keeping licenses current on the requirements of the License Act. When a licensee is not up-to-date on their responsibilities, violations can result. Listed below is a sampling of violations against licensees. These are for illustration purposes only and you will not be tested on these.

License Act Violations

Escrow

- Broker reprimanded with CE conditions for failure to return a security deposit after an agreement to rent commercial property was cancelled. He kept a portion of the deposit as his commission when he should have demanded payment from the client.
- Broker's license revoked and fined \$75,000 and the broker's corporation license was revoked and fined \$30,000 for failure to deposit earnest money in the escrow account, failure to return money and for not providing records requested by IDFPR.
- Broker indefinitely suspended for a minimum of three years and fined \$25,000 for failure to return earnest money as required by contract, failure to maintain escrow account records and for lacking signage at his place of business.
- Broker's license indefinitely suspended for a minimum of two years for using a personal bank account instead of an escrow account to hold client's earnest money.
- Broker's license revoked and fined \$10,000 due to his conversion of rental payments and security deposit for personal benefit.
- Broker's license and broker's corporation license were both indefinitely suspended for failure to deposit and maintain security deposits in an escrow account.
- Broker's license placed in refuse to renew status due to her conversion of escrow funds for personal use.

Agency

- Broker's license and corporation's license indefinitely suspended and fined \$50,000 for failure to fulfill contractual obligations and mismanaging funds while provided property management services; failure to maintain a separate account for funds and assessments and failure to send requested escrow records to IDFPR.
- Broker's license and corporations' license placed in refuse to renew status due to commingling of funds and failure to surrender leases, rent rolls and other property records pursuant to management contract.
- Broker's license indefinitely suspended for a minimum of three years for acting as a dual agent in a transaction in which she was an owner of the subject property.
- Broker's license revoked and fined \$20,000 for providing real estate service without a valid license, operating an unlicensed real estate corporation, and for engaging in dishonorable and unethical conduct by placing persons in rental units without the owner's knowledge.
- Broker's license revoked and fined \$25,000 for engaging in dishonorable, unethical and unprofessional conduct after he was found to have misled a client by failing to disclose a compensation agreement that he had with another party to the transaction.
- Broker's license placed in refuse to renew status due to misconduct while serving as a managing broker, including her failure to have identifying signage outside the brokerage office, failure to post licenses for all licensed agents working at the brokerage company and failure to provide copies of employment agreements to IDFPR upon request.

Advertising

- Broker ordered to cease and desist from advertising as a broker without a license.
- Broker's license indefinitely suspended for a minimum of three years and fined \$25,000 for engaging in a deceptive advertising, commingling funds and failing to respond to IDFPR's request for information.
- Broker's license and corporation's license both reprimanded due to the broker corporation's website containing misleading advertisement.
- Broker's license indefinitely suspended for practicing on an inoperative license, posting blind ads and using form rental contracts belonging to another licensee without permission.

Unlicensed Practice and Misc.

- Broker's license revoked and fined \$5,000 for falsification of broker license application and failure to disclose prior felony criminal conviction for grand larceny in New York.
- Broker's corporation license indefinitely suspended for a minimum of five years and fined \$25,000 due to owner being convicted of Felony Mail Fraud and Corruptly Endeavoring to Impede the IRS.
- Broker's license issued with reprimand after being disciplined by state of Wisconsin.
- Leasing agent student license indefinitely suspended and fined \$10,000 for practicing on an expired permit and for obstructing the investigation by IDFPR.
- Leasing agent's license placed on probation for 12 months due to a prior undisclosed criminal conviction.

Fair Housing

Civil Rights Act of 1866

In 1866, the first civil rights act was passed. This stemmed from the Fourteenth Amendment which made the Bill of Rights binding on all states. The Civil Rights Act of 1866 prohibited discrimination based on race in the purchase or rental of property. The landmark case of *Jones v Alfred H. Mayer Company* in 1968 upheld the 1866 Civil Rights Act which prohibited racial discrimination in both private and public housing whether selling or renting property.

