



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB2023

by Rep. Ann Williams

SYNOPSIS AS INTRODUCED:

225 ILCS 454/20-20
225 ILCS 454/20-78 new

Amends the Real Estate License Act of 2000. Changes provisions concerning the grounds for discipline of a licensee for convictions of certain crimes. Permits the Department to disclose information and documents related to an examination or investigation of a licensee or applicant only to law enforcement officials, other regulatory agencies that have an appropriate regulatory interest as determined by the Secretary, or a party presenting a lawful subpoena to the Department. Provides that any formal complaint against a licensee filed with the Department or an order issued by the Department against a licensee or applicant shall be a public record. Effective immediately.

LRB097 08661 CEL 48790 b

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 and by adding Section 20-78 as
6 follows:

7 (225 ILCS 454/20-20)

8 (Section scheduled to be repealed on January 1, 2020)

9 Sec. 20-20. Grounds for discipline.

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

20 (1) Fraud or misrepresentation in applying for, or
21 procuring, a license under this Act or in connection with
22 applying for renewal of a license under this Act.

23 (2) Conviction by plea of guilty or nolo contendere,

1 finding of guilt, jury verdict, or entry of judgment or by
2 sentencing of any crime, including, but not limited to,
3 convictions, preceding sentences of supervision,
4 conditional discharge, or first offender probation, under
5 the laws of any jurisdiction of the United States: (i) that
6 is a felony; or (ii) that is a misdemeanor, an essential
7 element of which is dishonesty, or that is directly related
8 to the practice of the profession. ~~The conviction of, plea~~
9 ~~of guilty or plea of nolo contendere to a felony or~~
10 ~~misdemeanor, an essential element of which is dishonesty or~~
11 ~~fraud or larceny, embezzlement, or obtaining money,~~
12 ~~property, or credit by false pretenses or by means of a~~
13 ~~confidence game, in this State, or any other jurisdiction.~~

14 (3) Inability to practice the profession with
15 reasonable judgment, skill, or safety as a result of a
16 physical illness, including, but not limited to,
17 deterioration through the aging process or loss of motor
18 skill, or a mental illness or disability.

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

23 (5) Disciplinary action of another state or
24 jurisdiction against the license or other authorization to
25 practice as a managing broker, broker, salesperson, or
26 leasing agent if at least one of the grounds for that

1 discipline is the same as or the equivalent of one of the
2 grounds for discipline set forth in this Act. A certified
3 copy of the record of the action by the other state or
4 jurisdiction shall be prima facie evidence thereof.

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

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

10 (8) Aiding or abetting an applicant to subvert or cheat
11 on the Real Estate License Exam or continuing education
12 exam administered pursuant to this Act.

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

15 (10) Making any substantial misrepresentation or
16 untruthful advertising.

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

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

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

25 (14) Acting for more than one party in a transaction
26 without providing written notice to all parties for whom

1 the licensee acts.

2 (15) Representing or attempting to represent a broker
3 other than the sponsoring broker.

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

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

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

25 (B) deemed abandoned and transferred to the Office
26 of the State Treasurer to be handled as unclaimed

1 property pursuant to the Uniform Disposition of
2 Unclaimed Property Act. Escrow moneys may be deemed
3 abandoned under this subparagraph (B) only: (i) in the
4 absence of disbursement under subparagraph (A); (ii)
5 in the absence of notice of the filing of any claim in
6 a court of competent jurisdiction; and (iii) if 6
7 months have elapsed after the receipt of a written
8 demand for the escrow moneys from one of the principals
9 to the transaction or the principal's duly authorized
10 agent.

11 The account shall be noninterest bearing, unless the
12 character of the deposit is such that payment of interest
13 thereon is otherwise required by law or unless the
14 principals to the transaction specifically require, in
15 writing, that the deposit be placed in an interest bearing
16 account.

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

21 (19) Failing to furnish copies upon request of
22 documents relating to a real estate transaction to a party
23 who has executed that document.

24 (20) Failure of a sponsoring broker to timely provide
25 information, sponsor cards, or termination of licenses to
26 the Department.

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

4 (22) Commingling the money or property of others with
5 his or her own money or property.

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

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

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

17 (26) Displaying a "for rent" or "for sale" sign on any
18 property without the written consent of an owner or his or
19 her duly authorized agent or advertising by any means that
20 any property is for sale or for rent without the written
21 consent of the owner or his or her authorized agent.

22 (27) Failing to provide information requested by the
23 Department, or otherwise respond to that request, within 30
24 days of the request.

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

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

4 (A) A "guaranteed sales plan" is any real estate
5 purchase or sales plan whereby a licensee enters into a
6 conditional or unconditional written contract with a
7 seller, prior to entering into a brokerage agreement
8 with the seller, by the terms of which a licensee
9 agrees to purchase a property of the seller within a
10 specified period of time at a specific price in the
11 event the property is not sold in accordance with the
12 terms of a brokerage agreement to be entered into
13 between the sponsoring broker and the seller.

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

17 (C) A licensee offering a guaranteed sales plan
18 shall provide to the party to whom the plan is offered
19 evidence of sufficient financial resources to satisfy
20 the commitment to purchase undertaken by the broker in
21 the plan.

22 (D) Any licensee offering a guaranteed sales plan
23 shall undertake to market the property of the seller
24 subject to the plan in the same manner in which the
25 broker would market any other property, unless the
26 agreement with the seller provides otherwise.

