



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB0092

Introduced 1/23/2013, by Sen. John M. Sullivan

SYNOPSIS AS INTRODUCED:

225 ILCS 407/5-10
225 ILCS 407/20-15
225 ILCS 454/5-20
225 ILCS 454/5-32 new
225 ILCS 454/10-5
225 ILCS 454/20-20

Amends the Real Estate License Act of 2000. Creates an exemption from the licensing requirements under the Act for any person who holds a valid license under the Auction License Act while conducting an auction for the sale of real estate, provided that certain provisions are complied with. Creates a new provision that provides the Department of Financial and Professional Regulation shall issue a real estate auction certification to applicants who meet certain qualifications. Provides that enabling, aiding, or abetting an auctioneer to conduct a real estate auction in a manner that is in violation of the Act shall be grounds for discipline. Makes corresponding changes in the Auction License Act. Effective on January 1, 2014.

LRB098 06113 MGM 36154 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 Auction License Act is amended by changing
5 Sections 5-10 and 20-15 as follows:

6 (225 ILCS 407/5-10)

7 (Section scheduled to be repealed on January 1, 2020)

8 Sec. 5-10. Definitions. As used in this Act:

9 "Advertisement" means any written, oral, or electronic
10 communication that contains a promotion, inducement, or offer
11 to conduct an auction or offer to provide an auction service,
12 including but not limited to brochures, pamphlets, radio and
13 television scripts, telephone and direct mail solicitations,
14 electronic media, and other means of promotion.

15 "Advisory Board" or "Board" means the Auctioneer Advisory
16 Board.

17 "Associate auctioneer" means a person who conducts an
18 auction, but who is under the direct supervision of, and is
19 sponsored by, a licensed auctioneer or auction firm.

20 "Auction" means the sale or lease of property, real or
21 personal, by means of exchanges between an auctioneer and
22 prospective purchasers or lessees, which consists of a series
23 of invitations for offers made by the auctioneer and offers by

1 prospective purchasers or lessees for the purpose of obtaining
2 an acceptable offer for the sale or lease of the property,
3 including the sale or lease of property via mail,
4 telecommunications, or the Internet.

5 "Auction contract" means a written agreement between an
6 auctioneer or auction firm and a seller or sellers.

7 "Auction firm" means any corporation, partnership, or
8 limited liability company that acts as an auctioneer and
9 provides an auction service.

10 "Auction school" means any educational institution, public
11 or private, which offers a curriculum of auctioneer education
12 and training approved by the Department.

13 "Auction service" means the service of arranging,
14 managing, advertising, or conducting auctions.

15 "Auctioneer" means a person or entity who, for another, for
16 a fee, compensation, commission, or any other valuable
17 consideration at auction or with the intention or expectation
18 of receiving valuable consideration by the means of or process
19 of an auction or sale at auction or providing an auction
20 service, offers, negotiates, or attempts to negotiate an
21 auction contract, sale, purchase, or exchange of goods,
22 chattels, merchandise, personal property, real property, or
23 any commodity that may be lawfully kept or offered for sale by
24 or at auction.

25 "Address of Record" means the designated address recorded
26 by the Department in the applicant's or licensee's application

1 file or license file maintained by the Department. It is the
2 duty of the applicant or licensee to inform the Department of
3 any change of address, and such changes must be made either
4 through the Department's website or by directly contacting the
5 Department.

6 "Buyer premium" means any fee or compensation paid by the
7 successful purchaser of property sold or leased at or by
8 auction, to the auctioneer, auction firms, seller, lessor, or
9 other party to the transaction, other than the purchase price.

10 "Department" means the Department of Financial and
11 Professional Regulation.

12 "Goods" means chattels, movable goods, merchandise, or
13 personal property or commodities of any form or type that may
14 be lawfully kept or offered for sale.

15 "Licensee" means any person licensed under this Act.

16 "Managing auctioneer" means any person licensed as an
17 auctioneer who manages and supervises licensees sponsored by an
18 auction firm or auctioneer.

19 "Person" means an individual, association, partnership,
20 corporation, or limited liability company or the officers,
21 directors, or employees of the same.

