



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB4394

by Rep. LaShawn K. Ford

SYNOPSIS AS INTRODUCED:

225 ILCS 454/20-20

Amends the Real Estate License Act of 2000. Provides that, prior to the consummation or termination of a transaction, escrow moneys shall be deemed abandoned and transferred to the Office of the State Treasurer to be handled as unclaimed property pursuant to the Uniform Disposition of Unclaimed Property Act only: (i) in the absence of disbursement under certain conditions; (ii) in the absence of notice of the filing of any claim in a court of competent jurisdiction; and (iii) if 6 months have elapsed after the receipt of a written demand for the escrow moneys from one of the principals to the transaction or the principal's duly authorized agent.

LRB095 15584 RAS 41584 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 20-20 as follows:

6 (225 ILCS 454/20-20)

7 (Section scheduled to be repealed on January 1, 2010)

8 Sec. 20-20. Disciplinary actions; causes. OBRE may refuse
9 to issue or renew a license, may place on probation, suspend,
10 or revoke any license, or may censure, reprimand, or otherwise
11 discipline or impose a civil fine not to exceed \$25,000 upon
12 any licensee hereunder for any one or any combination of the
13 following causes:

14 (a) When the applicant or licensee has, by false or
15 fraudulent representation, obtained or sought to obtain a
16 license.

17 (b) When the applicant or licensee has been convicted of
18 any crime, an essential element of which is dishonesty or fraud
19 or larceny, embezzlement, or obtaining money, property, or
20 credit by false pretenses or by means of a confidence game, has
21 been convicted in this or another state of a crime that is a
22 felony under the laws of this State, or has been convicted of a
23 felony in a federal court.

1 (c) When the applicant or licensee has been adjudged to be
2 a person under legal disability or subject to involuntary
3 admission or to meet the standard for judicial admission as
4 provided in the Mental Health and Developmental Disabilities
5 Code.

6 (d) When the licensee performs or attempts to perform any
7 act as a broker or salesperson in a retail sales establishment
8 from an office, desk, or space that is not separated from the
9 main retail business by a separate and distinct area within the
10 establishment.

11 (e) Discipline of a licensee by another state, the District
12 of Columbia, a territory, a foreign nation, a governmental
13 agency, or any other entity authorized to impose discipline if
14 at least one of the grounds for that discipline is the same as
15 or the equivalent of one of the grounds for discipline set
16 forth in this Act, in which case the only issue will be whether
17 one of the grounds for that discipline is the same or
18 equivalent to one of the grounds for discipline under this Act.

19 (f) When the applicant or licensee has engaged in real
20 estate activity without a license or after the licensee's
21 license was expired or while the license was inoperative.

22 (g) When the applicant or licensee attempts to subvert or
23 cheat on the Real Estate License Exam or continuing education
24 exam or aids and abets an applicant to subvert or cheat on the
25 Real Estate License Exam or continuing education exam
26 administered pursuant to this Act.

1 (h) When the licensee in performing, attempting to perform,
2 or pretending to perform any act as a broker, salesperson, or
3 leasing agent or when the licensee in handling his or her own
4 property, whether held by deed, option, or otherwise, is found
5 guilty of:

6 (1) Making any substantial misrepresentation or
7 untruthful advertising.

8 (2) Making any false promises of a character likely to
9 influence, persuade, or induce.

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

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

16 (5) Acting for more than one party in a transaction
17 without providing written notice to all parties for whom
18 the licensee acts.

19 (6) Representing or attempting to represent a broker
20 other than the sponsoring broker.

21 (7) Failure to account for or to remit any moneys or
22 documents coming into his or her possession that belong to
23 others.

24 (8) Failure to maintain and deposit in a special
25 account, separate and apart from personal and other
26 business accounts, all escrow moneys belonging to others

1 entrusted to a licensee while acting as a real estate
2 broker, escrow agent, or temporary custodian of the funds
3 of others or failure to maintain all escrow moneys on
4 deposit in the account until the transactions are
5 consummated or terminated, except to the extent that the
6 moneys, or any part thereof, shall be:

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

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

1 agent.

2 The account shall be noninterest bearing, unless the
3 character of the deposit is such that payment of interest
4 thereon is otherwise required by law or unless the
5 principals to the transaction specifically require, in
6 writing, that the deposit be placed in an interest bearing
7 account.

8 (9) Failure to make available to the real estate
9 enforcement personnel of OBRE during normal business hours
10 all escrow records and related documents maintained in
11 connection with the practice of real estate within 24 hours
12 of a request for those documents by OBRE personnel.

13 (10) Failing to furnish copies upon request of all
14 documents relating to a real estate transaction to all
15 parties executing them.

16 (11) Failure of a sponsoring broker to timely provide
17 information, sponsor cards, or termination of licenses to
18 OBRE.

