



Sen. John M. Sullivan

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1 AMENDMENT TO SENATE BILL 92

2 AMENDMENT NO. _____. Amend Senate Bill 92 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Auction License Act is amended by changing
5 Sections 5-10 and 20-15 as follows:

6 (225 ILCS 407/5-10)

7 (Section scheduled to be repealed on January 1, 2020)

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

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

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

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

4 "Auction" means the sale or lease of property, real or
5 personal, by means of exchanges between an auctioneer and
6 prospective purchasers or lessees, which consists of a series
7 of invitations for offers made by the auctioneer and offers by
8 prospective purchasers or lessees for the purpose of obtaining
9 an acceptable offer for the sale or lease of the property,
10 including the sale or lease of property via mail,
11 telecommunications, or the Internet.

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

14 "Auction firm" means any corporation, partnership, or
15 limited liability company that acts as an auctioneer and
16 provides an auction service.

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

20 "Auction service" means the service of arranging,
21 managing, advertising, or conducting auctions.

22 "Auctioneer" means a person or entity who, for another, for
23 a fee, compensation, commission, or any other valuable
24 consideration at auction or with the intention or expectation
25 of receiving valuable consideration by the means of or process
26 of an auction or sale at auction or providing an auction

1 service, offers, negotiates, or attempts to negotiate an
2 auction contract, sale, purchase, or exchange of goods,
3 chattels, merchandise, personal property, real property, or
4 any commodity that may be lawfully kept or offered for sale by
5 or at auction.

6 "Address of Record" means the designated address recorded
7 by the Department in the applicant's or licensee's application
8 file or license file maintained by the Department. It is the
9 duty of the applicant or licensee to inform the Department of
10 any change of address, and such changes must be made either
11 through the Department's website or by directly contacting the
12 Department.

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

17 "Department" means the Department of Financial and
18 Professional Regulation.

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

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

23 "Managing auctioneer" means any person licensed as an
24 auctioneer who manages and supervises licensees sponsored by an
25 auction firm or auctioneer.

26 "Person" means an individual, association, partnership,

1 corporation, or limited liability company or the officers,
2 directors, or employees of the same.

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

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

7 "Secretary" means the Secretary of the Department of
8 Financial and Professional Regulation or his or her designee.

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

11 "Sponsor card" means the temporary permit issued by the
12 sponsoring auctioneer certifying that the licensee named
13 thereon is employed by or associated with the sponsoring
14 auctioneer and the sponsoring auctioneer shall be responsible
15 for the actions of the sponsored licensee.

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

17 (225 ILCS 407/20-15)

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

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

1 reasons:

2 (1) False or fraudulent representation or material
3 misstatement in furnishing information to the Department
4 in obtaining or seeking to obtain a license.

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

7 (3) Conviction of or entry of a plea of guilty or nolo
8 contendere to any crime that is a felony under the laws of
9 the United States or any state or territory thereof, or
10 that is a misdemeanor, an essential element of which is
11 dishonesty, or any crime that is directly related to the
12 practice of the profession.

13 (4) Being adjudged to be a person under legal
14 disability or subject to involuntary admission or to meet
15 the standard for judicial admission as provided in the
16 Mental Health and Developmental Disabilities Code.

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

1 conduct that would constitute grounds for action as set
2 forth in this Act.

3 (6) Engaging in the practice of auctioneering,
4 conducting an auction, or providing an auction service
5 without a license or after the license was expired,
6 revoked, suspended, or terminated or while the license was
7 inoperative.

8 (7) Attempting to subvert or cheat on the auctioneer
9 exam or any continuing education exam, or aiding or
10 abetting another to do the same.

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

19 (9) Making any substantial misrepresentation or
20 untruthful advertising.

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

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

26 (12) Any misleading or untruthful advertising, or

1 using any trade name or insignia of membership in any
2 auctioneer association or organization of which the
3 licensee is not a member.