The Civil Rights Act of 1866 was the first civil rights act and it had no exemptions. Its' protected class was "racial discrimination".

Civil Rights Act of 1964 (Title VII)

In the early 1960's there was a movement to guarantee equal rights in federally funded housing. The 1964 Civil Rights Act was passed and discrimination based on *race* was prohibited in all federally funded housing programs.

Fair Housing Act of 1968 (Title VIII)

The assassination of Martin Luther King prompted another major change in fair housing. The passage of the Fair Housing Act of 1968 now prohibited discrimination based on *race, color, religion or national origin*.

Reference to "race" is interpreted in a couple of ways. Some agencies say we are all one race; while the government still provides for a breakdown of race into subcategories such as Hispanic, Asian, African American etc.

Reference to "color" is based on the color of a person's skin.

Reference to "religion" is based on the right to have or not have religious beliefs.

Reference to "national origin" is based on where a person or their ancestors are from and should not be used as a basis to discriminate.

In 1972, an amendment to the Fair Housing Act of 1968, introduced the use of the equal housing opportunity poster. For federally funded properties, HUD (Housing & Urban Development) requires the use of the fair housing logo in all advertisements. For conventional properties, it is recommended, not required.

Exemptions to the 1968 Fair Housing Act

The following exemptions apply:

1. For residential properties with *four units or less*, an owner may choose who they want to occupy the building, provided that the owner lives on site. This does not mean that the owner may discriminate against a person applying for an apartment.
2. *Religious organizations* that provide housing for their members only and not the general public.
3. *Private clubs* that provide housing for their members only, are exempt from this Act.
4. A person may own *up to three homes at one time* and can choose who they want to occupy the premises. Ownership of over three homes, would fall under the Fair Housing Act provisions.

Rehabilitation Act of 1973

Discrimination is prohibited against persons with disabilities in *federally assisted/funded housing programs*.

Housing & Community Development Act of 1974

Discrimination based on *sex* was added to the protected classes under Title VIII of the Fair Housing Act of 1968.

Fair Housing Amendment Act of 1988

This Act is an amendment to the Fair Housing Act of 1968. It added two additional protected classes:

Individuals with disabilities (based on a mental or physical impairment) that may affect one or more of their life's major functions (walking, talking, hearing, seeing, learning, self-care etc.) and

Familial status which defines a family as "an adult with persons under the age of 18, a person that is pregnant, a person who has custody or is getting custody or persons under the age of 18."

Provision for Senior Housing

The Fair Housing Amendment Act of 1988 included a provision for senior housing which can be defined as operating housing based on:

- a. Individuals age 62 years of age or older occupying units, or
- b. At least one person 55 years of age or older in 80% of the units. The remaining 20% of units can be occupied by anyone else who qualifies. Typically persons with disabilities tend to prefer senior housing due to the services provided.

COMPARISON OF FAIR HOUSING LAWS

<u>[Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) and Fair Housing Amendments Act of 1988]</u>	<u>Illinois Human Rights Act</u>	<u>Cook County Human Rights Ordinance</u>	<u>Chicago Human Rights Ordinance</u>
Race	Race	Race	Race
Color	Color	Color	Color
Religion	Religion	Religion	Religion
National Origin	National Origin	National Origin	National Origin
Sex (Added in 1974)	Sex	Sex	Sex
Disability (Added in 1988)	Disability	Disability	Disability
Familial Status (Added in 1988)	Marital Status	Marital Status	Marital Status
	Ancestry	Ancestry	Ancestry
	Age	Age	Age
	Unfavorable Military Discharge	Military Discharge Status	Military Discharge Status
	Sexual Orientation (2005)	Parental Status	Parental Status
	Order of Protection (2010)	Source of Income	Source of Income

SERVICE ANIMALS

(Assistance & Companion Animals)

A major part of fair housing includes providing accommodations to people with disabilities in the use of assistance animals. Let's clarify for a moment the difference between an assistance animal and a companion animal. First, an assistance animal is ANY animal that provides assistance or a service to an individual with a disability. The animal may be a dog, miniature horse (used for visually impaired people), monkey, potbellied pig, a bird or other animal.