22 "Pre-renewal period" means the 24 months prior to the
23 expiration date of a license issued under this Act.

24 "Real estate" means real estate as defined in Section 1-10
25 of the Real Estate License Act of 2000 or its successor Acts.

26 "Secretary" means the Secretary of the Department of

1 Financial and Professional Regulation or his or her designee.

2 "Sponsoring auctioneer" means the auctioneer or auction
3 firm who has issued a sponsor card to a licensed auctioneer.

4 "Sponsor card" means the temporary permit issued by the
5 sponsoring auctioneer certifying that the licensee named
6 thereon is employed by or associated with the sponsoring
7 auctioneer and the sponsoring auctioneer shall be responsible
8 for the actions of the sponsored licensee.

9 (Source: P.A. 95-572, eff. 6-1-08; 96-730, eff. 8-25-09.)

10 (225 ILCS 407/20-15)

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

12 Sec. 20-15. Disciplinary actions; grounds. The Department
13 may refuse to issue or renew a license, may place on probation
14 or administrative supervision, suspend, or revoke any license
15 or may reprimand or take other disciplinary or non-disciplinary
16 action as the Department may deem proper, including the
17 imposition of fines not to exceed \$10,000 for each violation
18 upon anyone licensed under this Act for any of the following
19 reasons:

20 (1) False or fraudulent representation or material
21 misstatement in furnishing information to the Department
22 in obtaining or seeking to obtain a license.

23 (2) Violation of any provision of this Act or the rules
24 promulgated pursuant to this Act.

25 (3) Conviction of or entry of a plea of guilty or nolo

1 contendere to any crime that is a felony under the laws of
2 the United States or any state or territory thereof, or
3 that is a misdemeanor, an essential element of which is
4 dishonesty, or any crime that is directly related to the
5 practice of the profession.

6 (4) Being adjudged to be a person under legal
7 disability or subject to involuntary admission or to meet
8 the standard for judicial admission as provided in the
9 Mental Health and Developmental Disabilities Code.

10 (5) Discipline of a licensee by another state, the
11 District of Columbia, a territory of the United States, a
12 foreign nation, a governmental agency, or any other entity
13 authorized to impose discipline if at least one of the
14 grounds for that discipline is the same as or the
15 equivalent to one of the grounds for discipline set forth
16 in this Act or for failing to report to the Department,
17 within 30 days, any adverse final action taken against the
18 licensee by any other licensing jurisdiction, government
19 agency, law enforcement agency, or court, or liability for
20 conduct that would constitute grounds for action as set
21 forth in this Act.

22 (6) Engaging in the practice of auctioneering,
23 conducting an auction, or providing an auction service
24 without a license or after the license was expired,
25 revoked, suspended, or terminated or while the license was
26 inoperative.

1 (7) Attempting to subvert or cheat on the auctioneer
2 exam or any continuing education exam, or aiding or
3 abetting another to do the same.

4 (8) Directly or indirectly giving to or receiving from
5 a person, firm, corporation, partnership, or association a
6 fee, commission, rebate, or other form of compensation for
7 professional service not actually or personally rendered,
8 except that an auctioneer licensed under this Act may
9 receive a fee from another licensed auctioneer from this
10 State or jurisdiction for the referring of a client or
11 prospect for auction services to the licensed auctioneer.

12 (9) Making any substantial misrepresentation or
13 untruthful advertising.

14 (10) Making any false promises of a character likely to
15 influence, persuade, or induce.

16 (11) Pursuing a continued and flagrant course of
17 misrepresentation or the making of false promises through a
18 licensee, agent, employee, advertising, or otherwise.

19 (12) Any misleading or untruthful advertising, or
20 using any trade name or insignia of membership in any
21 auctioneer association or organization of which the
22 licensee is not a member.

23 (13) Commingling funds of others with his or her own
24 funds or failing to keep the funds of others in an escrow
25 or trustee account.

26 (14) Failure to account for, remit, or return any

1 moneys, property, or documents coming into his or her
2 possession that belong to others, acquired through the
3 practice of auctioneering, conducting an auction, or
4 providing an auction service within 30 days of the written
5 request from the owner of said moneys, property, or
6 documents.

