

# HB1221



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB1221

Introduced 02/08/11, by Rep. Michael J. Zalewski

#### SYNOPSIS AS INTRODUCED:

225 ILCS 454/20-20

Amends the Real Estate License Act of 2000. Provides that the Department may impose a fine not to exceed \$35,000 (up from \$25,000) for any one or any combination of the grounds for discipline.

LRB097 06562 CEL 46647 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

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

4 Section 5. The Real Estate License Act of 2000 is amended  
5 by changing Section 20-20 as follows:

6 (225 ILCS 454/20-20)

7 (Section scheduled to be repealed on January 1, 2020)

8 Sec. 20-20. Grounds for discipline.

9 (a) The Department may refuse to issue or renew a license,  
10 may place on probation, suspend, or revoke any license,  
11 reprimand, or take any other disciplinary or non-disciplinary  
12 action as the Department may deem proper or impose a fine not  
13 to exceed \$35,000 ~~\$25,000~~ upon any licensee under this Act or  
14 against a licensee in handling his or her own property, whether  
15 held by deed, option, or otherwise, for any one or any  
16 combination of the following causes:

17 (1) Fraud or misrepresentation in applying for, or  
18 procuring, a license under this Act or in connection with  
19 applying for renewal of a license under this Act.

20 (2) The conviction of, plea of guilty or plea of nolo  
21 contendere to a felony or misdemeanor, an essential element  
22 of which is dishonesty or fraud or larceny, embezzlement,  
23 or obtaining money, property, or credit by false pretenses

1 or by means of a confidence game, in this State, or any  
2 other jurisdiction.

3 (3) Inability to practice the profession with  
4 reasonable judgment, skill, or safety as a result of a  
5 physical illness, including, but not limited to,  
6 deterioration through the aging process or loss of motor  
7 skill, or a mental illness or disability.

8 (4) Practice under this Act as a licensee in a retail  
9 sales establishment from an office, desk, or space that is  
10 not separated from the main retail business by a separate  
11 and distinct area within the establishment.

12 (5) Disciplinary action of another state or  
13 jurisdiction against the license or other authorization to  
14 practice as a managing broker, broker, salesperson, or  
15 leasing agent if at least one of the grounds for that  
16 discipline is the same as or the equivalent of one of the  
17 grounds for discipline set forth in this Act. A certified  
18 copy of the record of the action by the other state or  
19 jurisdiction shall be prima facie evidence thereof.

20 (6) Engaging in the practice of real estate brokerage  
21 without a license or after the licensee's license was  
22 expired or while the license was inoperative.

23 (7) Cheating on or attempting to subvert the Real  
24 Estate License Exam or continuing education exam.

25 (8) Aiding or abetting an applicant to subvert or cheat  
26 on the Real Estate License Exam or continuing education

1 exam administered pursuant to this Act.

2 (9) Advertising that is inaccurate, misleading, or  
3 contrary to the provisions of the Act.

4 (10) Making any substantial misrepresentation or  
5 untruthful advertising.

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

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

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

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

17 (15) Representing or attempting to represent a broker  
18 other than the sponsoring broker.

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

22 (17) Failure to maintain and deposit in a special  
23 account, separate and apart from personal and other  
24 business accounts, all escrow moneys belonging to others  
25 entrusted to a licensee while acting as a real estate  
26 broker, escrow agent, or temporary custodian of the funds

1 of others or failure to maintain all escrow moneys on  
2 deposit in the account until the transactions are  
3 consummated or terminated, except to the extent that the  
4 moneys, or any part thereof, shall be:

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

14 (B) deemed abandoned and transferred to the Office  
15 of the State Treasurer to be handled as unclaimed  
16 property pursuant to the Uniform Disposition of  
17 Unclaimed Property Act. Escrow moneys may be deemed  
18 abandoned under this subparagraph (B) only: (i) in the  
19 absence of disbursement under subparagraph (A); (ii)  
20 in the absence of notice of the filing of any claim in  
21 a court of competent jurisdiction; and (iii) if 6  
22 months have elapsed after the receipt of a written  
23 demand for the escrow moneys from one of the principals  
24 to the transaction or the principal's duly authorized  
25 agent.