4 (13) Commingling funds of others with his or her own
5 funds or failing to keep the funds of others in an escrow
6 or trustee account.

7 (14) Failure to account for, remit, or return any
8 moneys, property, or documents coming into his or her
9 possession that belong to others, acquired through the
10 practice of auctioneering, conducting an auction, or
11 providing an auction service within 30 days of the written
12 request from the owner of said moneys, property, or
13 documents.

14 (15) Failure to maintain and deposit into a special
15 account, separate and apart from any personal or other
16 business accounts, all moneys belonging to others
17 entrusted to a licensee while acting as an auctioneer,
18 associate auctioneer, auction firm, or as a temporary
19 custodian of the funds of others.

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

26 (17) Making or filing false records or reports in his

1 or her practice, including but not limited to false records
2 or reports filed with State agencies.

3 (18) Failing to voluntarily furnish copies of all
4 written instruments prepared by the auctioneer and signed
5 by all parties to all parties at the time of execution.

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

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

11 (21) (Blank).

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

15 (23) Offering or advertising real estate for sale or
16 lease at auction without a valid broker or managing
17 broker's ~~salesperson's~~ license under the Real Estate
18 License Act of 1983, or any successor Act, unless exempt
19 from licensure under the terms of the Real Estate License
20 Act of 2000, or any successor Act, except as provided for
21 in Section 5-32 of the Real Estate License Act of 2000.

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

1 (25) A pattern of practice or other behavior that
2 demonstrates incapacity or incompetence to practice under
3 this Act.

4 (26) Being named as a perpetrator in an indicated
5 report by the Department of Children and Family Services
6 under the Abused and Neglected Child Reporting Act and upon
7 proof by clear and convincing evidence that the licensee
8 has caused a child to be an abused child or a neglected
9 child as defined in the Abused and Neglected Child
10 Reporting Act.

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

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

18 The entry of an order by a circuit court establishing that
19 any person holding a license under this Act is subject to
20 involuntary admission or judicial admission, as provided for in
21 the Mental Health and Developmental Disabilities Code,
22 operates as an automatic suspension of that license. That
23 person may have his or her license restored only upon the
24 determination by a circuit court that the patient is no longer
25 subject to involuntary admission or judicial admission and the
26 issuance of an order so finding and discharging the patient and

1 upon the Board's recommendation to the Department that the
2 license be restored. Where circumstances so indicate, the Board
3 may recommend to the Department that it require an examination
4 prior to restoring a suspended license.

5 If the Department or Board finds an individual unable to
6 practice because of the reasons set forth in this Section, the
7 Department or Board may require that individual to submit to
8 care, counseling, or treatment by physicians approved or
9 designated by the Department or Board, as a condition, term, or
10 restriction for continued, reinstated, or renewed licensure to
11 practice; or, in lieu of care, counseling, or treatment, the
12 Department may file, or the Board may recommend to the
13 Department to file, a complaint to immediately suspend, revoke,
14 or otherwise discipline the license of the individual. An
15 individual whose license was granted, continued, reinstated,
16 renewed, disciplined or supervised subject to such terms,
17 conditions, or restrictions, and who fails to comply with such
18 terms, conditions, or restrictions, shall be referred to the
19 Secretary for a determination as to whether the individual
20 shall have his or her license suspended immediately, pending a
21 hearing by the Department. In instances in which the Secretary
22 immediately suspends a person's license under this Section, a
23 hearing on that person's license must be convened by the
24 Department within 21 days after the suspension and completed
25 without appreciable delay. The Department and Board shall have
26 the authority to review the subject individual's record of

1 treatment and counseling regarding the impairment to the extent
2 permitted by applicable federal statutes and regulations
3 safeguarding the confidentiality of medical records.

4 An individual licensed under this Act and affected under
5 this Section shall be afforded an opportunity to demonstrate to
6 the Department or Board that he or she can resume practice in
7 compliance with acceptable and prevailing standards under the
8 provisions of his or her license.