7 (15) Failure to maintain and deposit into a special
8 account, separate and apart from any personal or other
9 business accounts, all moneys belonging to others
10 entrusted to a licensee while acting as an auctioneer,
11 associate auctioneer, auction firm, or as a temporary
12 custodian of the funds of others.

13 (16) Failure to make available to Department personnel
14 during normal business hours all escrow and trustee records
15 and related documents maintained in connection with the
16 practice of auctioneering, conducting an auction, or
17 providing an auction service within 24 hours after a
18 request from Department personnel.

19 (17) Making or filing false records or reports in his
20 or her practice, including but not limited to false records
21 or reports filed with State agencies.

22 (18) Failing to voluntarily furnish copies of all
23 written instruments prepared by the auctioneer and signed
24 by all parties to all parties at the time of execution.

25 (19) Failing to provide information within 30 days in
26 response to a written request made by the Department.

1 (20) Engaging in any act that constitutes a violation
2 of Section 2-102, 3-103, or 3-105 of the Illinois Human
3 Rights Act.

4 (21) (Blank).

5 (22) Engaging in dishonorable, unethical, or
6 unprofessional conduct of a character likely to deceive,
7 defraud, or harm the public.

8 (23) Offering or advertising real estate for sale or
9 lease at auction without a valid broker or managing
10 broker's ~~salesperson's~~ license under the Real Estate
11 License Act of 1983, or any successor Act, unless exempt
12 from licensure under the terms of the Real Estate License
13 Act of 2000, or any successor Act, except as provided for
14 in Section 5-32 of the Real Estate License Act of 2000.

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

20 (25) A pattern of practice or other behavior that
21 demonstrates incapacity or incompetence to practice under
22 this Act.

23 (26) Being named as a perpetrator in an indicated
24 report by the Department of Children and Family Services
25 under the Abused and Neglected Child Reporting Act and upon
26 proof by clear and convincing evidence that the licensee

1 has caused a child to be an abused child or a neglected
2 child as defined in the Abused and Neglected Child
3 Reporting Act.

4 (27) Inability to practice with reasonable judgment
5 ~~judgement~~, skill, or safety as a result of habitual or
6 excessive use or addiction to alcohol, narcotics,
7 stimulants, or any other chemical agent or drug.

8 (28) Wilfully failing to report an instance of
9 suspected child abuse or neglect as required by the Abused
10 and Neglected Child Reporting Act.

11 The entry of an order by a circuit court establishing that
12 any person holding a license under this Act is subject to
13 involuntary admission or judicial admission, as provided for in
14 the Mental Health and Developmental Disabilities Code,
15 operates as an automatic suspension of that license. That
16 person may have his or her license restored only upon the
17 determination by a circuit court that the patient is no longer
18 subject to involuntary admission or judicial admission and the
19 issuance of an order so finding and discharging the patient and
20 upon the Board's recommendation to the Department that the
21 license be restored. Where circumstances so indicate, the Board
22 may recommend to the Department that it require an examination
23 prior to restoring a suspended license.

24 If the Department or Board finds an individual unable to
25 practice because of the reasons set forth in this Section, the
26 Department or Board may require that individual to submit to

1 care, counseling, or treatment by physicians approved or
2 designated by the Department or Board, as a condition, term, or
3 restriction for continued, reinstated, or renewed licensure to
4 practice; or, in lieu of care, counseling, or treatment, the
5 Department may file, or the Board may recommend to the
6 Department to file, a complaint to immediately suspend, revoke,
7 or otherwise discipline the license of the individual. An
8 individual whose license was granted, continued, reinstated,
9 renewed, disciplined or supervised subject to such terms,
10 conditions, or restrictions, and who fails to comply with such
11 terms, conditions, or restrictions, shall be referred to the
12 Secretary for a determination as to whether the individual
13 shall have his or her license suspended immediately, pending a
14 hearing by the Department. In instances in which the Secretary
15 immediately suspends a person's license under this Section, a
16 hearing on that person's license must be convened by the
17 Department within 21 days after the suspension and completed
18 without appreciable delay. The Department and Board shall have
19 the authority to review the subject individual's record of
20 treatment and counseling regarding the impairment to the extent
21 permitted by applicable federal statutes and regulations
22 safeguarding the confidentiality of medical records.

