



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5359

Introduced 2/15/2012, by Rep. Robert Rita

SYNOPSIS AS INTRODUCED:

225 ILCS 454/5-70
225 ILCS 454/10-30
225 ILCS 454/20-20
225 ILCS 454/20-78 new
225 ILCS 454/20-90
225 ILCS 454/20-95
225 ILCS 454/20-115

Amends the Real Estate License Act of 2000. Creates a provision concerning the confidentiality of all information collected by the Department in the course of an examination or investigation of a licensee or applicant. Removes language that provides that when any aggrieved party commences action for a judgment that may result in collection from the Real Estate Recovery Fund, the aggrieved person must notify the Department of Financial and Professional Regulation in writing to this effect within 7 days of the commencement of the action. Provides that an aggrieved party, in an action that may result in a judgment that may result in the collection from the Real Estate Recovery Fund, shall give written notice to the Department within 30 days after entry of the judgment and provide the Department with copies of the pleadings upon which the default judgment was entered and of the default judgment order. Provides that the Department shall file a written response with the court stating that the Department has no objection to a claim on the Real Estate Recovery Fund by the aggrieved party or that the Department objects to such claim stating the basis for such objection. Provides that there is no limitation as to when an action against a person for violating the terms of the Act or its rules may be taken by the Department if it is alleged that an initial application for licensure contains false or misleading information. Also makes changes in provisions concerning continuing education requirements; managing brokers, brokers, or salespersons; advertising; grounds for discipline; and power of the Department to defend. Effective immediately.

LRB097 19406 CEL 64659 b

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 5-70, 10-30, 20-20, 20-90, 20-95, and
6 20-115 and by adding Section 20-78 as follows:

7 (225 ILCS 454/5-70)

8 (Section scheduled to be repealed on January 1, 2020)

9 Sec. 5-70. Continuing education requirement; managing
10 broker, broker, or salesperson.

11 (a) The requirements of this Section apply to all managing
12 brokers, brokers, and salespersons.

13 (b) Except as otherwise provided in this Section, each
14 person who applies for renewal of his or her license as a
15 managing broker, real estate broker, or real estate salesperson
16 must successfully complete 6 hours of real estate continuing
17 education courses approved by the Advisory Council for each
18 year of the pre-renewal period. Broker licensees must
19 successfully complete a 6-hour broker management continuing
20 education course approved by the Department for the pre-renewal
21 period ending April 30, 2010. In addition, beginning with the
22 pre-renewal period for managing broker licensees that begins
23 after the effective date of this Act, those licensees renewing

1 or obtaining a managing broker's license must successfully
2 complete a 12-hour broker management continuing education
3 course approved by the Department each pre-renewal period. The
4 broker management continuing education course must be
5 completed in the classroom or by other interactive delivery
6 method presenting instruction and real time discussion between
7 the instructor and the students. Successful completion of the
8 course shall include achieving a passing score as provided by
9 rule on a test developed and administered in accordance with
10 rules adopted by the Department. No license may be renewed
11 except upon the successful completion of the required courses
12 or their equivalent or upon a waiver of those requirements for
13 good cause shown as determined by the Secretary with the
14 recommendation of the Advisory Council. The requirements of
15 this Article are applicable to all managing brokers, brokers,
16 and salespersons except those brokers and salespersons who,
17 during the pre-renewal period:

- 18 (1) serve in the armed services of the United States;
- 19 (2) serve as an elected State or federal official;
- 20 (3) serve as a full-time employee of the Department; or
- 21 (4) are admitted to practice law pursuant to Illinois

22 Supreme Court rule.

23 (c) A person licensed as a salesperson as of April 30, 2011
24 shall not be required to complete the 18 hours of continuing
25 education for the pre-renewal period ending April 30, 2012 if
26 that person takes the 30-hour post-licensing course to obtain a

1 broker's license. A person licensed as a broker as of April 30,
2 2011 shall not be required to complete the 12 hours of broker
3 management continuing education for the pre-renewal period
4 ending April 30, 2012, unless that person passes the
5 proficiency exam provided for in Section 5-47 of this Act to
6 qualify for a managing broker's license.