9 In enforcing this Section, the Department or Board, upon a
10 showing of a possible violation, may compel an individual
11 licensed to practice under this Act, or who has applied for
12 licensure under this Act, to submit to a mental or physical
13 examination, or both, as required by and at the expense of the
14 Department. The Department or Board may order the examining
15 physician to present testimony concerning the mental or
16 physical examination of the licensee or applicant. No
17 information shall be excluded by reason of any common law or
18 statutory privilege relating to communications between the
19 licensee or applicant and the examining physician. The
20 examining physicians shall be specifically designated by the
21 Board or Department. The individual to be examined may have, at
22 his or her own expense, another physician of his or her choice
23 present during all aspects of this examination. Failure of an
24 individual to submit to a mental or physical examination when
25 directed shall be grounds for suspension of his or her license
26 until the individual submits to the examination, if the

1 Department finds that, after notice and hearing, the refusal to
2 submit to the examination was without reasonable cause.

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

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

7 (225 ILCS 454/5-20)

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

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

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

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

6 (3) Any person acting as receiver, trustee in
7 bankruptcy, administrator, executor, or guardian or while
8 acting under a court order or under the authority of a will
9 or testamentary trust.

10 (4) Any person acting as a resident manager for the
11 owner or any employee acting as the resident manager for a
12 broker managing an apartment building, duplex, or
13 apartment complex, when the resident manager resides on the
14 premises, the premises is his or her primary residence, and
15 the resident manager is engaged in the leasing of the
16 property of which he or she is the resident manager.

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

19 (6) Any officer or employee of the State government or
20 any political subdivision thereof performing official
21 duties.

22 (7) Any multiple listing service or other similar
23 information exchange that is engaged in the collection and
24 dissemination of information concerning real estate
25 available for sale, purchase, lease, or exchange for the
26 purpose of providing licensees with a system by which

1 licensees may cooperatively share information along with
2 which no other licensed activities, as defined in Section
3 1-10 of this Act, are provided.

4 (8) Railroads and other public utilities regulated by
5 the State of Illinois, or the officers or full time
6 employees thereof, unless the performance of any licensed
7 activities is in connection with the sale, purchase, lease,
8 or other disposition of real estate or investment therein
9 not needing the approval of the appropriate State
10 regulatory authority.

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

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

1 conditions of leasing a dwelling unit with a prospective
2 lessee, or otherwise participate in the negotiation of the
3 leasing of a dwelling unit.

4 (11) An exchange company registered under the Real
5 Estate Timeshare Act of 1999 and the regular employees of
6 that registered exchange company but only when conducting
7 an exchange program as defined in that Act.

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

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

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

26 (B) that person verifies to the Department that he

1 or she has sold real estate at auction for a period of
2 5 years prior to licensure as an auctioneer;

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

5 (D) the license issued under the Auction License
6 Act has not been disciplined for violation of those
7 provisions of Article 20 of the Auction License Act
8 dealing with or related to the sale or lease of real
9 estate at auction.

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

14 (15) ~~(14)~~ A hotel operator who is registered with the
15 Illinois Department of Revenue and pays taxes under the
16 Hotel Operators' Occupation Tax Act and rents a room or
17 rooms in a hotel as defined in the Hotel Operators'
18 Occupation Tax Act for a period of not more than 30
19 consecutive days and not more than 60 days in a calendar
20 year.

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

22 (225 ILCS 454/5-32 new)

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

24 (a) An auctioneer licensed under the Auction License Act
25 who does not possess a valid and active broker's or managing

1 broker's license under this Act, or who is not otherwise exempt
2 from licensure, may not engage in the practice of auctioning
3 real estate, except as provided in this Section.

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

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

8 (2) successfully complete a real estate auction course
9 of at least 30 hours approved by the Department, which
10 shall cover the scope of activities that may be engaged in
11 by a person holding a real estate auction certification and
12 the activities for which a person must hold a real estate
13 license, as well as other material as provided by the
14 Department;

15 (3) successfully complete an examination provided for
16 by the approved real estate auction course; and

17 (4) successfully complete any other reasonable
18 requirements as provided by rule.

