

HB2722



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB2722

Introduced 2/21/2013, by Rep. Robert Rita

SYNOPSIS AS INTRODUCED:

225 ILCS 454/1-10

Amends the Real Estate License Act of 2000. Includes within the definition of "broker" an individual, partnership, limited liability company, corporation, or registered limited liability partnership who negotiates, facilitates, offers, attempts, or agrees to negotiation or facilitate the short sale of residential property or otherwise engages in short sale facilitation. Defines "short sale facilitation". Effective immediately.

LRB098 02607 MGM 32612 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 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7 (Section scheduled to be repealed on January 1, 2020)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) Negotiates, facilitates, offers, attempts, or
25 agrees to negotiation or facilitate short sale of
26 residential property or otherwise engages in short sale

1 facilitation.

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

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

- 17 (1) commissions;
18 (2) referral fees;
19 (3) bonuses;
20 (4) prizes;
21 (5) merchandise;
22 (6) finder fees;
23 (7) performance of services;
24 (8) coupons or gift certificates;
25 (9) discounts;
26 (10) rebates;

1 (11) a chance to win a raffle, drawing, lottery, or
2 similar game of chance not prohibited by any other law or
3 statute;

4 (12) retainer fee; or

5 (13) salary.

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

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

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

16 (3) the information becomes public from a source other
17 than the licensee.

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

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

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

26 "Coordinator" means the Coordinator of Real Estate created

1 in Section 25-15 of this Act.

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

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

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

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

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

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

24 "Employee" or other derivative of the word "employee", when
25 used to refer to, describe, or delineate the relationship
26 between a real estate broker and a real estate salesperson,

1 another real estate broker, or a leasing agent, shall be
2 construed to include an independent contractor relationship,
3 provided that a written agreement exists that clearly
4 establishes and states the relationship. All responsibilities
5 of a broker shall remain.

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

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

21 "Inoperative" means a status of licensure where the
22 licensee holds a current license under this Act, but the
23 licensee is prohibited from engaging in licensed activities
24 because the licensee is unsponsored or the license of the
25 sponsoring broker with whom the licensee is associated or by
26 whom he or she is employed is currently expired, revoked,

1 suspended, or otherwise rendered invalid under this Act.

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

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

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

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

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

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

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

25 "Medium of advertising" means any method of communication
26 intended to influence the general public to use or purchase a

1 particular good or service or real estate.

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

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

26 "Person" means and includes individuals, entities,

1 corporations, limited liability companies, registered limited
2 liability partnerships, and partnerships, foreign or domestic,
3 except that when the context otherwise requires, the term may
4 refer to a single individual or other described entity.

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

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

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

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

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

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

1 State or elsewhere.

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

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

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

17 "Short sale facilitation" means, for compensation or gain,
18 either directly or indirectly offering or negotiating on behalf
19 of a borrower or homeowner to facilitate the sale of
20 residential real estate subject to one or more residential
21 mortgage loans or debts constituting liens on the property in
22 which the proceeds from selling the residential real estate
23 will fall short of the amount owed and the lien holders are
24 contacted to agree to release their lien on the residential
25 real estate and accept less than the full amount owed on the
26 debt.

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

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

10 (Source: P.A. 96-856, eff. 12-31-09.)

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.