7 (d) A person receiving an initial license during the 90
8 days before the renewal date shall not be required to complete
9 the continuing education courses provided for in subsection (b)
10 of this Section as a condition of initial license renewal.

11 (e) The continuing education requirement for salespersons,
12 brokers and managing brokers shall consist of a core curriculum
13 and an elective curriculum, to be established by the Advisory
14 Council. In meeting the continuing education requirements of
15 this Act, at least 3 hours per year or their equivalent, 6
16 hours for each two-year pre-renewal period, shall be required
17 to be completed in the core curriculum. In establishing the
18 core curriculum, the Advisory Council shall consider subjects
19 that will educate licensees on recent changes in applicable
20 laws and new laws and refresh the licensee on areas of the
21 license law and the Department policy that the Advisory Council
22 deems appropriate, and any other areas that the Advisory
23 Council deems timely and applicable in order to prevent
24 violations of this Act and to protect the public. In
25 establishing the elective curriculum, the Advisory Council
26 shall consider subjects that cover the various aspects of the

1 practice of real estate that are covered under the scope of
2 this Act. However, the elective curriculum shall not include
3 any offerings referred to in Section 5-85 of this Act.

4 (f) The subject areas of continuing education courses
5 approved by the Advisory Council may include without limitation
6 the following:

- 7 (1) license law and escrow;
- 8 (2) antitrust;
- 9 (3) fair housing;
- 10 (4) agency;
- 11 (5) appraisal;
- 12 (6) property management;
- 13 (7) residential brokerage;
- 14 (8) farm property management;
- 15 (9) rights and duties of sellers, buyers, and brokers;
- 16 (10) commercial brokerage and leasing; and
- 17 (11) real estate financing.

18 (g) In lieu of credit for those courses listed in
19 subsection (f) of this Section, credit may be earned for
20 serving as a licensed instructor in an approved course of
21 continuing education. The amount of credit earned for teaching
22 a course shall be the amount of continuing education credit for
23 which the course is approved for licensees taking the course.

24 (h) Credit hours may be earned for self-study programs
25 approved by the Advisory Council.

26 (i) A broker or salesperson may earn credit for a specific

1 continuing education course only once during the prerenewal
2 period.

3 (j) No more than 6 hours of continuing education credit may
4 be taken or earned in one calendar day.

5 (k) To promote the offering of a uniform and consistent
6 course content, the Department may provide for the development
7 of a single broker management course to be offered by all
8 continuing education providers who choose to offer the broker
9 management continuing education course. The Department may
10 contract for the development of the 12-hour ~~6-hour~~ broker
11 management continuing education course with an outside vendor
12 or consultant and, if the course is developed in this manner,
13 the Department or the outside consultant shall license the use
14 of that course to all approved continuing education providers
15 who wish to provide the course.

16 (l) Except as specifically provided in this Act, continuing
17 education credit hours may not be earned for completion of pre
18 or post-license courses. The approved 30-hour post-license
19 course for broker licensees shall satisfy the continuing
20 education requirement for the pre-renewal period in which the
21 course is taken. The approved 45-hour brokerage administration
22 and management course shall satisfy the 12-hour broker
23 management continuing education requirement for the
24 pre-renewal period in which the course is taken.

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

1 (225 ILCS 454/10-30)

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

3 Sec. 10-30. Advertising.

4 (a) No advertising, whether in print, via the Internet, or
5 through any other media, shall be fraudulent, deceptive,
6 inherently misleading, or proven to be misleading in practice.
7 Advertising shall be considered misleading or untruthful if,
8 when taken as a whole, there is a distinct and reasonable
9 possibility that it will be misunderstood or will deceive the
10 ordinary purchaser, seller, lessee, lessor, or owner.
11 Advertising shall contain all information necessary to
12 communicate the information contained therein to the public in
13 an accurate, direct, and readily comprehensible manner.

14 (b) No blind advertisements may be used by any licensee, in
15 any media, except as provided for in this Section.

