

SB1440



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB1440

Introduced 2/20/2015, by Sen. John M. Sullivan

SYNOPSIS AS INTRODUCED:

225 ILCS 454/1-10
225 ILCS 454/5-32

Amends the Real Estate License Act of 2000. Provides that a grandfathered auctioneer must only hold a real estate auction certification if the grandfathered auctioneer performs licensed activities in a transaction in which a licensed auctioneer with a real estate certification is providing specified limited services. Defines "grandfathered auctioneer". Effective immediately.

LRB099 03529 HAF 23537 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 Sections 1-10 and 5-32 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7 (Section scheduled to be repealed on January 1, 2020)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 "Grandfathered auctioneer" means a person who is exempt
24 from holding a license under paragraph (13) of Section 5-20 of
25 this Act.

26 "Inoperative" means a status of licensure where the

1 licensee holds a current license under this Act, but the
2 licensee is prohibited from engaging in licensed activities
3 because the licensee is unsponsored or the license of the
4 sponsoring broker with whom the licensee is associated or by
5 whom he or she is employed is currently expired, revoked,
6 suspended, or otherwise rendered invalid under this Act.

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

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

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

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

20 "Licensed activities" means those activities listed in the
21 definition of "broker" under this Section.

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

25 "Listing presentation" means a communication between a
26 real estate broker or salesperson and a consumer in which the

1 licensee is attempting to secure a brokerage agreement with the
2 consumer to market the consumer's real estate for sale or
3 lease.

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

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

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

1 factual information for a consumer on an offer or contract to
2 purchase on behalf of a client, (ix) showing a client through a
3 property being sold by an owner on his or her own behalf, or
4 (x) referral to another broker or service provider.

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

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

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

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

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

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

1 date.

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

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

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

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

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

26 "Sponsoring broker" means the broker who has issued a

1 sponsor card to a licensed salesperson, another licensed
2 broker, or a leasing agent.

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

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

10 (225 ILCS 454/5-32)

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

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

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

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

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

22 (2) successfully complete a real estate auction course
23 of at least 30 hours approved by the Department, which
24 shall cover the scope of activities that may be engaged in
25 by a person holding a real estate auction certification and

1 the activities for which a person must hold a real estate
2 license, as well as other material as provided by the
3 Department;

4 (3) provide documentation of the completion of the real
5 estate auction course; and

6 (4) successfully complete any other reasonable
7 requirements as provided by rule.

8 (c) The auctioneer's role shall be limited to establishing
9 the time, place, and method of the real estate auction, placing
10 advertisements regarding the auction, and crying or calling the
11 auction; any other real estate brokerage activities must be
12 performed by a person holding a valid and active real estate
13 broker's or managing broker's license under the provisions of
14 this Act or by a grandfathered auctioneer ~~a person who is~~
15 ~~exempt from holding a license under paragraph (13) of Section~~
16 ~~5-20~~ who has a certificate under this Section. A grandfathered
17 auctioneer must only be certified under this Section if the
18 grandfathered auctioneer performs licensed activities in a
19 transaction in which a licensed auctioneer with a real estate
20 certification is providing the limited services provided for in
21 this subsection (c).

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

25 (e) The Department may revoke, suspend, or otherwise
26 discipline the real estate auction certification of an

1 auctioneer who is adjudicated to be in violation of the
2 provisions of this Section or Section 20-15 of the Auction
3 License Act.

4 (f) Advertising for the real estate auction must contain
5 the name and address of the licensed real estate broker,
6 managing broker, or a licensed auctioneer under paragraph (13)
7 of Section 5-20 of this Act who is providing brokerage services
8 for the transaction.

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

16 (h) Nothing in this Section shall require a person licensed
17 under this Act as a real estate broker or managing broker to
18 obtain a real estate auction certification in order to auction
19 real estate.

20 (i) The Department may adopt rules to implement this
21 Section.

22 (Source: P.A. 98-553, eff. 1-1-14; 98-756, eff. 7-16-14.)

23 Section 99. Effective date. This Act takes effect upon
24 becoming law.