26 The account shall be noninterest bearing, unless the

1 character of the deposit is such that payment of interest  
2 thereon is otherwise required by law or unless the  
3 principals to the transaction specifically require, in  
4 writing, that the deposit be placed in an interest bearing  
5 account.

6 (18) Failure to make available to the Department all  
7 escrow records and related documents maintained in  
8 connection with the practice of real estate within 24 hours  
9 of a request for those documents by Department personnel.

10 (19) Failing to furnish copies upon request of  
11 documents relating to a real estate transaction to a party  
12 who has executed that document.

13 (20) Failure of a sponsoring broker to timely provide  
14 information, sponsor cards, or termination of licenses to  
15 the Department.

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

19 (22) Commingling the money or property of others with  
20 his or her own money or property.

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

25 (24) Permitting the use of his or her license as a  
26 broker to enable a salesperson or unlicensed person to

1 operate a real estate business without actual  
2 participation therein and control thereof by the broker.

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

6 (26) Displaying a "for rent" or "for sale" sign on any  
7 property without the written consent of an owner or his or  
8 her duly authorized agent or advertising by any means that  
9 any property is for sale or for rent without the written  
10 consent of the owner or his or her authorized agent.

11 (27) Failing to provide information requested by the  
12 Department, or otherwise respond to that request, within 30  
13 days of the request.

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

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

19 (A) A "guaranteed sales plan" is any real estate  
20 purchase or sales plan whereby a licensee enters into a  
21 conditional or unconditional written contract with a  
22 seller, prior to entering into a brokerage agreement  
23 with the seller, by the terms of which a licensee  
24 agrees to purchase a property of the seller within a  
25 specified period of time at a specific price in the  
26 event the property is not sold in accordance with the

1 terms of a brokerage agreement to be entered into  
2 between the sponsoring broker and the seller.

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

6 (C) A licensee offering a guaranteed sales plan  
7 shall provide to the party to whom the plan is offered  
8 evidence of sufficient financial resources to satisfy  
9 the commitment to purchase undertaken by the broker in  
10 the plan.

11 (D) Any licensee offering a guaranteed sales plan  
12 shall undertake to market the property of the seller  
13 subject to the plan in the same manner in which the  
14 broker would market any other property, unless the  
15 agreement with the seller provides otherwise.

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

19 (F) Any licensee who fails to perform on a  
20 guaranteed sales plan in strict accordance with its  
21 terms shall be subject to all the penalties provided in  
22 this Act for violations thereof and, in addition, shall  
23 be subject to a civil fine payable to the party injured  
24 by the default in an amount of up to \$25,000.

25 (30) Influencing or attempting to influence, by any  
26 words or acts, a prospective seller, purchaser, occupant,



1 landlord, or tenant of real estate, in connection with  
2 viewing, buying, or leasing real estate, so as to promote  
3 or tend to promote the continuance or maintenance of  
4 racially and religiously segregated housing or so as to  
5 retard, obstruct, or discourage racially integrated  
6 housing on or in any street, block, neighborhood, or  
7 community.

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

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

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

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

26 (35) Advertising or offering merchandise or services

1 as free if any conditions or obligations necessary for  
2 receiving the merchandise or services are not disclosed in  
3 the same advertisement or offer. These conditions or  
4 obligations include without limitation the requirement  
5 that the recipient attend a promotional activity or visit a  
6 real estate site. As used in this subdivision (35), "free"  
7 includes terms such as "award", "prize", "no charge", "free  
8 of charge", "without charge", and similar words or phrases  
9 that reasonably lead a person to believe that he or she may  
10 receive or has been selected to receive something of value,  
11 without any conditions or obligations on the part of the  
12 recipient.

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

17 (37) Violating the terms of a disciplinary order issued  
18 by the Department.