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

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

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

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

23 (32) Inducing any party to a contract of sale or lease
24 or brokerage agreement to break the contract of sale or
25 lease or brokerage agreement for the purpose of
26 substituting, in lieu thereof, a new contract for sale or

1 lease or brokerage agreement with a third party.

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

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

11 (35) Advertising or offering merchandise or services
12 as free if any conditions or obligations necessary for
13 receiving the merchandise or services are not disclosed in
14 the same advertisement or offer. These conditions or
15 obligations include without limitation the requirement
16 that the recipient attend a promotional activity or visit a
17 real estate site. As used in this subdivision (35), "free"
18 includes terms such as "award", "prize", "no charge", "free
19 of charge", "without charge", and similar words or phrases
20 that reasonably lead a person to believe that he or she may
21 receive or has been selected to receive something of value,
22 without any conditions or obligations on the part of the
23 recipient.

24 (36) Disregarding or violating any provision of the
25 Land Sales Registration Act of 1989, the Illinois Real
26 Estate Time-Share Act, or the published rules promulgated

1 by the Department to enforce those Acts.

2 (37) Violating the terms of a disciplinary order issued
3 by the Department.

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

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

11 (40) Disregarding or violating any provision of this
12 Act or the published rules promulgated by the Department to
13 enforce this Act or aiding or abetting any individual,
14 partnership, registered limited liability partnership,
15 limited liability company, or corporation in disregarding
16 any provision of this Act or the published rules
17 promulgated by the Department to enforce this Act.

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

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

26 (b) The Department may refuse to issue or renew or may

1 suspend the license of any person who fails to file a return,
2 pay the tax, penalty or interest shown in a filed return, or
3 pay any final assessment of tax, penalty, or interest, as
4 required by any tax Act administered by the Department of
5 Revenue, until such time as the requirements of that tax Act
6 are satisfied in accordance with subsection (g) of Section
7 2105-15 of the Civil Administrative Code of Illinois.

8 (c) The Department shall deny a license or renewal
9 authorized by this Act to a person who has defaulted on an
10 educational loan or scholarship provided or guaranteed by the
11 Illinois Student Assistance Commission or any governmental
12 agency of this State in accordance with item (5) of subsection
13 (g) of Section 2105-15 of the Civil Administrative Code of
14 Illinois.

15 (d) In cases where the Department of Healthcare and Family
16 Services (formerly Department of Public Aid) has previously
17 determined that a licensee or a potential licensee is more than
18 30 days delinquent in the payment of child support and has
19 subsequently certified the delinquency to the Department may
20 refuse to issue or renew or may revoke or suspend that person's
21 license or may take other disciplinary action against that
22 person based solely upon the certification of delinquency made
23 by the Department of Healthcare and Family Services in
24 accordance with item (5) of subsection (g) of Section 2105-15
25 of the Civil Administrative Code of Illinois.

26 (e) In enforcing this Section, the Department or Board upon

1 a showing of a possible violation may compel an individual
2 licensed to practice under this Act, or who has applied for
3 licensure under this Act, to submit to a mental or physical
4 examination, or both, as required by and at the expense of the
5 Department. The Department or Board may order the examining
6 physician to present testimony concerning the mental or
7 physical examination of the licensee or applicant. No
8 information shall be excluded by reason of any common law or
9 statutory privilege relating to communications between the
10 licensee or applicant and the examining physician. The
11 examining physicians shall be specifically designated by the
12 Board or Department. The individual to be examined may have, at
13 his or her own expense, another physician of his or her choice
14 present during all aspects of this examination. Failure of an
15 individual to submit to a mental or physical examination, when
16 directed, shall be grounds for suspension of his or her license
17 until the individual submits to the examination if the
18 Department finds, after notice and hearing, that the refusal to
19 submit to the examination was without reasonable cause.

20 If the Department or Board finds an individual unable to
21 practice because of the reasons set forth in this Section, the
22 Department or Board may require that individual to submit to
23 care, counseling, or treatment by physicians approved or
24 designated by the Department or Board, as a condition, term, or
25 restriction for continued, reinstated, or renewed licensure to
26 practice; or, in lieu of care, counseling, or treatment, the

1 Department may file, or the Board may recommend to the
2 Department to file, a complaint to immediately suspend, revoke,
3 or otherwise discipline the license of the individual. An
4 individual whose license was granted, continued, reinstated,
5 renewed, disciplined or supervised subject to such terms,
6 conditions, or restrictions, and who fails to comply with such
7 terms, conditions, or restrictions, shall be referred to the
8 Secretary for a determination as to whether the individual
9 shall have his or her license suspended immediately, pending a
10 hearing by the Department.

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

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

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

1 (225 ILCS 454/20-78 new)

2 Sec. 20-78. Confidentiality. All information collected by
3 the Department in the course of an examination or investigation
4 of a licensee or applicant, including, but not limited to, any
5 complaint against a licensee filed with the Department and
6 information collected to investigate any such complaint, shall
7 be maintained for the confidential use of the Department and
8 shall not be disclosed. The Department may not disclose the
9 information to anyone other than law enforcement officials,
10 other regulatory agencies that have an appropriate regulatory
11 interest as determined by the Secretary, or to a party
12 presenting a lawful subpoena to the Department. Information and
13 documents disclosed to a federal, State, county, or local law
14 enforcement agency shall not be disclosed by the agency for any
15 purpose to any other agency or person. A formal complaint filed
16 against a licensee by the Department or any order issued by the
17 Department against a licensee or applicant shall be a public
18 record, except as otherwise prohibited by law.

19 Section 99. Effective date. This Act takes effect upon
20 becoming law.