19 (c) The auctioneer's role shall include, but not be limited
20 to, establishing the time, place, and method of the real estate
21 auction, placing advertisements regarding the auction, crying
22 or calling the auction, and any other usual activities used to
23 promote the auction; any other real estate brokerage activities
24 must be performed by a person holding a valid and active real
25 estate broker's or managing broker's license under the
26 provisions of this Act or by a person who is otherwise exempt

1 from licensure under this Act.

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

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

9 (f) Advertising for the real estate auction shall contain
10 the name and address of the auctioneer and the licensed real
11 estate broker, managing broker, or other person or entity
12 exempt under this Act, who is providing brokerage services for
13 the transaction.

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

21 (h) Nothing in this Section shall require a person licensed
22 under this Act as a real estate broker or managing broker to
23 obtain a real estate auction certification in order to auction
24 real estate.

25 (i) The Department may adopt rules to implement this
26 Section.

1 (225 ILCS 454/10-5)

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

3 Sec. 10-5. Payment of compensation.

4 (a) No licensee shall pay compensation directly to a
5 licensee sponsored by another broker for the performance of
6 licensed activities. No licensee sponsored by a broker may pay
7 compensation to any licensee other than his or her sponsoring
8 broker for the performance of licensed activities unless the
9 licensee paying the compensation is a principal to the
10 transaction. However, a non-sponsoring broker may pay
11 compensation directly to a licensee sponsored by another or a
12 person who is not sponsored by a broker if the payments are
13 made pursuant to terms of an employment agreement that was
14 previously in place between a licensee and the non-sponsoring
15 broker, and the payments are for licensed activity performed by
16 that person while previously sponsored by the now
17 non-sponsoring broker.

18 (b) No licensee sponsored by a broker shall accept
19 compensation for the performance of activities under this Act
20 except from the broker by whom the licensee is sponsored,
21 except as provided in this Section.

22 (c) Any person that is a licensed personal assistant for
23 another licensee may only be compensated in his or her capacity
24 as a personal assistant by the sponsoring broker for that
25 licensed personal assistant.

1 (d) One sponsoring broker may pay compensation directly to
2 another sponsoring broker for the performance of licensed
3 activities.

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

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

9 (225 ILCS 454/20-20)

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

11 Sec. 20-20. Grounds for discipline.

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

21 (1) Fraud or misrepresentation in applying for, or
22 procuring, a license under this Act or in connection with
23 applying for renewal of a license under this Act.

24 (2) The conviction of or plea of guilty or plea of nolo
25 contendere to a felony or misdemeanor in this State or any

1 other jurisdiction; or the entry of an administrative
2 sanction by a government agency in this State or any other
3 jurisdiction. Action taken under this paragraph (2) for a
4 misdemeanor or an administrative sanction is limited to a
5 misdemeanor or administrative sanction that has as an
6 essential element dishonesty or fraud or involves larceny,
7 embezzlement, or obtaining money, property, or credit by
8 false pretenses or by means of a confidence game.

9 (3) Inability to practice the profession with
10 reasonable judgment, skill, or safety as a result of a
11 physical illness, including, but not limited to,
12 deterioration through the aging process or loss of motor
13 skill, or a mental illness or disability.

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

18 (5) Having been disciplined by another state, the
19 District of Columbia, a territory, a foreign nation, or a
20 governmental agency authorized to impose discipline if at
21 least one of the grounds for that discipline is the same as
22 or the equivalent of one of the grounds for which a
23 licensee may be disciplined under this Act. A certified
24 copy of the record of the action by the other state or
25 jurisdiction shall be prima facie evidence thereof.

26 (6) Engaging in the practice of real estate brokerage

1 without a license or after the licensee's license was
2 expired or while the license was inoperative.