Owners may NOT charge any fees for assistance animals or companion animals. That includes no pet rent (because they are not pets) and no pet-related deposit of any kind. However, if there are damages to the property by a service animal or the tenant, damages may be assessed.

You may ask a person with a disability for a doctor's note (if it is your policy to do so) when they are requesting an accommodation or modification to the unit or property.

Companion animals, on the other hand, provide emotional well-being for individuals with certain medical conditions. Again, you may ask for a doctor's note, but no extra fees can be charged.

Americans with Disabilities Act (ADA)

This law guarantees equal opportunities for persons with disabilities in employment, public transportation, government services and telecommunications. It prohibits discrimination based on physical or mental disabilities.

ADA provides landlords to make a "*reasonable accommodation*" in their policies, rules, practices or services for a person with a disability. Examples might include a policy on "No pets", but an assistance animal or companion animal is exempt from this policy and cannot be denied access. Another example would be "Open parking" as a policy, but if a person has a disability that requires them to request accommodation for close parking, that would be a reasonable request.

ADA also provides that landlords shall consent to "*reasonable modification*" if requested by a prospect and/or tenant. A resident may request a modification to the interior or exterior of the building in order to make their housing meet their needs. Examples of interior modifications might be:

- Widening doorways
- Lowering countertops
- Removing the bath tub

What determines whether a landlord/owner must consent to the modification or to pay for the modification? It's a very simple formula:

IF the property receives federal funding, the landlord will pay for the modifications with those funds. Otherwise, if it's a conventional property, the rule of thumb is: Does it place an "undue financial burden" on the landlord to perform the requested modification? Each property is different. One property might have a very tight budget and can only afford a modest amount over that budget. Another property might have such a

strict budget that anything significant would put an undue financial burden on the property. That is what an owner/landlord would need to prove in court if they intend to win the case.

CONSENT to the modification is different than whether or not the owner/landlord is going to pay for the improvement/modification. We have already established that if the property receives federal funding, the owner/landlord will pay for the requested modification. If it's a conventional property, the owner/landlord cannot withhold their consent for the tenant/prospective tenant to install a modification.

Illinois Human Rights Act

In Illinois, complaints based on violations of the Federal fair housing laws, may also be referred to the Illinois Human Rights Commission. The Illinois Human Rights Act prohibits, discrimination based on all the federal protected classes: race, color, religion, national origin, sex, handicap and familial status AND

Ancestry, age (over age 40), marital status, perceived disability and unfavorable discharge from the military AND

In June of 2005, *sexual orientation* was added as a protected class to the Illinois Human Rights Act. AND

In January 2010, the protected class of "*Order of Protection*" was added to the Illinois Human Rights Act. This means that any person who identifies to an owner/landlord that they have an order of protection against another person, the owner/landlord cannot use that information against the prospect and deny them housing.

Recognizing Discrimination

The Fair Housing Acts protects individuals with disabilities (any physical or mental impairment limiting life's major activities). Examples include:

- Mental illness
- Epilepsy
- Cerebral palsy
- Visual impairments
- Hearing impairments
- AIDS/HIV

It also protects individuals who use service animals and those who need personal care/live-in attendants.

Rarely are owners/landlords or their representatives blatantly discriminating. It usually comes in the form of a casual remark during a telephone call, a visit to the property or in an advertisement. HUD and the Department of Human Rights regularly list some of the following in their public awareness campaigns.

Beware when you hear:

- This building is for adults only.
- We have a no-pet policy and that includes your guide dog.
- You can't live here because there is no one to take care of you.
- I don't really want all those changes... a ramp, grab bars, etc.
- Children are only allowed in basement and first floor units.
- Our "kids" building is full.
- Sorry, a parent and a child cannot share a bedroom.