16 (c) A licensee shall disclose, in writing, to all parties
17 in a transaction his or her status as a licensee and any and
18 all interest the licensee has or may have in the real estate
19 constituting the subject matter thereof, directly or
20 indirectly, according to the following guidelines:

21 (1) On broker yard signs or in broker advertisements,
22 no disclosure of ownership is necessary. However, the
23 ownership shall be indicated on any property data form and
24 disclosed to persons responding to any advertisement or any
25 sign. The term "broker owned" or "agent owned" is
26 sufficient disclosure.

1 (2) A sponsored or inoperative licensee selling or
2 leasing property, owned solely by the sponsored or
3 inoperative licensee, without utilizing brokerage services
4 of their sponsoring broker or any other licensee, may
5 advertise "By Owner". For purposes of this Section,
6 property is "solely owned" by a sponsored or inoperative
7 licensee if he or she (i) has a 100% ownership interest
8 alone, (ii) has ownership as a joint tenant or tenant by
9 the entirety, or (iii) holds a 100% beneficial interest in
10 a land trust. Sponsored or inoperative licensees selling or
11 leasing "By Owner" shall comply with the following if
12 advertising by owner:

13 (A) On "By Owner" yard signs, the sponsored or
14 inoperative licensee shall indicate "broker owned" or
15 "agent owned." "By Owner" advertisements used in any
16 medium of advertising shall include the term "broker
17 owned" or "agent owned."

18 (B) If a sponsored or inoperative licensee runs
19 advertisements, for the purpose of purchasing or
20 leasing real estate, he or she shall disclose in the
21 advertisements his or her status as a licensee.

22 (C) A sponsored or inoperative licensee shall not
23 use the sponsoring broker's name or the sponsoring
24 broker's company name in connection with the sale,
25 lease, or advertisement of the property nor utilize the
26 sponsoring broker's or company's name in connection

1 with the sale, lease, or advertising of the property in
2 a manner likely to create confusion among the public as
3 to whether or not the services of a real estate company
4 are being utilized or whether or not a real estate
5 company has an ownership interest in the property.

6 (d) A sponsored licensee may not advertise under his or her
7 own name. Advertising in any media shall be under the direct
8 supervision of the sponsoring or managing broker and in the
9 sponsoring broker's business name, which in the case of a
10 franchise shall include the franchise affiliation as well as
11 the name of the individual firm. This provision does not apply
12 under the following circumstances:

13 (1) When a licensee enters into a brokerage agreement
14 relating to his or her own real estate, or real estate in
15 which he or she has an ownership interest, with another
16 licensed broker; or

17 (2) When a licensee is selling or leasing his or her
18 own real estate or buying or leasing real estate for
19 himself or herself, after providing the appropriate
20 written disclosure of his or her ownership interest as
21 required in paragraph (2) of subsection (c) of this
22 Section.

23 (e) No licensee shall list his or her name under the
24 heading or title "Real Estate" in the telephone directory or
25 otherwise advertise in his or her own name to the general
26 public through any medium of advertising as being in the real

1 estate business without listing his or her sponsoring broker's
2 business name.

3 (f) The sponsoring broker's business name and the name of
4 the licensee must appear in all advertisements, including
5 business cards. Nothing in this Act shall be construed to
6 require specific print size as between the broker's business
7 name and the name of the licensee.

8 (g) Those individuals licensed as a managing broker and
9 designated with the Department as a managing broker by their
10 sponsoring broker shall identify themselves to the public in
11 advertising, except on "For Sale" or similar signs, as a
12 managing broker. No other individuals holding a managing
13 broker's license may hold themselves out to the public or other
14 licensees as a managing broker.

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

16 (225 ILCS 454/20-20)

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

18 Sec. 20-20. Grounds for discipline.

19 (a) The Department may refuse to issue or renew a license,
20 may place on probation, suspend, or revoke any license,
21 reprimand, or take any other disciplinary or non-disciplinary
22 action as the Department may deem proper and ~~or~~ impose a fine
23 not to exceed \$25,000 upon any licensee or applicant under this
24 Act or any person who holds himself or herself out as an
25 applicant or licensee or against a licensee in handling his or

1 her own property, whether held by deed, option, or otherwise,
2 for any one or any combination of the following causes:

3 (1) Fraud or misrepresentation in applying for, or
4 procuring, a license under this Act or in connection with
5 applying for renewal of a license under this Act.

