



Sen. John M. Sullivan

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1 AMENDMENT TO SENATE BILL 1440

2 AMENDMENT NO. _____. Amend Senate Bill 1440 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Real Estate License Act of 2000 is amended
5 by changing Sections 1-10 and 5-32 as follows:

6 (225 ILCS 454/1-10)

7 (Section scheduled to be repealed on January 1, 2020)

8 Sec. 1-10. Definitions. In this Act, unless the context
9 otherwise requires:

10 "Act" means the Real Estate License Act of 2000.

11 "Address of Record" means the designated address recorded
12 by the Department in the applicant's or licensee's application
13 file or license file as maintained by the Department's
14 licensure maintenance unit. It is the duty of the applicant or
15 licensee to inform the Department of any change of address, and
16 those changes must be made either through the Department's

1 website or by contacting the Department.

2 "Advisory Council" means the Real Estate Education
3 Advisory Council created under Section 30-10 of this Act.

4 "Agency" means a relationship in which a real estate broker
5 or licensee, whether directly or through an affiliated
6 licensee, represents a consumer by the consumer's consent,
7 whether express or implied, in a real property transaction.

8 "Applicant" means any person, as defined in this Section,
9 who applies to the Department for a valid license as a real
10 estate broker, real estate salesperson, or leasing agent.

11 "Blind advertisement" means any real estate advertisement
12 that does not include the sponsoring broker's business name and
13 that is used by any licensee regarding the sale or lease of
14 real estate, including his or her own, licensed activities, or
15 the hiring of any licensee under this Act. The broker's
16 business name in the case of a franchise shall include the
17 franchise affiliation as well as the name of the individual
18 firm.

19 "Board" means the Real Estate Administration and
20 Disciplinary Board of the Department as created by Section
21 25-10 of this Act.

22 "Branch office" means a sponsoring broker's office other
23 than the sponsoring broker's principal office.

24 "Broker" means an individual, partnership, limited
25 liability company, corporation, or registered limited
26 liability partnership other than a real estate salesperson or

1 leasing agent who, whether in person or through any media or
2 technology, for another and for compensation, or with the
3 intention or expectation of receiving compensation, either
4 directly or indirectly:

5 (1) Sells, exchanges, purchases, rents, or leases real
6 estate.

7 (2) Offers to sell, exchange, purchase, rent, or lease
8 real estate.

9 (3) Negotiates, offers, attempts, or agrees to
10 negotiate the sale, exchange, purchase, rental, or leasing
11 of real estate.

12 (4) Lists, offers, attempts, or agrees to list real
13 estate for sale, lease, or exchange.

14 (5) Buys, sells, offers to buy or sell, or otherwise
15 deals in options on real estate or improvements thereon.

16 (6) Supervises the collection, offer, attempt, or
17 agreement to collect rent for the use of real estate.

18 (7) Advertises or represents himself or herself as
19 being engaged in the business of buying, selling,
20 exchanging, renting, or leasing real estate.

21 (8) Assists or directs in procuring or referring of
22 leads or prospects, intended to result in the sale,
23 exchange, lease, or rental of real estate.

24 (9) Assists or directs in the negotiation of any
25 transaction intended to result in the sale, exchange,
26 lease, or rental of real estate.

1 (10) Opens real estate to the public for marketing
2 purposes.

3 (11) Sells, leases, or offers for sale or lease real
4 estate at auction.

5 (12) Prepares or provides a broker price opinion or
6 comparative market analysis as those terms are defined in
7 this Act, pursuant to the provisions of Section 10-45 of
8 this Act.

9 "Brokerage agreement" means a written or oral agreement
10 between a sponsoring broker and a consumer for licensed
11 activities to be provided to a consumer in return for
12 compensation or the right to receive compensation from another.
13 Brokerage agreements may constitute either a bilateral or a
14 unilateral agreement between the broker and the broker's client
15 depending upon the content of the brokerage agreement. All
16 exclusive brokerage agreements shall be in writing.

17 "Broker price opinion" means an estimate or analysis of the
18 probable selling price of a particular interest in real estate,
19 which may provide a varying level of detail about the
20 property's condition, market, and neighborhood and information
21 on comparable sales. The activities of a real estate broker or
22 managing broker engaging in the ordinary course of business as
23 a broker, as defined in this Section, shall not be considered a
24 broker price opinion if no compensation is paid to the broker
25 or managing broker, other than compensation based upon the sale
26 or rental of real estate.

1 "Client" means a person who is being represented by a
2 licensee.