These are all discriminatory actions. You may only indicate “adults only” IF you are a senior property. All the other references noted above should not be said to a prospect or tenant.

Additional information and help can be found at:

U.S Department of Housing & Urban Development (HUD) 1-800-669-9777

U.S Department of Justice – 1-202-514-4713

Steering, Blockbusting, Redlining

As noted above, actions are sometimes deemed discriminatory as well as saying discriminating things to people

Steering- The illegal practice of directing people, especially minorities, toward or away from a property, building or neighborhood. Example: Our family building is located next to a playground. It is illegal to have a “family” building.

Blockbusting- The illegal practice of prompting owners to rent or sell by making a representation about any protected class (race, color, religion, national origin, sex, handicap or familial status). This practice is also known as “panic pedaling”

Redlining- The illegal practice by lending institutions/banks (Not licensees) of refusing to grant loans within certain areas or neighborhoods. It is also illegal to charge different rates and terms for any protected class.

Advertising (Section 10-27 License Act)

- (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 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, 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.

- (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.
- (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 the 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.

Review- Fair Housing & Advertising (True/False)

True False

- 1) Service animals are not pets?
- 2) A disability is based on a mental or physical impairment
- 3) ADA stands for Americans with Dependents Act.
- 4) Age is a state protected class.
- 5) Steering is directing people towards or away from a property.
- 6) The sponsoring broker's business name must appear in all advertisements.
- 7) Discrimination is illegal.

(Answers to the Review Question can be found at the end of this home study)

AGENCY

Let's begin with the Legislative Intent behind the License Act requirements. The common law that dictates agency relationships between licensees and the consumer has led to numerous misunderstandings and sometimes, misinterpretations of the laws. Since the real estate industry plays a significant role in relation to the economy, the Illinois Department of Financial and Professional Regulation (IDFPR) finds it necessary to enact regulations to minimize these misunderstandings between licensees and consumers. In the material that follows, IDFPR's requirements are reviewed in detail.

Relationships between licensees and consumers (Section 15-10)

Licensees shall be considered to be representing the consumer they are working with as a designated agent for the consumer unless:

- (1) There is a written agreement providing a different relationship or*
- (2) The licensee is performing only ministerial acts on behalf of the consumer.*

Note: Ministerial acts or duties include such items that are more clerical functions and do not rise to the level of actual representation of a consumer. Examples might include answering phone calls, setting up appointments to show property, or assisting a licensee by completing business forms.

Duties of licensees representing clients (Section 15-15)

Licensees representing clients shall/may promote the best interests of that client by:

- 1) Seeking a transaction at the price and terms stated in the brokerage agreement*
- 2) Timely presenting all offers to and from the client, unless the client has waived this duty.*
- 3) Disclosing to the client, material facts concerning the transaction of which the licensee has actual knowledge, unless the information is confidential.*
- 4) Timely accounting for all money and property received*
- 5) Exercising reasonable skill and care in the transaction process*
- 6) Keep confidential all confidential information received from the client.*
- 7) A licensee representing a buyer or 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 a higher selling cost.*
- 8) 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.*

Failure to disclose information not affecting physical condition of property

No cause of action shall arise against a licensee for the failure to disclose (i) that an occupant of the property was afflicted with HIV or any other medical condition. (ii) that the property was the site of an act or occurrence that had no effect on the physical condition of the property or its environment (iii) fact situations on the property that are not the subject of the transaction. Or (iv) physical conditions located on the property that are not the subject of the transaction.

