



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB1361

Introduced 2/21/2007, by Rep. LaShawn K. Ford

#### SYNOPSIS AS INTRODUCED:

225 ILCS 454/20-20

Amends the Real Estate License Act of 2000. Provides for the transfer by a licensee under the Act to the Office of the State Treasurer of escrow moneys, prior to the consummation or termination of a transaction, at the end of a 6-month time period when, in the absence of the filing of any claim in a court of competent jurisdiction, the principals to the transaction have remained in a continuous and uninterrupted dispute during that 6-month period.

LRB095 08275 RAS 28447 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7 (Section scheduled to be repealed on January 1, 2010)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 disbursed prior to  
7 the consummation or termination (i) in accordance with ~~(i)~~  
8 the written direction of the principals to the transaction  
9 or their duly authorized agents, (ii) in accordance with  
10 directions providing for the release, payment, or  
11 distribution of escrow moneys contained in any written  
12 contract signed by the principals to the transaction or  
13 their duly authorized agents, ~~or~~ (iii) pursuant to an order  
14 of a court of competent jurisdiction, or (iv) in the  
15 absence of the filing of any claim in a court of competent  
16 jurisdiction, in accordance with the end of a 6-month  
17 period during which the principals to the transaction have  
18 remained in a continuous and uninterrupted dispute, at  
19 which time the escrow moneys shall be transferred by the  
20 licensee to the Office of the State Treasurer. The account  
21 shall be noninterest bearing, unless the character of the  
22 deposit is such that payment of interest thereon is  
23 otherwise required by law or unless the principals to the  
24 transaction specifically require, in writing, that the  
25 deposit be placed in an interest bearing account.

26 (9) Failure to make available to the real estate

1 enforcement personnel of OBRE during normal business hours  
2 all escrow records and related documents maintained in  
3 connection with the practice of real estate within 24 hours  
4 of a request for those documents by OBRE personnel.

5 (10) Failing to furnish copies upon request of all  
6 documents relating to a real estate transaction to all  
7 parties executing them.

8 (11) Failure of a sponsoring broker to timely provide  
9 information, sponsor cards, or termination of licenses to  
10 OBRE.

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

14 (13) Commingling the money or property of others with  
15 his or her own.

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

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

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

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

6           (18) Failing to provide information requested by OBRE,  
7 within 30 days of the request, either as the result of a  
8 formal or informal complaint to OBRE or as a result of a  
9 random audit conducted by OBRE, which would indicate a  
10 violation of this Act.

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

13           (20) Offering guaranteed sales plans, as defined in  
14 clause (A) of this subdivision (20), 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 by the terms of which a licensee agrees to  
20 purchase a property of the seller within a specified  
21 period of time at a specific price in the event the  
22 property is not sold in accordance with the terms of a  
23 listing contract between the sponsoring broker and the  
24 seller or on other terms acceptable to the seller.

25           (B) A licensee offering a guaranteed sales plan  
26 shall provide the details and conditions of the plan in

1 writing to the party to whom the plan is offered.

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

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

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

18 (21) Influencing or attempting to influence, by any  
19 words or acts, a prospective seller, purchaser, occupant,  
20 landlord, or tenant of real estate, in connection with  
21 viewing, buying, or leasing real estate, so as to promote  
22 or tend to promote the continuance or maintenance of  
23 racially and religiously segregated housing or so as to  
24 retard, obstruct, or discourage racially integrated  
25 housing on or in any street, block, neighborhood, or  
26 community.



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

5           (23) Inducing any party to a contract of sale or lease  
6 or brokerage agreement to break the contract of sale or  
7 lease or brokerage agreement for the purpose of  
8 substituting, in lieu thereof, a new contract for sale or  
9 lease or brokerage agreement with a third party.

10          (24) Negotiating a sale, exchange, or lease of real  
11 estate directly with any person if the licensee knows that  
12 the person has a written exclusive brokerage agreement with  
13 another broker, unless specifically authorized by that  
14 broker.

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

19          (26) Advertising or offering merchandise or services  
20 as free if any conditions or obligations necessary for  
21 receiving the merchandise or services are not disclosed in  
22 the same advertisement or offer. These conditions or  
23 obligations include without limitation the requirement  
24 that the recipient attend a promotional activity or visit a  
25 real estate site. As used in this subdivision (26), "free"  
26 includes terms such as "award", "prize", "no charge", "free

1 of charge", "without charge", and similar words or phrases  
2 that reasonably lead a person to believe that he or she may  
3 receive or has been selected to receive something of value,  
4 without any conditions or obligations on the part of the  
5 recipient.

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

10 (28) Violating the terms of a disciplinary order issued  
11 by OBRE.

12 (29) Paying compensation in violation of Article 10 of  
13 this Act.

14 (30) Requiring a party to a transaction who is not a  
15 client of the licensee to allow the licensee to retain a  
16 portion of the escrow moneys for payment of the licensee's  
17 commission or expenses as a condition for release of the  
18 escrow moneys to that party.

19 (31) Disregarding or violating any provision of this  
20 Act or the published rules promulgated by OBRE to enforce  
21 this Act or aiding or abetting any individual, partnership,  
22 registered limited liability partnership, limited  
23 liability company, or corporation in disregarding any  
24 provision of this Act or the published rules promulgated by  
25 OBRE to enforce this Act.

26 (32) Failing to provide the minimum services required

1           by Section 15-75 of this Act when acting under an exclusive  
2           brokerage agreement.

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