3 "Comparative market analysis" is an analysis or opinion
4 regarding pricing, marketing, or financial aspects relating to
5 a specified interest or interests in real estate that may be
6 based upon an analysis of comparative market data, the
7 expertise of the real estate broker or managing broker, and
8 such other factors as the broker or managing broker may deem
9 appropriate in developing or preparing such analysis or
10 opinion. The activities of a real estate broker or managing
11 broker engaging in the ordinary course of business as a broker,
12 as defined in this Section, shall not be considered a
13 comparative market analysis if no compensation is paid to the
14 broker or managing broker, other than compensation based upon
15 the sale or rental of real estate.

16 "Compensation" means the valuable consideration given by
17 one person or entity to another person or entity in exchange
18 for the performance of some activity or service. Compensation
19 shall include the transfer of valuable consideration,
20 including without limitation the following:

- 21 (1) commissions;
- 22 (2) referral fees;
- 23 (3) bonuses;
- 24 (4) prizes;
- 25 (5) merchandise;
- 26 (6) finder fees;

- 1 (7) performance of services;
- 2 (8) coupons or gift certificates;
- 3 (9) discounts;
- 4 (10) rebates;
- 5 (11) a chance to win a raffle, drawing, lottery, or
- 6 similar game of chance not prohibited by any other law or
- 7 statute;
- 8 (12) retainer fee; or
- 9 (13) salary.

10 "Confidential information" means information obtained by a
11 licensee from a client during the term of a brokerage agreement
12 that (i) was made confidential by the written request or
13 written instruction of the client, (ii) deals with the
14 negotiating position of the client, or (iii) is information the
15 disclosure of which could materially harm the negotiating
16 position of the client, unless at any time:

- 17 (1) the client permits the disclosure of information
- 18 given by that client by word or conduct;
- 19 (2) the disclosure is required by law; or
- 20 (3) the information becomes public from a source other
- 21 than the licensee.

22 "Confidential information" shall not be considered to
23 include material information about the physical condition of
24 the property.

25 "Consumer" means a person or entity seeking or receiving
26 licensed activities.

1 "Continuing education school" means any person licensed by
2 the Department as a school for continuing education in
3 accordance with Section 30-15 of this Act.

4 "Coordinator" means the Coordinator of Real Estate created
5 in Section 25-15 of this Act.

6 "Credit hour" means 50 minutes of classroom instruction in
7 course work that meets the requirements set forth in rules
8 adopted by the Department.

9 "Customer" means a consumer who is not being represented by
10 the licensee but for whom the licensee is performing
11 ministerial acts.

12 "Department" means the Department of Financial and
13 Professional Regulation.

14 "Designated agency" means a contractual relationship
15 between a sponsoring broker and a client under Section 15-50 of
16 this Act in which one or more licensees associated with or
17 employed by the broker are designated as agent of the client.

18 "Designated agent" means a sponsored licensee named by a
19 sponsoring broker as the legal agent of a client, as provided
20 for in Section 15-50 of this Act.

21 "Dual agency" means an agency relationship in which a
22 licensee is representing both buyer and seller or both landlord
23 and tenant in the same transaction. When the agency
24 relationship is a designated agency, the question of whether
25 there is a dual agency shall be determined by the agency
26 relationships of the designated agent of the parties and not of

1 the sponsoring broker.

2 "Employee" or other derivative of the word "employee", when
3 used to refer to, describe, or delineate the relationship
4 between a real estate broker and a real estate salesperson,
5 another real estate broker, or a leasing agent, shall be
6 construed to include an independent contractor relationship,
7 provided that a written agreement exists that clearly
8 establishes and states the relationship. All responsibilities
9 of a broker shall remain.

10 "Escrow moneys" means all moneys, promissory notes or any
11 other type or manner of legal tender or financial consideration
12 deposited with any person for the benefit of the parties to the
13 transaction. A transaction exists once an agreement has been
14 reached and an accepted real estate contract signed or lease
15 agreed to by the parties. Escrow moneys includes without
16 limitation earnest moneys and security deposits, except those
17 security deposits in which the person holding the security
18 deposit is also the sole owner of the property being leased and
19 for which the security deposit is being held.

20 "Electronic means of proctoring" means a methodology
21 providing assurance that the person taking a test and
22 completing the answers to questions is the person seeking
23 licensure or credit for continuing education and is doing so
24 without the aid of a third party or other device.

25 "Exclusive brokerage agreement" means a written brokerage
26 agreement that provides that the sponsoring broker has the sole

1 right, through one or more sponsored licensees, to act as the
2 exclusive designated agent or representative of the client and
3 that meets the requirements of Section 15-75 of this Act.

4 "Grandfathered auctioneer" means a person who is exempt
5 from holding a license under paragraph (13) of Section 5-20 of
6 this Act.