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

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

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

10 (10) Making any substantial misrepresentation or
11 untruthful advertising.

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

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

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

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

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

25 (16) Failure to account for or to remit any moneys or
26 documents coming into his or her possession that belong to

1 others.

2 (17) Failure to maintain and deposit in a special
3 account, separate and apart from personal and other
4 business accounts, all escrow moneys belonging to others
5 entrusted to a licensee while acting as a real estate
6 broker, escrow agent, or temporary custodian of the funds
7 of others or failure to maintain all escrow moneys on
8 deposit in the account until the transactions are
9 consummated or terminated, except to the extent that the
10 moneys, or any part thereof, shall be:

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

20 (B) deemed abandoned and transferred to the Office
21 of the State Treasurer to be handled as unclaimed
22 property pursuant to the Uniform Disposition of
23 Unclaimed Property Act. Escrow moneys may be deemed
24 abandoned under this subparagraph (B) only: (i) in the
25 absence of disbursement under subparagraph (A); (ii)
26 in the absence of notice of the filing of any claim in

1 a court of competent jurisdiction; and (iii) if 6
2 months have elapsed after the receipt of a written
3 demand for the escrow moneys from one of the principals
4 to the transaction or the principal's duly authorized
5 agent.

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

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

16 (19) Failing to furnish copies upon request of
17 documents relating to a real estate transaction to a party
18 who has executed that document.

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

22 (21) Engaging in dishonorable, unethical, or
23 unprofessional conduct of a character likely to deceive,
24 defraud, or harm the public.

25 (22) Commingling the money or property of others with
26 his or her own money or property.

1 (23) Employing any person on a purely temporary or
2 single deal basis as a means of evading the law regarding
3 payment of commission to nonlicensees on some contemplated
4 transactions.

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

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

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

17 (27) Failing to provide information requested by the
18 Department, or otherwise respond to that request, within 30
19 days of the request.

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

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

25 (A) A "guaranteed sales plan" is any real estate
26 purchase or sales plan whereby a licensee enters into a

1 conditional or unconditional written contract with a
2 seller, prior to entering into a brokerage agreement
3 with the seller, by the terms of which a licensee
4 agrees to purchase a property of the seller within a
5 specified period of time at a specific price in the
6 event the property is not sold in accordance with the
7 terms of a brokerage agreement to be entered into
8 between the sponsoring broker and the seller.

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

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

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

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

25 (F) Any licensee who fails to perform on a
26 guaranteed sales plan in strict accordance with its

1 terms shall be subject to all the penalties provided in
2 this Act for violations thereof and, in addition, shall
3 be subject to a civil fine payable to the party injured
4 by the default in an amount of up to \$25,000.

5 (30) Influencing or attempting to influence, by any
6 words or acts, a prospective seller, purchaser, occupant,
7 landlord, or tenant of real estate, in connection with
8 viewing, buying, or leasing real estate, so as to promote
9 or tend to promote the continuance or maintenance of
10 racially and religiously segregated housing or so as to
11 retard, obstruct, or discourage racially integrated
12 housing on or in any street, block, neighborhood, or
13 community.

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

18 (32) Inducing any party to a contract of sale or lease
19 or brokerage agreement to break the contract of sale or
20 lease or brokerage agreement for the purpose of
21 substituting, in lieu thereof, a new contract for sale or
22 lease or brokerage agreement with a third party.

23 (33) Negotiating a sale, exchange, or lease of real
24 estate directly with any person if the licensee knows that
25 the person has an exclusive brokerage agreement with
26 another broker, unless specifically authorized by that

1 broker.

2 (34) When a licensee is also an attorney, acting as the
3 attorney for either the buyer or the seller in the same
4 transaction in which the licensee is acting or has acted as
5 a broker or salesperson.