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

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

26 (40) Disregarding or violating any provision of this

1 Act or the published rules promulgated by the Department to  
2 enforce this Act or aiding or abetting any individual,  
3 partnership, registered limited liability partnership,  
4 limited liability company, or corporation in disregarding  
5 any provision of this Act or the published rules  
6 promulgated by the Department to enforce this Act.

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

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

15 (b) The Department may refuse to issue or renew or may  
16 suspend the license of any person who fails to file a return,  
17 pay the tax, penalty or interest shown in a filed return, or  
18 pay any final assessment of tax, penalty, or interest, as  
19 required by any tax Act administered by the Department of  
20 Revenue, until such time as the requirements of that tax Act  
21 are satisfied in accordance with subsection (g) of Section  
22 2105-15 of the Civil Administrative Code of Illinois.

23 (c) The Department shall deny a license or renewal  
24 authorized by this Act to a person who has defaulted on an  
25 educational loan or scholarship provided or guaranteed by the  
26 Illinois Student Assistance Commission or any governmental

1 agency of this State in accordance with item (5) of subsection  
2 (g) of Section 2105-15 of the Civil Administrative Code of  
3 Illinois.

4 (d) In cases where the Department of Healthcare and Family  
5 Services (formerly Department of Public Aid) has previously  
6 determined that a licensee or a potential licensee is more than  
7 30 days delinquent in the payment of child support and has  
8 subsequently certified the delinquency to the Department may  
9 refuse to issue or renew or may revoke or suspend that person's  
10 license or may take other disciplinary action against that  
11 person based solely upon the certification of delinquency made  
12 by the Department of Healthcare and Family Services in  
13 accordance with item (5) of subsection (g) of Section 2105-15  
14 of the Civil Administrative Code of Illinois.

15 (e) In enforcing this Section, the Department or Board upon  
16 a showing of a possible violation may compel an individual  
17 licensed to practice under this Act, or who has applied for  
18 licensure under this Act, to submit to a mental or physical  
19 examination, or both, as required by and at the expense of the  
20 Department. The Department or Board may order the examining  
21 physician to present testimony concerning the mental or  
22 physical examination of the licensee or applicant. No  
23 information shall be excluded by reason of any common law or  
24 statutory privilege relating to communications between the  
25 licensee or applicant and the examining physician. The  
26 examining physicians shall be specifically designated by the

1 Board or Department. The individual to be examined may have, at  
2 his or her own expense, another physician of his or her choice  
3 present during all aspects of this examination. Failure of an  
4 individual to submit to a mental or physical examination, when  
5 directed, shall be grounds for suspension of his or her license  
6 until the individual submits to the examination if the  
7 Department finds, after notice and hearing, that the refusal to  
8 submit to the examination was without reasonable cause.

9 If the Department or Board finds an individual unable to  
10 practice because of the reasons set forth in this Section, the  
11 Department or Board may require that individual to submit to  
12 care, counseling, or treatment by physicians approved or  
13 designated by the Department or Board, as a condition, term, or  
14 restriction for continued, reinstated, or renewed licensure to  
15 practice; or, in lieu of care, counseling, or treatment, the  
16 Department may file, or the Board may recommend to the  
17 Department to file, a complaint to immediately suspend, revoke,  
18 or otherwise discipline the license of the individual. An  
19 individual whose license was granted, continued, reinstated,  
20 renewed, disciplined or supervised subject to such terms,  
21 conditions, or restrictions, and who fails to comply with such  
22 terms, conditions, or restrictions, shall be referred to the  
23 Secretary for a determination as to whether the individual  
24 shall have his or her license suspended immediately, pending a  
25 hearing by the Department.

26 In instances in which the Secretary immediately suspends a

1 person's license under this Section, a hearing on that person's  
2 license must be convened by the Department within 30 days after  
3 the suspension and completed without appreciable delay. The  
4 Department and Board shall have the authority to review the  
5 subject individual's record of treatment and counseling  
6 regarding the impairment to the extent permitted by applicable  
7 federal statutes and regulations safeguarding the  
8 confidentiality of medical records.

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

14 (Source: P.A. 95-851, eff. 1-1-09; 96-856, eff. 12-31-09.)