6 (2) The entry of an administrative sanction,
7 conviction of or plea of guilty or plea of nolo contendere
8 in this State or any other jurisdiction to: (A) ~~conviction~~
9 ~~of, plea of guilty or plea of nolo contendere to a felony or~~
10 (B) a misdemeanor or a finding by an administrative body,
11 an essential element of which is dishonesty or fraud or
12 larceny, embezzlement, or obtaining money, property, or
13 credit by false pretenses or by means of a confidence game,
14 ~~in this State, or any other jurisdiction.~~

15 (3) Inability to practice the profession with
16 reasonable judgment, skill, or safety as a result of a
17 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 (4) Practice under this Act as a licensee in a retail
21 sales establishment from an office, desk, or space that is
22 not separated from the main retail business by a separate
23 and distinct area within the establishment.

24 (5) Having been disciplined by another state, the
25 District of Columbia, a territory, a foreign nation, a
26 governmental agency, or any other entity authorized to

1 impose discipline ~~Disciplinary action of another state or~~
2 ~~jurisdiction against the license or other authorization to~~
3 ~~practice as a managing broker, broker, salesperson, or~~
4 ~~leasing agent~~ if at least one of the grounds for that
5 discipline is the same as or the equivalent of one of the
6 grounds for which a licensee may be disciplined under
7 ~~discipline set forth in~~ this Act. A certified copy of the
8 record of the action by the other state or jurisdiction
9 shall be prima facie evidence thereof.

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

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

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

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

20 (10) Making any substantial misrepresentation or
21 untruthful advertising.

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

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

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

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

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

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

12 (17) Failure to maintain and deposit in a special
13 account, separate and apart from personal and other
14 business accounts, all escrow moneys belonging to others
15 entrusted to a licensee while acting as a real estate
16 broker, escrow agent, or temporary custodian of the funds
17 of others or failure to maintain all escrow moneys on
18 deposit in the account until the transactions are
19 consummated or terminated, except to the extent that the
20 moneys, or any part thereof, shall be:

21 (A) disbursed prior to the consummation or
22 termination (i) in accordance with the written
23 direction of the principals to the transaction or their
24 duly authorized agents, (ii) in accordance with
25 directions providing for the release, payment, or
26 distribution of escrow moneys contained in any written

1 contract signed by the principals to the transaction or
2 their duly authorized agents, or (iii) pursuant to an
3 order of a court of competent jurisdiction; or

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

16 The account shall be noninterest bearing, unless the
17 character of the deposit is such that payment of interest
18 thereon is otherwise required by law or unless the
19 principals to the transaction specifically require, in
20 writing, that the deposit be placed in an interest bearing
21 account.

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

26 (19) Failing to furnish copies upon request of

1 documents relating to a real estate transaction to a party
2 who has executed that document.

3 (20) Failure of a sponsoring broker to timely provide
4 information, sponsor cards, or termination of licenses to
5 the Department.

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

9 (22) Commingling the money or property of others with
10 his or her own money or property.

11 (23) Employing any person on a purely temporary or
12 single deal basis as a means of evading the law regarding
13 payment of commission to nonlicensees on some contemplated
14 transactions.

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

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

22 (26) Displaying a "for rent" or "for sale" sign on any
23 property without the written consent of an owner or his or
24 her duly authorized agent or advertising by any means that
25 any property is for sale or for rent without the written
26 consent of the owner or his or her authorized agent.

1 (27) Failing to provide information requested by the
2 Department, or otherwise respond to that request, within 30
3 days of the request.

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

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

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

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

22 (C) A licensee offering a guaranteed sales plan
23 shall provide to the party to whom the plan is offered
24 evidence of sufficient financial resources to satisfy
25 the commitment to purchase undertaken by the broker in
26 the plan.