23 An individual licensed under this Act and affected under
24 this Section shall be afforded an opportunity to demonstrate to
25 the Department or Board that he or she can resume practice in
26 compliance with acceptable and prevailing standards under the

1 provisions of his or her license.

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

22 (Source: P.A. 95-572, eff. 6-1-08; 96-730, eff. 8-25-09.)

23 Section 10. The Real Estate License Act of 2000 is amended
24 by changing Sections 5-20, 10-5, and 20-20 and by adding
25 Section 5-32 as follows:

1 (225 ILCS 454/5-20)

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

3 Sec. 5-20. Exemptions from broker, salesperson, or leasing
4 agent license requirement. The requirement for holding a
5 license under this Article 5 shall not apply to:

6 (1) Any person, partnership, or corporation that as
7 owner or lessor performs any of the acts described in the
8 definition of "broker" under Section 1-10 of this Act with
9 reference to property owned or leased by it, or to the
10 regular employees thereof with respect to the property so
11 owned or leased, where such acts are performed in the
12 regular course of or as an incident to the management,
13 sale, or other disposition of such property and the
14 investment therein, provided that such regular employees
15 do not perform any of the acts described in the definition
16 of "broker" under Section 1-10 of this Act in connection
17 with a vocation of selling or leasing any real estate or
18 the improvements thereon not so owned or leased.

19 (2) An attorney in fact acting under a duly executed
20 and recorded power of attorney to convey real estate from
21 the owner or lessor or the services rendered by an attorney
22 at law in the performance of the attorney's duty as an
23 attorney at law.

24 (3) Any person acting as receiver, trustee in
25 bankruptcy, administrator, executor, or guardian or while

1 acting under a court order or under the authority of a will
2 or testamentary trust.

3 (4) Any person acting as a resident manager for the
4 owner or any employee acting as the resident manager for a
5 broker managing an apartment building, duplex, or
6 apartment complex, when the resident manager resides on the
7 premises, the premises is his or her primary residence, and
8 the resident manager is engaged in the leasing of the
9 property of which he or she is the resident manager.

10 (5) Any officer or employee of a federal agency in the
11 conduct of official duties.

12 (6) Any officer or employee of the State government or
13 any political subdivision thereof performing official
14 duties.

15 (7) Any multiple listing service or other similar
16 information exchange that is engaged in the collection and
17 dissemination of information concerning real estate
18 available for sale, purchase, lease, or exchange for the
19 purpose of providing licensees with a system by which
20 licensees may cooperatively share information along with
21 which no other licensed activities, as defined in Section
22 1-10 of this Act, are provided.

23 (8) Railroads and other public utilities regulated by
24 the State of Illinois, or the officers or full time
25 employees thereof, unless the performance of any licensed
26 activities is in connection with the sale, purchase, lease,

1 or other disposition of real estate or investment therein
2 not needing the approval of the appropriate State
3 regulatory authority.

4 (9) Any medium of advertising in the routine course of
5 selling or publishing advertising along with which no other
6 licensed activities, as defined in Section 1-10 of this
7 Act, are provided.

8 (10) Any resident lessee of a residential dwelling unit
9 who refers for compensation to the owner of the dwelling
10 unit, or to the owner's agent, prospective lessees of
11 dwelling units in the same building or complex as the
12 resident lessee's unit, but only if the resident lessee (i)
13 refers no more than 3 prospective lessees in any 12-month
14 period, (ii) receives compensation of no more than \$1,500
15 or the equivalent of one month's rent, whichever is less,
16 in any 12-month period, and (iii) limits his or her
17 activities to referring prospective lessees to the owner,
18 or the owner's agent, and does not show a residential
19 dwelling unit to a prospective lessee, discuss terms or
20 conditions of leasing a dwelling unit with a prospective
21 lessee, or otherwise participate in the negotiation of the
22 leasing of a dwelling unit.