Licensee's relationship with customers.(Section 15-25)

- (a) *Licensees shall treat all customers honestly and shall not negligently or knowingly give them false information. A licensee engaged by a seller shall timely disclose to customers who are prospective buyers all latent material adverse facts pertaining to the physical condition of the property that are actually known by the licensee and that could not be discovered by a reasonably diligent inspection of the property by the customer. A licensee shall not be liable to a customer for providing false information to the customer if the false information was provided to the licensee by the licensee's client and the licensee did not have actual knowledge that the information was false. No cause of action shall arise on behalf of any person against a licensee for revealing information in compliance with this Section.*
- (b) *A licensee representing a client in a real estate transaction may provide assistance to a customer by performing ministerial acts.*

Duties following termination of brokerage agreement (Section 15-30)

Except as may be provided in a written agreement between the broker and the client, neither a sponsoring broker or any licensee affiliated with the sponsoring broker owes any further duties to the client after termination, expiration, or completion of performance of the brokerage agreement except:

- 1) *to account for all moneys and property relating to the transaction and*
- 2) *to keep confidential, all confidential information received during the course of the brokerage agreement.*

Agency relationship disclosure (Section 15-35)

A consumer shall be advised of the following no later than entering into a brokerage agreement with the sponsoring broker that:

- 1) A designated agency relationship exists
- 2) The name(s) of the designated agent in writing
- 3) The sponsoring broker's compensation and policy with regard to cooperating with other brokers in the transaction.

Compensation does not determine agency (Section 15-40)

Compensation does not determine an agency relationship. The payment or promise of payment of compensation to a licensee is not determinative of whether an agency relationship has been created between any licensee and a consumer.

Dual agency (Section 15-45)

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:

1) "The undersigned (insert name), (Licensee), may undertake a dual representation 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 the 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."

If either client is uncomfortable with this disclosure and dual representation, they should let the Licensee know. Clients are not required to sign the document unless they want to allow for dual representation.

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 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 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 o what price to accept or offer.

What a 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 the seller or landlord will take other than the listing price without permission of the seller or landlord.*
- 3) *The price the buyer or tenant is willing to pay without permission of the buyer or tenant.*
- 4) *A recommended or suggested price the buyer or tenant should offer.*
- 5) *A recommended or suggested price the seller or landlord should counter with or accept.*

The dual agency disclosure form must be presented by a licensee to the client at the time the brokerage agreement is entered into.

A licensee acting in a dual agency capacity must obtain written confirmation of the client's prior consent for the licensee to act as a dual agent.

Designated agency (Section 15-50)

A sponsoring broker entering into a brokerage agreement with any person for the listing of property or for buying, selling, exchanging, renting or leasing real estate, may specifically designate those licensees employed by the sponsoring broker who will be acting as legal agents of that person. A sponsoring broker entering into an agreement shall not be considered to be acting for more than one party in a transaction if the licensees specifically designated as legal agents are not representing more than one party in a transaction.

A sponsoring broker designating licensees to act as agents of clients shall take ordinary and necessary care to protect confidential information disclosed by a client to his or her designated agent.

Minimum Services (Section 15-75)

Sponsoring brokers must provide a certain level of minimum services to clients. They include:

- 1) *Acceptance and delivery of all offer to buy or sell a client's property*
- 2) *Assist their client in the negotiating and presenting of offers until a signed agreement is reached.*
- 3) *Answer their client's questions relating to the transaction of making offers, accepting offers, counter offers and finalizing the transaction.*

Review- Agency

True False

- 1) Agency is the relationship between licensees and consumers.
- 2) Licensees shall not knowingly give false information.
- 3) Licensees have a fiduciary responsibility to keep confidential information confidential.
- 4) Compensation determines agency.
- 5) A Licensee may have an obligation to present all offers unless the client waives this duty.
- 6) Licensees have an obligation to present all offers unless the client waives this duty.
- 7) Licensees have a duty to keep client's funds separate from their brokerage funds.
- 8) Licensees must disclose "material" facts that they have knowledge of.
- 9) Written consent to dual agency must be secured by the licensee prior to entering into a brokerage agreement.

(Answers to the Review Questions can be found at the end of this home study)

L I C E N S E L A W

Definitions (Section 1-10)

The Real Estate License Act of 2000 contains definitions of how the terms in the Act are meant to be understood. Some of the most important terms that all licensees should be aware of include:

“Agency” which means a relationship in which a real estate broker or licensee represents a consumer in a real estate transaction.