1 (D) Any licensee offering a guaranteed sales plan
2 shall undertake to market the property of the seller
3 subject to the plan in the same manner in which the
4 broker would market any other property, unless the
5 agreement with the seller provides otherwise.

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

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

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

24 (31) Engaging in any act that constitutes a violation
25 of any provision of Article 3 of the Illinois Human Rights
26 Act, whether or not a complaint has been filed with or

1 adjudicated by the Human Rights Commission.

2 (32) Inducing any party to a contract of sale or lease
3 or brokerage agreement to break the contract of sale or
4 lease or brokerage agreement for the purpose of
5 substituting, in lieu thereof, a new contract for sale or
6 lease or brokerage agreement with a third party.

7 (33) Negotiating a sale, exchange, or lease of real
8 estate directly with any person if the licensee knows that
9 the person has an exclusive brokerage agreement with
10 another broker, unless specifically authorized by that
11 broker.

12 (34) When a licensee is also an attorney, acting as the
13 attorney for either the buyer or the seller in the same
14 transaction in which the licensee is acting or has acted as
15 a broker or salesperson.

16 (35) Advertising or offering merchandise or services
17 as free if any conditions or obligations necessary for
18 receiving the merchandise or services are not disclosed in
19 the same advertisement or offer. These conditions or
20 obligations include without limitation the requirement
21 that the recipient attend a promotional activity or visit a
22 real estate site. As used in this subdivision (35), "free"
23 includes terms such as "award", "prize", "no charge", "free
24 of charge", "without charge", and similar words or phrases
25 that reasonably lead a person to believe that he or she may
26 receive or has been selected to receive something of value,

1 without any conditions or obligations on the part of the
2 recipient.

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

7 (37) Violating the terms of a disciplinary order issued
8 by the Department.

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

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

16 (40) Disregarding or violating any provision of this
17 Act or the published rules promulgated by the Department to
18 enforce this Act or aiding or abetting any individual,
19 partnership, registered limited liability partnership,
20 limited liability company, or corporation in disregarding
21 any provision of this Act or the published rules
22 promulgated by the Department to enforce this Act.

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

26 (42) Habitual or excessive use or addiction to alcohol,

1 narcotics, stimulants, or any other chemical agent or drug
2 that results in a managing broker, broker, salesperson, or
3 leasing agent's inability to practice with reasonable
4 skill or safety.

5 (b) The Department may refuse to issue or renew or may
6 suspend the license of any person who fails to file a return,
7 pay the tax, penalty or interest shown in a filed return, or
8 pay any final assessment of tax, penalty, or interest, as
9 required by any tax Act administered by the Department of
10 Revenue, until such time as the requirements of that tax Act
11 are satisfied in accordance with subsection (g) of Section
12 2105-15 of the Civil Administrative Code of Illinois.

13 (c) The Department shall deny a license or renewal
14 authorized by this Act to a person who has defaulted on an
15 educational loan or scholarship provided or guaranteed by the
16 Illinois Student Assistance Commission or any governmental
17 agency of this State in accordance with item (5) of subsection
18 (g) of Section 2105-15 of the Civil Administrative Code of
19 Illinois.

20 (d) In cases where the Department of Healthcare and Family
21 Services (formerly Department of Public Aid) has previously
22 determined that a licensee or a potential licensee is more than
23 30 days delinquent in the payment of child support and has
24 subsequently certified the delinquency to the Department may
25 refuse to issue or renew or may revoke or suspend that person's
26 license or may take other disciplinary action against that

1 person based solely upon the certification of delinquency made
2 by the Department of Healthcare and Family Services in
3 accordance with item (5) of subsection (g) of Section 2105-15
4 of the Civil Administrative Code of Illinois.

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

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

1 Department or Board may require that individual to submit to
2 care, counseling, or treatment by physicians approved or
3 designated by the Department or Board, as a condition, term, or
4 restriction for continued, reinstated, or renewed licensure to
5 practice; or, in lieu of care, counseling, or treatment, the
6 Department may file, or the Board may recommend to the
7 Department to file, a complaint to immediately suspend, revoke,
8 or otherwise discipline the license of the individual. An
9 individual whose license was granted, continued, reinstated,
10 renewed, disciplined or supervised subject to such terms,
11 conditions, or restrictions, and who fails to comply with such
12 terms, conditions, or restrictions, shall be referred to the
13 Secretary for a determination as to whether the individual
14 shall have his or her license suspended immediately, pending a
15 hearing by the Department.