23 (11) An exchange company registered under the Real
24 Estate Timeshare Act of 1999 and the regular employees of
25 that registered exchange company but only when conducting
26 an exchange program as defined in that Act.

1 (12) An existing timeshare owner who, for
2 compensation, refers prospective purchasers, but only if
3 the existing timeshare owner (i) refers no more than 20
4 prospective purchasers in any calendar year, (ii) receives
5 no more than \$1,000, or its equivalent, for referrals in
6 any calendar year and (iii) limits his or her activities to
7 referring prospective purchasers of timeshare interests to
8 the developer or the developer's employees or agents, and
9 does not show, discuss terms or conditions of purchase or
10 otherwise participate in negotiations with regard to
11 timeshare interests.

12 (13) Any person who is licensed without examination
13 under Section 10-25 (now repealed) of the Auction License
14 Act is exempt from holding a broker's or salesperson's
15 license under this Act for the limited purpose of selling
16 or leasing real estate at auction, so long as:

17 (A) that person has made application for said
18 exemption by July 1, 2000;

19 (B) that person verifies to the Department that he
20 or she has sold real estate at auction for a period of
21 5 years prior to licensure as an auctioneer;

22 (C) the person has had no lapse in his or her
23 license as an auctioneer; and

24 (D) the license issued under the Auction License
25 Act has not been disciplined for violation of those
26 provisions of Article 20 of the Auction License Act

1 dealing with or related to the sale or lease of real
2 estate at auction.

3 (14) A person who holds a valid license under the
4 Auction License Act and a valid real estate auction
5 certification and conducts auctions for the sale of real
6 estate under Section 5-32 of this Act.

7 (15) ~~(14)~~ A hotel operator who is registered with the
8 Illinois Department of Revenue and pays taxes under the
9 Hotel Operators' Occupation Tax Act and rents a room or
10 rooms in a hotel as defined in the Hotel Operators'
11 Occupation Tax Act for a period of not more than 30
12 consecutive days and not more than 60 days in a calendar
13 year.

14 (Source: P.A. 96-328, eff. 8-11-09; 96-856, eff. 12-31-09.)

15 (225 ILCS 454/5-32 new)

16 Sec. 5-32. Real estate auction certification.

17 (a) An auctioneer licensed under the Auction License Act
18 who does not possess a valid and active broker's or managing
19 broker's license under this Act, or who is not otherwise exempt
20 from licensure, may not engage in the practice of auctioning
21 real estate, except as provided in this Section.

22 (b) The Department shall issue a real estate auction
23 certification to applicants who:

24 (1) possess a valid auctioneer's license under the
25 Auction License Act;

1 (2) successfully complete a real estate auction course
2 of at least 30 hours approved by the Real Estate Education
3 Advisory Council, which shall cover the scope of activities
4 that may be engaged in by a person holding a real estate
5 auction certification and the activities for which a person
6 must hold a real estate license, as well as other material
7 as provided by the Advisory Council;

8 (3) successfully complete an examination provided for
9 by the Department; and

10 (4) successfully complete any other reasonable
11 requirements as provided by rule.

12 (c) The auctioneer's role shall be limited to establishing
13 the time, place, and method of the real estate auction, placing
14 advertisements regarding the auction, and crying or calling the
15 auction; any other real estate brokerage activities must be
16 performed by a person holding a valid and active real estate
17 broker's or managing broker's license under the provisions of
18 this Act or by a person who is otherwise exempt from licensure
19 under this Act.

20 (d) An auctioneer who conducts any real estate auction
21 activities in violation of this Section is guilty of unlicensed
22 practice under Section 20-10 of this Act.

23 (e) The Department may revoke, suspend, or otherwise
24 discipline the real estate auction certification of an
25 auctioneer who is adjudicated to be in violation of the
26 provisions of Section 20-15 of the Auction License Act.

1 (f) Advertising for the real estate auction must contain
2 the name and address of the licensed real estate broker or
3 managing broker who is providing brokerage services for the
4 transaction.