“Broker” means an individual, partnership, limited liability company, corporation, or registered limited liability partnership other than a real estate salesperson or leasing agent who for another for compensation either directly or indirectly conducts the following tasks:

- 1) *Sells, exchanges, purchases, rents, or leases real estate*
- 2) *Offers to sell, exchange, rent or lease real estate.*
- 3) *Negotiates, offers, attempts to negotiate the sale, exchange, purchase or rental of property*
- 4) *Lists, offers, attempts or agrees to list real estate.*
- 5) *Buys, sells, offers to buy or sell options on real estate improvements*
- 6) *Supervises the collection, offer, or attempt to collect rent for the use of real estate.*
- 7) *Advertises themselves as being engaged in the business of buying, selling, exchanging or renting real estate.*
- 8) *Assists or directs the sale, exchange, lease or rental of real estate.*
- 9) *Assists in negotiations of any transaction which results in the sale, exchange or lease 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 auctions.*

“Brokerage Agreement” means a written or oral agreement between a sponsoring broker and a consumer for licensed activities.

“Compensation” means the valuable consideration given by one person to another person in exchange for the performance of some activity or service. Forms of compensation include commissions, referral fees, bonuses, prizes, merchandise, finder fees, discounts, rebates, chance to win a drawing, or a person’s salary.

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

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

“Dual agency” means an agency relationship in which the licensee represents both the buyer and seller in the same transaction.

“Escrow moneys” means all moneys, promissory notes or any other type of legal tender deposited with any person for the benefit of the parties to the transaction.

“Managing broker” means a broker who has supervisory responsibilities for licensees in one or more offices and who has been appointed by the sponsoring broker of the real estate firm.

“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.

“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..

Unlicensed Assistants

Licensees may employ “unlicensed” assistants to assist with administrative or clerical duties **including:**

1. Answer phones, take message
2. Submit listings to MLS
3. Have keys made
4. Draft advertising copy and promotional materials for approval by licensee
5. Place advertising
6. Record and deposit earnest money, security deposits and rents
7. Compute commission checks and perform bookkeeping activities
8. Place signs on property
9. Prepare and distribute flyers and promotional information under direction of licensee
10. Deliver documents, pick up keys
11. Place routing call on late rent payments
12. Schedule appointments for licensees (does NOT include make calls, telemarketing or other activities to solicit business on behalf of licensee)
13. Respond to questions by quoting directly from published information
14. Sit at a property for a “broker” tour that is NOT open to the public

Unlicensed Assistant of a licensee may NOT:

1. Host open houses, kiosks, or home show booths or fairs
2. Show property for sale or rent
3. Interpret or explain a contract/clause or lease agreement
4. Negotiate or agree to any commission on behalf of licensee
5. Perform any other activity for which a licensee is required

Sponsoring broker, employment agreement (Section 10-20)

A licensee may perform activities as a licensee only for his or her sponsoring broker. A licensee must have only one sponsoring broker at any one time.

Every broker who employs licensees shall have a written employment agreement with each licensee. The agreement shall address the employment or independent contractor relationship and shall include supervision, duties, compensation and termination.

In addition, each sponsoring broker must have a written employment agreement with each licensed personal assistant who assists a licensee sponsored by the sponsoring broker. The duties to be included are the same as stated above.