16 In instances in which the Secretary immediately suspends a
17 person's license under this Section, a hearing on that person's
18 license must be convened by the Department within 30 days after
19 the suspension and completed without appreciable delay. The
20 Department and Board shall have the authority to review the
21 subject individual's record of treatment and counseling
22 regarding the impairment to the extent permitted by applicable
23 federal statutes and regulations safeguarding the
24 confidentiality of medical records.

25 An individual licensed under this Act and affected under
26 this Section shall be afforded an opportunity to demonstrate to

1 the Department or Board that he or she can resume practice in
2 compliance with acceptable and prevailing standards under the
3 provisions of his or her license.

4 (Source: P.A. 95-851, eff. 1-1-09; 96-856, eff. 12-31-09;
5 revised 11-18-11.)

6 (225 ILCS 454/20-78 new)

7 Sec. 20-78. Confidentiality. All information collected by
8 the Department in the course of an examination or investigation
9 of a licensee or applicant, including, but not limited to, any
10 complaint against a licensee filed with the Department and
11 information collected to investigate any such complaint, shall
12 be maintained for the confidential use of the Department and
13 shall not be disclosed. The Department may not disclose the
14 information to anyone other than law enforcement officials,
15 regulatory agencies that have an appropriate regulatory
16 interest as determined by the Secretary, or a party presenting
17 a lawful subpoena to the Department. Information and documents
18 disclosed to a federal, State, county, or local law enforcement
19 agency shall not be disclosed by the agency for any purpose to
20 any other agency or person. A formal complaint filed against a
21 licensee by the Department or any order issued by the
22 Department against a licensee or applicant shall be a public
23 record, except as otherwise prohibited by law.

24 (225 ILCS 454/20-90)

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

2 Sec. 20-90. Collection from Real Estate Recovery Fund;
3 procedure.

4 (a) No action for a judgment that subsequently results in
5 an order for collection from the Real Estate Recovery Fund
6 shall be started later than 2 years after the date on which the
7 aggrieved person knew, or through the use of reasonable
8 diligence should have known, of the acts or omissions giving
9 rise to a right of recovery from the Real Estate Recovery Fund.

10 (b) When any aggrieved person commences action for a
11 judgment that may result in collection from the Real Estate
12 Recovery Fund, the aggrieved person must name as parties
13 defendant to that action any and all individual licensees or
14 their employees who allegedly committed or are responsible for
15 acts or omissions giving rise to a right of recovery from the
16 Real Estate Recovery Fund. Failure to name as parties defendant
17 such licensees or their employees shall preclude recovery from
18 the Real Estate Recovery Fund of any portion of any judgment
19 received in such an action. The aggrieved party may also name
20 as additional parties defendant any corporations, limited
21 liability companies, partnerships, registered limited
22 liability partnership, or other business associations that may
23 be responsible for acts giving rise to a right of recovery from
24 the Real Estate Recovery Fund.

25 (c) (Blank). ~~When any aggrieved person commences action for~~
26 ~~a judgment that may result in collection from the Real Estate~~

1 ~~Recovery Fund, the aggrieved person must notify the Department~~
2 ~~in writing to this effect within 7 days of the commencement of~~
3 ~~the action. Failure to so notify the Department shall preclude~~
4 ~~recovery from the Real Estate Recovery Fund of any portion of~~
5 ~~any judgment received in such an action. After receiving notice~~
6 ~~of the commencement of such an action, the Department upon~~
7 ~~timely application shall be permitted to intervene as a party~~
8 ~~defendant to that action.~~