5 (g) The requirement to hold a real estate auction
6 certification shall not apply to a person exempt from this Act
7 under the provisions of paragraph (13) of subsection 5-20 of
8 this Act, unless that person is performing licensed activities
9 in a transaction in which a licensed auctioneer with a real
10 estate certification is providing the limited services
11 provided for in subsection (c) of this Section.

12 (h) Nothing in this Section shall require a person licensed
13 under this Act as a real estate broker or managing broker to
14 obtain a real estate auction certification in order to auction
15 real estate.

16 (i) The Department may adopt rules to implement this
17 Section.

18 (225 ILCS 454/10-5)

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

20 Sec. 10-5. Payment of compensation.

21 (a) No licensee shall pay compensation directly to a
22 licensee sponsored by another broker for the performance of
23 licensed activities. No licensee sponsored by a broker may pay
24 compensation to any licensee other than his or her sponsoring
25 broker for the performance of licensed activities unless the

1 licensee paying the compensation is a principal to the
2 transaction. However, a non-sponsoring broker may pay
3 compensation directly to a licensee sponsored by another or a
4 person who is not sponsored by a broker if the payments are
5 made pursuant to terms of an employment agreement that was
6 previously in place between a licensee and the non-sponsoring
7 broker, and the payments are for licensed activity performed by
8 that person while previously sponsored by the now
9 non-sponsoring broker.

10 (b) No licensee sponsored by a broker shall accept
11 compensation for the performance of activities under this Act
12 except from the broker by whom the licensee is sponsored,
13 except as provided in this Section.

14 (c) Any person that is a licensed personal assistant for
15 another licensee may only be compensated in his or her capacity
16 as a personal assistant by the sponsoring broker for that
17 licensed personal assistant.

18 (d) One sponsoring broker may pay compensation directly to
19 another sponsoring broker for the performance of licensed
20 activities.

21 (e) Notwithstanding any other provision of this Act, a
22 sponsoring broker may pay compensation to a person currently
23 licensed under the Auction License Act who is in compliance
24 with and providing services under Section 5-32 of this Act.

25 (Source: P.A. 91-245, eff. 12-31-99.)

1 (225 ILCS 454/20-20)

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

3 Sec. 20-20. Grounds for discipline.

4 (a) The Department may refuse to issue or renew a license,
5 may place on probation, suspend, or revoke any license,
6 reprimand, or take any other disciplinary or non-disciplinary
7 action as the Department may deem proper and impose a fine not
8 to exceed \$25,000 upon any licensee or applicant under this Act
9 or any person who holds himself or herself out as an applicant
10 or licensee or against a licensee in handling his or her own
11 property, whether held by deed, option, or otherwise, for any
12 one or any combination of the following causes:

13 (1) Fraud or misrepresentation in applying for, or
14 procuring, a license under this Act or in connection with
15 applying for renewal of a license under this Act.

16 (2) The conviction of or plea of guilty or plea of nolo
17 contendere to a felony or misdemeanor in this State or any
18 other jurisdiction; or the entry of an administrative
19 sanction by a government agency in this State or any other
20 jurisdiction. Action taken under this paragraph (2) for a
21 misdemeanor or an administrative sanction is limited to a
22 misdemeanor or administrative sanction that has as an
23 essential element dishonesty or fraud or involves larceny,
24 embezzlement, or obtaining money, property, or credit by
25 false pretenses or by means of a confidence game.

26 (3) Inability to practice the profession with

1 reasonable judgment, skill, or safety as a result of a
2 physical illness, including, but not limited to,
3 deterioration through the aging process or loss of motor
4 skill, or a mental illness or disability.

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

9 (5) Having been disciplined by another state, the
10 District of Columbia, a territory, a foreign nation, or a
11 governmental agency authorized to impose discipline if at
12 least one of the grounds for that discipline is the same as
13 or the equivalent of one of the grounds for which a
14 licensee may be disciplined under this Act. A certified
15 copy of the record of the action by the other state or
16 jurisdiction shall be prima facie evidence thereof.

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

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

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

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

1 (10) Making any substantial misrepresentation or
2 untruthful advertising.