Disciplinary actions, causes – (Section 20-20)

IDFPR may refuse to issue or renew a license, may place on probation, suspend, or revoke any license, or may censure, reprimand, or otherwise discipline or impose a civil fine upon any licensee for any one or any combination of the following causes. When an applicant or licensee:

- 1) *Has by fraudulent representation, obtained a license*
- 2) *Has been convicted of any crime (dishonesty or fraud, larceny, embezzlement or has been convicted in this state or another state of a crime that is a felony under the laws of the State or has been convicted of a felony in a federal court.*
- 3) *Has been adjudged to be a person under legal disability or subject to involuntary admission in the Mental Health and Developmental Disabilities Code.*
- 4) *When a licensee performs any act as a broker or salesperson in a retail sales establishment from an office, desk or space not separated from the main retail business by a separate and distinct area.*
- 5) *Has been disciplined by another state*
- 6) *Has engaged in real estate activity without a license or after a license has expired, or inoperative.*
- 7) *Attempts to cheat on the real estate exam or continuing education or aid an applicant to do the same.*
- 8) *Is performing any act as a broker or leasing agent and is found guilty of misrepresentation, untruthful advertising, making false promises, acting on behalf of more than one party without the permission of all parties, representing a broker other than his/her sponsoring broker, failure to account for money and documents, failure to maintain and deposit in a special account all escrow money belonging to others, failure to make available to real estate enforcement all escrow records, failure to furnish copies of all documents in a real estate transaction, failure of a sponsoring broker to timely provide sponsor cards or termination of licenses to IDFPR, engaging in dishonorable, unethical or unprofessional conduct likely to defraud or harm the public. In addition, commingling of money or property of others with their own, employing any person on a temporary basis as a means of evading the law of payment of commissions, permitting the use of his/her license as a broker to enable a salesperson or unlicensed person to operate a real estate business without actual participation by the broker, displaying a for rent or for sale sign without the written consent of an owner, failure to provide IDFPR with information as a result of a complaint or advertising by means of a blind ad.*

Overview of the License Act Changes

- 1) Lead- The name of a potential seller, buyer, lessor, lessee or client when a licensee exchanges this information for compensation
- 2) Regular employee- A person working an average of 20 hours per week (IRS standards)
- 3) Change of Address- Notification is required to IDFPR of every address where a license practices real estate and if the offices where they practice changes
- 4) Advertising- Internet is now included as a form of advertising
- 5) Advertising- deceptive and misleading now covers if a licensee uses a domain name or keywords/devices to mislead or direct customers deceptively to licensee's website
- 6) Company policy- Real estate brokerage offices must have a written office policy covering at least agency, fair housing, non-discrimination, confidential information, advertising, supervision and training, disclosures, risk management, earnest money, and escrow handling plus any other issues that affect licensee's actions
- 7) Agency- written disclosure- Every customer must be given written notice as to who his/her designated agent is BEFORE beginning to work with that person and the company must keep a copy of disclosure for 5 years
- 8) Dual agency- Expanded notification of the details of what it means to represent both parties must be given to buyer/seller and lessor/lessee
- 9) Discipline- A licensee can be disciplined when dealing with their own property improperly and they must be able to practice with a degree of skill
- 10) Discipline- drugs/alcohol- licensee may be required to submit to a mental or physical exam if IDFPR believes the person is incompetent or under the influence of drugs/alcohol
- 11) Enforcement- private right of action- License Act contains a private right of action where private citizens can take legal action to stop unlicensed practice

Review- License Law

True False

- 1) Licensees must have only one sponsoring broker at any one time.
- 2) All sponsored licensees need a written employment agreement.
- 3) Engaging in licensed activity without a license is acceptable.
- 4) Commingling of client's funds and broker's funds is permitted.
- 5) Advertising by means of a blind ad is not allowed.

(Answers to the Review Questions can be found at the end of this home study.)

ESCROW

Escrow Overview (Admin Rules 1450-175)

Definition – Escrow moneys means all moneys, promissory notes or any other type of legal tender deposited for the benefit of parties to the transaction.

Sponsoring brokers who accept escrow moneys shall maintain and deposit into a special account, separate and apart from personal or other business accounts, all escrow moneys entrusted to them while acting as the real estate brokers, escrow agents, or as the temporary custodians of the funds for others.