19 (12) Engaging in dishonorable, unethical, or
20 unprofessional conduct of a character likely to deceive,
21 defraud, or harm the public.

22 (13) Commingling the money or property of others with
23 his or her own.

24 (14) Employing any person on a purely temporary or
25 single deal basis as a means of evading the law regarding
26 payment of commission to nonlicensees on some contemplated

1 transactions.

2 (15) Permitting the use of his or her license as a
3 broker to enable a salesperson or unlicensed person to
4 operate a real estate business without actual
5 participation therein and control thereof by the broker.

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

9 (17) Displaying a "for rent" or "for sale" sign on any
10 property without the written consent of an owner or his or
11 her duly authorized agent or advertising by any means that
12 any property is for sale or for rent without the written
13 consent of the owner or his or her authorized agent.

14 (18) Failing to provide information requested by OBRE,
15 within 30 days of the request, either as the result of a
16 formal or informal complaint to OBRE or as a result of a
17 random audit conducted by OBRE, which would indicate a
18 violation of this Act.

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

21 (20) Offering guaranteed sales plans, as defined in
22 clause (A) of this subdivision (20), except to the extent
23 hereinafter set forth:

24 (A) A "guaranteed sales plan" is any real estate
25 purchase or sales plan whereby a licensee enters into a
26 conditional or unconditional written contract with a

1 seller by the terms of which a licensee agrees to
2 purchase a property of the seller within a specified
3 period of time at a specific price in the event the
4 property is not sold in accordance with the terms of a
5 listing contract between the sponsoring broker and the
6 seller or on other terms acceptable to the seller.

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

10 (C) A licensee offering a guaranteed sales plan
11 shall provide to the party to whom the plan is offered
12 evidence of sufficient financial resources to satisfy
13 the commitment to purchase undertaken by the broker in
14 the plan.

15 (D) Any licensee offering a guaranteed sales plan
16 shall undertake to market the property of the seller
17 subject to the plan in the same manner in which the
18 broker would market any other property, unless the
19 agreement with the seller provides otherwise.

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

26 (21) Influencing or attempting to influence, by any

1 words or acts, a prospective seller, purchaser, occupant,
2 landlord, or tenant of real estate, in connection with
3 viewing, buying, or leasing real estate, so as to promote
4 or tend to promote the continuance or maintenance of
5 racially and religiously segregated housing or so as to
6 retard, obstruct, or discourage racially integrated
7 housing on or in any street, block, neighborhood, or
8 community.

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

13 (23) Inducing any party to a contract of sale or lease
14 or brokerage agreement to break the contract of sale or
15 lease or brokerage agreement for the purpose of
16 substituting, in lieu thereof, a new contract for sale or
17 lease or brokerage agreement with a third party.

18 (24) Negotiating a sale, exchange, or lease of real
19 estate directly with any person if the licensee knows that
20 the person has a written exclusive brokerage agreement with
21 another broker, unless specifically authorized by that
22 broker.

23 (25) When a licensee is also an attorney, acting as the
24 attorney for either the buyer or the seller in the same
25 transaction in which the licensee is acting or has acted as
26 a broker or salesperson.

1 (26) Advertising or offering merchandise or services
2 as free if any conditions or obligations necessary for
3 receiving the merchandise or services are not disclosed in
4 the same advertisement or offer. These conditions or
5 obligations include without limitation the requirement
6 that the recipient attend a promotional activity or visit a
7 real estate site. As used in this subdivision (26), "free"
8 includes terms such as "award", "prize", "no charge", "free
9 of charge", "without charge", and similar words or phrases
10 that reasonably lead a person to believe that he or she may
11 receive or has been selected to receive something of value,
12 without any conditions or obligations on the part of the
13 recipient.

14 (27) Disregarding or violating any provision of the
15 Land Sales Registration Act of 1989, the Illinois Real
16 Estate Time-Share Act, or the published rules promulgated
17 by OBRE to enforce those Acts.

18 (28) Violating the terms of a disciplinary order issued
19 by OBRE.

20 (29) Paying compensation in violation of Article 10 of
21 this Act.

22 (30) Requiring a party to a transaction who is not a
23 client of the licensee to allow the licensee to retain a
24 portion of the escrow moneys for payment of the licensee's
25 commission or expenses as a condition for release of the
26 escrow moneys to that party.

1 (31) Disregarding or violating any provision of this
2 Act or the published rules promulgated by OBRE to enforce
3 this Act or aiding or abetting any individual, partnership,
4 registered limited liability partnership, limited
5 liability company, or corporation in disregarding any
6 provision of this Act or the published rules promulgated by
7 OBRE to enforce this Act.

8 (32) Failing to provide the minimum services required
9 by Section 15-75 of this Act when acting under an exclusive
10 brokerage agreement.

11 (Source: P.A. 93-957, eff. 8-19-04.)