6 (35) Advertising or offering merchandise or services
7 as free if any conditions or obligations necessary for
8 receiving the merchandise or services are not disclosed in
9 the same advertisement or offer. These conditions or
10 obligations include without limitation the requirement
11 that the recipient attend a promotional activity or visit a
12 real estate site. As used in this subdivision (35), "free"
13 includes terms such as "award", "prize", "no charge", "free
14 of charge", "without charge", and similar words or phrases
15 that reasonably lead a person to believe that he or she may
16 receive or has been selected to receive something of value,
17 without any conditions or obligations on the part of the
18 recipient.

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

23 (37) Violating the terms of a disciplinary order issued
24 by the Department.

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

1 (39) Requiring a party to a transaction who is not a
2 client of the licensee to allow the licensee to retain a
3 portion of the escrow moneys for payment of the licensee's
4 commission or expenses as a condition for release of the
5 escrow moneys to that party.

6 (40) Disregarding or violating any provision of this
7 Act or the published rules promulgated by the Department to
8 enforce this Act or aiding or abetting any individual,
9 partnership, registered limited liability partnership,
10 limited liability company, or corporation in disregarding
11 any provision of this Act or the published rules
12 promulgated by the Department to enforce this Act.

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

16 (42) Habitual or excessive use or addiction to alcohol,
17 narcotics, stimulants, or any other chemical agent or drug
18 that results in a managing broker, broker, salesperson, or
19 leasing agent's inability to practice with reasonable
20 skill or safety.

21 (43) Enabling, aiding, or abetting an auctioneer, as
22 defined in the Auction License Act, to conduct a real
23 estate auction in a manner that is in violation of this
24 Act.

25 (b) The Department may refuse to issue or renew or may
26 suspend the license of any person who fails to file a return,

1 pay the tax, penalty or interest shown in a filed return, or
2 pay any final assessment of tax, penalty, or interest, as
3 required by any tax Act administered by the Department of
4 Revenue, until such time as the requirements of that tax Act
5 are satisfied in accordance with subsection (g) of Section
6 2105-15 of the Civil Administrative Code of Illinois.

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

14 (d) In cases where the Department of Healthcare and Family
15 Services (formerly Department of Public Aid) has previously
16 determined that a licensee or a potential licensee is more than
17 30 days delinquent in the payment of child support and has
18 subsequently certified the delinquency to the Department may
19 refuse to issue or renew or may revoke or suspend that person's
20 license or may take other disciplinary action against that
21 person based solely upon the certification of delinquency made
22 by the Department of Healthcare and Family Services in
23 accordance with item (5) of subsection (g) of Section 2105-15
24 of the Civil Administrative Code of Illinois.

25 (e) In enforcing this Section, the Department or Board upon
26 a showing of a possible violation may compel an individual

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

19 If the Department or Board finds an individual unable to
20 practice because of the reasons set forth in this Section, the
21 Department or Board may require that individual to submit to
22 care, counseling, or treatment by physicians approved or
23 designated by the Department or Board, as a condition, term, or
24 restriction for continued, reinstated, or renewed licensure to
25 practice; or, in lieu of care, counseling, or treatment, the
26 Department may file, or the Board may recommend to the

1 Department to file, a complaint to immediately suspend, revoke,
2 or otherwise discipline the license of the individual. An
3 individual whose license was granted, continued, reinstated,
4 renewed, disciplined or supervised subject to such terms,
5 conditions, or restrictions, and who fails to comply with such
6 terms, conditions, or restrictions, shall be referred to the
7 Secretary for a determination as to whether the individual
8 shall have his or her license suspended immediately, pending a
9 hearing by the Department.

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

19 An individual licensed under this Act and affected under
20 this Section shall be afforded an opportunity to demonstrate to
21 the Department or Board that he or she can resume practice in
22 compliance with acceptable and prevailing standards under the
23 provisions of his or her license.

24 (Source: P.A. 96-856, eff. 12-31-09; 97-813, eff. 7-13-12;
25 97-1002, eff. 8-17-12.)

1 Section 99. Effective date. This Act takes effect January
2 1, 2014.".