

**SB1697**



**99TH GENERAL ASSEMBLY**

**State of Illinois**

**2015 and 2016**

**SB1697**

Introduced 2/20/2015, by Sen. William E. Brady

**SYNOPSIS AS INTRODUCED:**

225 ILCS 454/1-10

Amends the Real Estate License Act of 2000. Changes the definition of "managing broker" to provide that a supervising broker may have supervisory responsibilities for licensees in more than one brokerage company or entity (rather than for licensees in one or more than one office). Effective immediately.

LRB099 06413 HAF 26483 b

**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 1-10 as follows:

6 (225 ILCS 454/1-10)

7 (Section scheduled to be repealed on January 1, 2020)

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

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

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

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

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

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

4 "Blind advertisement" means any real estate advertisement  
5 that does not include the sponsoring broker's business name and  
6 that is used by any licensee regarding the sale or lease of  
7 real estate, including his or her own, licensed activities, or  
8 the hiring of any licensee under this Act. The broker's  
9 business name in the case of a franchise shall include the  
10 franchise affiliation as well as the name of the individual  
11 firm.

12 "Board" means the Real Estate Administration and  
13 Disciplinary Board of the Department as created by Section  
14 25-10 of this Act.

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

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

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

26 (2) Offers to sell, exchange, purchase, rent, or lease

1 real estate.

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

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

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

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

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

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

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

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

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

24 (12) Prepares or provides a broker price opinion or  
25 comparative market analysis as those terms are defined in  
26 this Act, pursuant to the provisions of Section 10-45 of

1           this Act.

2           "Brokerage agreement" means a written or oral agreement  
3 between a sponsoring broker and a consumer for licensed  
4 activities to be provided to a consumer in return for  
5 compensation or the right to receive compensation from another.  
6 Brokerage agreements may constitute either a bilateral or a  
7 unilateral agreement between the broker and the broker's client  
8 depending upon the content of the brokerage agreement. All  
9 exclusive brokerage agreements shall be in writing.

10          "Broker price opinion" means an estimate or analysis of the  
11 probable selling price of a particular interest in real estate,  
12 which may provide a varying level of detail about the  
13 property's condition, market, and neighborhood and information  
14 on comparable sales. The activities of a real estate broker or  
15 managing broker engaging in the ordinary course of business as  
16 a broker, as defined in this Section, shall not be considered a  
17 broker price opinion if no compensation is paid to the broker  
18 or managing broker, other than compensation based upon the sale  
19 or rental of real estate.

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

22          "Comparative market analysis" is an analysis or opinion  
23 regarding pricing, marketing, or financial aspects relating to  
24 a specified interest or interests in real estate that may be  
25 based upon an analysis of comparative market data, the  
26 expertise of the real estate broker or managing broker, and

1 such other factors as the broker or managing broker may deem  
2 appropriate in developing or preparing such analysis or  
3 opinion. The activities of a real estate broker or managing  
4 broker engaging in the ordinary course of business as a broker,  
5 as defined in this Section, shall not be considered a  
6 comparative market analysis if no compensation is paid to the  
7 broker or managing broker, other than compensation based upon  
8 the sale or rental of real estate.

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

- 14 (1) commissions;
- 15 (2) referral fees;
- 16 (3) bonuses;
- 17 (4) prizes;
- 18 (5) merchandise;
- 19 (6) finder fees;
- 20 (7) performance of services;
- 21 (8) coupons or gift certificates;
- 22 (9) discounts;
- 23 (10) rebates;
- 24 (11) a chance to win a raffle, drawing, lottery, or  
25 similar game of chance not prohibited by any other law or  
26 statute;

1 (12) retainer fee; or

2 (13) salary.

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

10 (1) the client permits the disclosure of information  
11 given by that client by word or conduct;

12 (2) the disclosure is required by law; or

13 (3) the information becomes public from a source other  
14 than the licensee.

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

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

20 "Continuing education school" means any person licensed by  
21 the Department as a school for continuing education in  
22 accordance with Section 30-15 of this Act.

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

25 "Credit hour" means 50 minutes of classroom instruction in  
26 course work that meets the requirements set forth in rules

1 adopted by the Department.

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

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

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

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

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

21 "Employee" or other derivative of the word "employee", when  
22 used to refer to, describe, or delineate the relationship  
23 between a real estate broker and a real estate salesperson,  
24 another real estate broker, or a leasing agent, shall be  
25 construed to include an independent contractor relationship,  
26 provided that a written agreement exists that clearly



1 establishes and states the relationship. All responsibilities  
2 of a broker shall remain.

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

13 "Electronic means of proctoring" means a methodology  
14 providing assurance that the person taking a test and  
15 completing the answers to questions is the person seeking  
16 licensure or credit for continuing education and is doing so  
17 without the aid of a third party or other device.

18 "Exclusive brokerage agreement" means a written brokerage  
19 agreement that provides that the sponsoring broker has the sole  
20 right, through one or more sponsored licensees, to act as the  
21 exclusive designated agent or representative of the client and  
22 that meets the requirements of Section 15-75 of this Act.

23 "Inoperative" means a status of licensure where the  
24 licensee holds a current license under this Act, but the  
25 licensee is prohibited from engaging in licensed activities  
26 because the licensee is unsponsored or the license of the

1 sponsoring broker with whom the licensee is associated or by  
2 whom he or she is employed is currently expired, revoked,  
3 suspended, or otherwise rendered invalid under this Act.

4 "Interactive delivery method" means delivery of a course by  
5 an instructor through a medium allowing for 2-way communication  
6 between the instructor and a student in which either can  
7 initiate or respond to questions.

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

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

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

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

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

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

1 "Managing broker" means a broker who has supervisory  
2 responsibilities for licensees in one or, ~~in the case of a~~  
3 ~~multi office company,~~ more brokerage companies or entities,  
4 ~~than one office~~ and who has been appointed as such by the  
5 sponsoring broker.

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

9 "Ministerial acts" means those acts that a licensee may  
10 perform for a consumer that are informative or clerical in  
11 nature and do not rise to the level of active representation on  
12 behalf of a consumer. Examples of these acts include without  
13 limitation (i) responding to phone inquiries by consumers as to  
14 the availability and pricing of brokerage services, (ii)  
15 responding to phone inquiries from a consumer concerning the  
16 price or location of property, (iii) attending an open house  
17 and responding to questions about the property from a consumer,  
18 (iv) setting an appointment to view property, (v) responding to  
19 questions of consumers walking into a licensee's office  
20 concerning brokerage services offered or particular  
21 properties, (vi) accompanying an appraiser, inspector,  
22 contractor, or similar third party on a visit to a property,  
23 (vii) describing a property or the property's condition in  
24 response to a consumer's inquiry, (viii) completing business or  
25 factual information for a consumer on an offer or contract to  
26 purchase on behalf of a client, (ix) showing a client through a

1 property being sold by an owner on his or her own behalf, or  
2 (x) referral to another broker or service provider.

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

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

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

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

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

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

26 "Proctor" means any person, including, but not limited to,

1 an instructor, who has a written agreement to administer  
2 examinations fairly and impartially with a licensed  
3 pre-license school or a licensed continuing education school.

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

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

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

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

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

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

7 (Source: P.A. 98-531, eff. 8-23-13; 98-1109, eff. 1-1-15.)

8 Section 99. Effective date. This Act takes effect upon  
9 becoming law.