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

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

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

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

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

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

19 (17) Failure to maintain and deposit in a special
20 account, separate and apart from personal and other
21 business accounts, all escrow moneys belonging to others
22 entrusted to a licensee while acting as a real estate
23 broker, escrow agent, or temporary custodian of the funds
24 of others or failure to maintain all escrow moneys on
25 deposit in the account until the transactions are
26 consummated or terminated, except to the extent that the

1 moneys, or any part thereof, shall be:

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

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

23 The account shall be noninterest bearing, unless the
24 character of the deposit is such that payment of interest
25 thereon is otherwise required by law or unless the
26 principals to the transaction specifically require, in

1 writing, that the deposit be placed in an interest bearing
2 account.

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

7 (19) Failing to furnish copies upon request of
8 documents relating to a real estate transaction to a party
9 who has executed that document.

10 (20) Failure of a sponsoring broker to timely provide
11 information, sponsor cards, or termination of licenses to
12 the Department.

13 (21) Engaging in dishonorable, unethical, or
14 unprofessional conduct of a character likely to deceive,
15 defraud, or harm the public.

16 (22) Commingling the money or property of others with
17 his or her own money or property.

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

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

26 (25) Any other conduct, whether of the same or a

1 different character from that specified in this Section,
2 that constitutes dishonest dealing.

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

8 (27) Failing to provide information requested by the
9 Department, or otherwise respond to that request, within 30
10 days of the request.

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

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

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

26 (B) A licensee offering a guaranteed sales plan

1 shall provide the details and conditions of the plan in
2 writing to the party to whom the plan is offered.

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

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

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

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

22 (30) Influencing or attempting to influence, by any
23 words or acts, a prospective seller, purchaser, occupant,
24 landlord, or tenant of real estate, in connection with
25 viewing, buying, or leasing real estate, so as to promote
26 or tend to promote the continuance or maintenance of

1 racially and religiously segregated housing or so as to
2 retard, obstruct, or discourage racially integrated
3 housing on or in any street, block, neighborhood, or
4 community.

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

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

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

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

23 (35) Advertising or offering merchandise or services
24 as free if any conditions or obligations necessary for
25 receiving the merchandise or services are not disclosed in
26 the same advertisement or offer. These conditions or

1 obligations include without limitation the requirement
2 that the recipient attend a promotional activity or visit a
3 real estate site. As used in this subdivision (35), "free"
4 includes terms such as "award", "prize", "no charge", "free
5 of charge", "without charge", and similar words or phrases
6 that reasonably lead a person to believe that he or she may
7 receive or has been selected to receive something of value,
8 without any conditions or obligations on the part of the
9 recipient.

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

14 (37) Violating the terms of a disciplinary order issued
15 by the Department.

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

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

23 (40) Disregarding or violating any provision of this
24 Act or the published rules promulgated by the Department to
25 enforce this Act or aiding or abetting any individual,
26 partnership, registered limited liability partnership,

1 limited liability company, or corporation in disregarding
2 any provision of this Act or the published rules
3 promulgated by the Department to enforce this Act.

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

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

12 (43) Enabling, aiding, or abetting an auctioneer, as
13 defined in the Auction License Act, to conduct a real
14 estate auction in a manner that is in violation of this
15 Act.

16 (b) The Department may refuse to issue or renew or may
17 suspend the license of any person who fails to file a return,
18 pay the tax, penalty or interest shown in a filed return, or
19 pay any final assessment of tax, penalty, or interest, as
20 required by any tax Act administered by the Department of
21 Revenue, until such time as the requirements of that tax Act
22 are satisfied in accordance with subsection (g) of Section
23 2105-15 of the Civil Administrative Code of Illinois.

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

1 Illinois Student Assistance Commission or any governmental
2 agency of this State in accordance with item (5) of subsection
3 (g) of Section 2105-15 of the Civil Administrative Code of
4 Illinois.

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

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

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

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

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

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

15 (Source: P.A. 96-856, eff. 12-31-09; 97-813, eff. 7-13-12;
16 97-1002, eff. 8-17-12.)

17 Section 99. Effective date. This Act takes effect January
18 1, 2014.