- 1) *Escrow funds shall be maintained in a non-interest bearing account, unless the parties to the transaction agree otherwise.*
- 2) *The sponsoring broker may maintain more than one escrow account*
- 3) *If the sponsoring broker does not receive escrow moneys, an account need not be maintained.*
- 4) *All escrow accounts whether in a non-interest bearing or interest bearing account must be kept at a federally insured depository.*
- 5) *Commingling is not permitted.*
- 6) *Depositing escrow moneys – All escrow money accepted by the sponsoring broker shall be deposited in the broker’s escrow account not later than the next business day following the transaction.*
- 7) *The sponsoring broker shall keep all escrow moneys on deposit until the transaction is consummated or terminated, except to the extent where they are disbursed according to the provisions of the License Act.*
- 8) *The sponsoring broker must disburse escrow moneys upon consummation or termination of the transaction. Such disbursement must be according to the terms of the contract and must be made no later than the next business day following the sponsoring broker’s receipt of notice of the consummation or termination, or otherwise in accordance with the written direction of all principals to the transaction or their duly authorized agents.*
 - a. *Commissions and/or fees earned by a sponsoring broker in any transaction shall be disbursed by that broker from the funds deposited in an escrow account no earlier than the day the transaction is consummated or terminated and not later than the next business day after the transaction is consummated or terminated, or otherwise in accordance with the written direction of all principals to the transaction or their duly authorized agents.*
- 9) *Disputes over escrow moneys –(IR legal) Effective January 1, 2009, the Real Estate License Act was amended to reflect a shortened period of time before disputed funds will be considered abandoned. Prior to January 1, 2009 disputed moneys held in broker escrow accounts would be considered abandoned after being held for five (5) years. At that time, brokers would turn those moneys over to the Illinois Treasurer’s Office (Division of Unclaimed Property). The new provisions reduce the five (5) year time period to six (6) months for certain disputed earnest moneys held in a broker’s escrow account. Funds shall be deemed “abandoned” 1) in the absence of disbursement as permitted, 2) in the absence of notice of the filing of any claim in a court of jurisdiction and 3) if six (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 authorized agent.*

Disciplinary causes related to escrow (Section 20-20 h)

Disciplinary actions for violations of escrow include:

- 1) *Failure to account for or to remit any moneys or documents coming into his or her possession that belong to others.*
- 2) *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 disbursed prior to the consummation or termination in accordance with: a) the written direction of the principals, b) directions for providing the release, payment or distribution of escrow moneys contained in any written contract signed by the principals to the transaction, c) pursuant to a court order. The account shall be non-interest bearing, unless the character of the deposit is such that payment of interest 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.*
- 3) *Failure to make available to the real estate enforcement personnel of IDFPR during normal business hours, all escrow records and related documents maintained in connection with the practice of real estate.*
- 4) *Commingling the money or property of others with his or her own funds.*

Review Escrow

True False

- 1) Sponsoring brokers who accept escrow money shall maintain and deposit it in a separate account from the broker's fund.
- 2) Escrow funds shall be placed in a non-interest bearing account.
- 3) Escrow funds must be deposited within a week following the transaction.
- 4) Escrow funds must be deposited not later than the next business day following the transaction.

(Answers for the Review Questions can be found at the end of this home study)

CONCLUSION

At this point, you should read over the Review Sections (all 4 of them).

Contact the provider where you purchased this home study to arrange for a proctor to administer the 25 question true/false CE exam.

If you have any questions about the license act provisions contained in this home study, please contact the author (Patricia Trombello at Technical Training Consultants, Inc. at 630-353-0400 or via email at www.ttcinc01@aol.com)

Answer Key: Review Questions

Fair Housing and Advertising:

- 1) T
- 2) T
- 3) F
- 4) T
- 5) T
- 6) T
- 7) T

Agency:

- 1) T
- 2) T
- 3) T
- 4) F
- 5) F
- 6) T
- 7) T
- 8) T
- 9) T

License Law:

- 1) T
- 2) T
- 3) F
- 4) F
- 5) T

Escrow:

- 1) T
- 2) T
- 3) F
- 4) T