9 (d) When any aggrieved person commences action for a
10 judgment that may result in collection from the Real Estate
11 Recovery Fund, and the aggrieved person is unable to obtain
12 legal and proper service upon the defendant under the
13 provisions of Illinois law concerning service of process in
14 civil actions, the aggrieved person may petition the court
15 where the action to obtain judgment was begun for an order to
16 allow service of legal process on the Secretary. Service of
17 process on the Secretary shall be taken and held in that court
18 to be as valid and binding as if due service had been made upon
19 the defendant. In case any process mentioned in this Section is
20 served upon the Secretary, the Secretary shall forward a copy
21 of the process by certified mail to the licensee's last address
22 on record with the Department. Any judgment obtained after
23 service of process on the Secretary under this Act shall apply
24 to and be enforceable against the Real Estate Recovery Fund
25 only. The Department ~~OBRE~~ may intervene in and defend any such
26 action.

1 (e) When an aggrieved party commences action for a judgment
2 that may result in collection from the Real Estate Recovery
3 Fund, and the court before which that action is commenced
4 enters judgment by default against the defendant and in favor
5 of the aggrieved party, the aggrieved party shall give written
6 notice to the Department within 30 days after the entry of such
7 default judgment and provide the Department with copies of the
8 pleadings upon which the default judgment was entered and of
9 the default judgment order. The ~~the~~ court shall upon motion of
10 the Department set aside that judgment by default. After such a
11 judgment by default has been set aside, the Department shall
12 appear as party defendant to that action, and thereafter the
13 court shall require proof of the allegations in the pleadings
14 upon which relief is sought.

15 (f) The aggrieved person shall give written notice to the
16 Department within 30 days of the entry of any judgment that may
17 result in collection from the Real Estate Recovery Fund and
18 provide the Department with copies of the pleadings upon which
19 the judgment was entered and of the judgment order. Notice
20 provided pursuant to subsection (e) of this Section shall
21 satisfy this requirement. Within 60 days after the Department
22 receives such written notice of the judgment or the court has
23 re-entered judgment pursuant to the procedures under
24 subsection (e) of this Section, the Department shall file a
25 written response with the court stating that the Department has
26 no objection to a claim on the Real Estate Recovery Fund by the

1 aggrieved party or that the Department objects to such claim
2 stating the basis for such objection. The Department, after
3 receiving the written notice provided for in this subsection,
4 shall be entitled to appear before the court and exercise the
5 same rights in the same manner as any party. The aggrieved
6 person shall provide the Department ~~OBRE~~ ~~within 20 days prior~~
7 ~~written~~ notice of all supplementary proceedings ~~so as to allow~~
8 ~~the Department to participate in all efforts to collect on the~~
9 ~~judgment.~~

10 (g) After the Department has filed its response as required
11 in subsection (f) of this Section and any supplementary
12 proceedings have concluded, ~~When any aggrieved person recovers~~
13 ~~a valid judgment in any court of competent jurisdiction against~~
14 ~~any licensee or an unlicensed employee of any broker, upon the~~
15 ~~grounds of fraud, misrepresentation, discrimination, or~~
16 ~~deceit,~~ the aggrieved person may, ~~upon the termination of all~~
17 ~~proceedings, including review and appeals in connection with~~
18 ~~the judgment, file a verified claim in the court in which the~~
19 ~~judgment was entered and, upon 30 days' written notice to the~~
20 ~~Department, and to the person against whom the judgment was~~
21 ~~obtained, may~~ apply to the court for an order directing payment
22 out of the Real Estate Recovery Fund of the amount unpaid upon
23 the judgment, not including interest on the judgment, and
24 subject to the limitations stated in Section 20-85 of this Act.
25 The aggrieved person must set out in that verified claim and at
26 an evidentiary hearing to be held by the court upon the

1 application that the claim meets all requirements of Section
2 20-85 and this Section to be eligible for payment from the Real
3 Estate Recovery Fund and the aggrieved party shall be required
4 to show that the aggrieved person:

5 (1) Is not a spouse of the debtor or the personal
6 representative of such spouse.

7 (2) Has complied with all the requirements of this
8 Section.

9 (3) Has obtained a judgment stating the amount thereof
10 and the amount owing thereon, not including interest
11 thereon, at the date of the application.