7 "Inoperative" means a status of licensure where the
8 licensee holds a current license under this Act, but the
9 licensee is prohibited from engaging in licensed activities
10 because the licensee is unsponsored or the license of the
11 sponsoring broker with whom the licensee is associated or by
12 whom he or she is employed is currently expired, revoked,
13 suspended, or otherwise rendered invalid under this Act.

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

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

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

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

1 "Licensed activities" means those activities listed in the
2 definition of "broker" under this Section.

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

6 "Listing presentation" means a communication between a
7 real estate broker or salesperson and a consumer in which the
8 licensee is attempting to secure a brokerage agreement with the
9 consumer to market the consumer's real estate for sale or
10 lease.

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

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

18 "Ministerial acts" means those acts that a licensee may
19 perform for a consumer that are informative or clerical in
20 nature and do not rise to the level of active representation on
21 behalf of a consumer. Examples of these acts include without
22 limitation (i) responding to phone inquiries by consumers as to
23 the availability and pricing of brokerage services, (ii)
24 responding to phone inquiries from a consumer concerning the
25 price or location of property, (iii) attending an open house
26 and responding to questions about the property from a consumer,

1 (iv) setting an appointment to view property, (v) responding to
2 questions of consumers walking into a licensee's office
3 concerning brokerage services offered or particular
4 properties, (vi) accompanying an appraiser, inspector,
5 contractor, or similar third party on a visit to a property,
6 (vii) describing a property or the property's condition in
7 response to a consumer's inquiry, (viii) completing business or
8 factual information for a consumer on an offer or contract to
9 purchase on behalf of a client, (ix) showing a client through a
10 property being sold by an owner on his or her own behalf, or
11 (x) referral to another broker or service provider.

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

16 "Person" means and includes individuals, entities,
17 corporations, limited liability companies, registered limited
18 liability partnerships, and partnerships, foreign or domestic,
19 except that when the context otherwise requires, the term may
20 refer to a single individual or other described entity.

21 "Personal assistant" means a licensed or unlicensed person
22 who has been hired for the purpose of aiding or assisting a
23 sponsored licensee in the performance of the sponsored
24 licensee's job.

25 "Pocket card" means the card issued by the Department to
26 signify that the person named on the card is currently licensed

1 under this Act.

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

6 "Pre-renewal period" means the period between the date of
7 issue of a currently valid license and the license's expiration
8 date.

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

13 "Real estate" means and includes leaseholds as well as any
14 other interest or estate in land, whether corporeal,
15 incorporeal, freehold, or non-freehold, including timeshare
16 interests, and whether the real estate is situated in this
17 State or elsewhere.

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

24 "Salesperson" means any individual, other than a real
25 estate broker or leasing agent, who is employed by a real
26 estate broker or is associated by written agreement with a real

1 estate broker as an independent contractor and participates in
2 any activity described in the definition of "broker" under this
3 Section.

4 "Secretary" means the Secretary of the Department of
5 Financial and Professional Regulation, or a person authorized
6 by the Secretary to act in the Secretary's stead.

7 "Sponsoring broker" means the broker who has issued a
8 sponsor card to a licensed salesperson, another licensed
9 broker, or a leasing agent.

10 "Sponsor card" means the temporary permit issued by the
11 sponsoring real estate broker certifying that the real estate
12 broker, real estate salesperson, or leasing agent named thereon
13 is employed by or associated by written agreement with the
14 sponsoring real estate broker, as provided for in Section 5-40
15 of this Act.

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

17 (225 ILCS 454/5-32)

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

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

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

25 (b) The Department shall issue a real estate auction

1 certification to applicants who:

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

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

11 (3) provide documentation of the completion of the real
12 estate auction course; and

13 (4) successfully complete any other reasonable
14 requirements as provided by rule.

15 (c) The auctioneer's role shall be limited to establishing
16 the time, place, and method of the real estate auction, placing
17 advertisements regarding the auction, and crying or calling the
18 auction; any other real estate brokerage activities must be
19 performed by a person holding a valid and active real estate
20 broker's or managing broker's license under the provisions of
21 this Act or by a grandfathered auctioneer ~~a person who is~~
22 ~~exempt from holding a license under paragraph (13) of Section~~
23 ~~5-20~~ who has a certificate under this Section. A grandfathered
24 auctioneer must only be certified under this Section if the
25 grandfathered auctioneer sells or leases real estate at auction
26 in a transaction in which a licensed auctioneer with a real

1 estate certification is providing the limited services
2 provided for in this subsection (c).

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

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

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

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

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

1 (i) The Department may adopt rules to implement this
2 Section.

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

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.".