12 (4) Has made all reasonable searches and inquiries to
13 ascertain whether the judgment debtor is possessed of real
14 or personal property or other assets, liable to be sold or
15 applied in satisfaction of the judgment.

16 (5) By such search has discovered no personal or real
17 property or other assets liable to be sold or applied, or
18 has discovered certain of them, describing them as owned by
19 the judgment debtor and liable to be so applied and has
20 taken all necessary action and proceedings for the
21 realization thereof, and the amount thereby realized was
22 insufficient to satisfy the judgment, stating the amount so
23 realized and the balance remaining due on the judgment
24 after application of the amount realized.

25 (6) Has diligently pursued all remedies against all the
26 judgment debtors and all other persons liable to the

1 aggrieved person in the transaction for which recovery is
2 sought from the Real Estate Recovery Fund, including the
3 filing of an adversary action to have the debts declared
4 non-dischargeable in any bankruptcy petition matter filed
5 by any judgment debtor or person liable to the aggrieved
6 person.

7 The aggrieved person shall also be required to prove the
8 amount of attorney's fees sought to be recovered and the
9 reasonableness of those fees up to the maximum allowed pursuant
10 to Section 20-85 of this Act.

11 (h) After considering the written response of the
12 Department and conducting the evidentiary hearing required
13 under this Section, the ~~The~~ court shall make an order directed
14 to the Department requiring payment from the Real Estate
15 Recovery Fund of whatever sum it finds to be payable upon the
16 claim, pursuant to and in accordance with the limitations
17 contained in Section 20-85 of this Act, if the court is
18 satisfied, upon the hearing, of the truth of all matters
19 required to be shown by the aggrieved person under subsection
20 (g) of this Section and that the aggrieved person has fully
21 pursued and exhausted all remedies available for recovering the
22 amount awarded by the judgment of the court.

23 (i) Should the Department pay from the Real Estate Recovery
24 Fund any amount in settlement of a claim or toward satisfaction
25 of a judgment against a licensed broker or salesperson or an
26 unlicensed employee of a broker, the licensee's license shall

1 be automatically revoked ~~terminated~~ upon the issuance of a
2 court order authorizing payment from the Real Estate Recovery
3 Fund. No petition for restoration of a license shall be heard
4 until repayment has been made in full, plus interest at the
5 rate prescribed in Section 12-109 of the Code of Civil
6 Procedure of the amount paid from the Real Estate Recovery Fund
7 on their account, notwithstanding any provision to the contrary
8 in Section 2105-15 of the Department of Professional Regulation
9 Law of the Civil Administrative Code of Illinois. A discharge
10 in bankruptcy shall not relieve a person from the penalties and
11 disabilities provided in this subsection (i).

12 (j) If, at any time, the money deposited in the Real Estate
13 Recovery Fund is insufficient to satisfy any duly authorized
14 claim or portion thereof, the Department shall, when sufficient
15 money has been deposited in the Real Estate Recovery Fund,
16 satisfy such unpaid claims or portions thereof, in the order
17 that such claims or portions thereof were originally filed,
18 plus accumulated interest at the rate prescribed in Section
19 12-109 of the Code of Civil Procedure.

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

21 (225 ILCS 454/20-95)

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

23 Sec. 20-95. Power of the Department to defend. When the
24 Department receives any process, notice, order, or other
25 document provided for or required under Section 20-90 of this

1 Act, it may enter an appearance, file an answer, appear at the
2 court hearing, defend the action, or take whatever other action
3 it deems appropriate on behalf and in the name of the defendant
4 or the Department and take recourse through any appropriate
5 method of review on behalf of and in the name of the defendant
6 or the Department.

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

8 (225 ILCS 454/20-115)

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

10 Sec. 20-115. Time limit on action. No action may be taken
11 by the Department against any person for violation of the terms
12 of this Act or its rules unless the action is commenced within
13 5 years after the occurrence of the alleged violation. This
14 limitation shall not apply where it is alleged that an initial
15 application for licensure under this Act contains false or
16 misleading information.

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

18 Section 99. Effective date. This Act takes effect upon
19 becoming law.