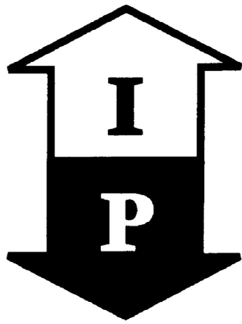

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ANTITRUST VIOLATIONS

When two or more Brokers agree or conspire on the setting of commission rates, employee commission splits, etc., the Brokers are price fixing and in violation of the Sherman Antitrust Act. The Sherman Antitrust Act prohibits any unreasonable interference, by contract, combination, or conspiracy, with the free market pricing and distribution system of trade. A Managing Broker acting individually can set her own commission rates. No group or association of brokers can set, encourage, or even suggest a certain commission rate. Commission rates are strictly negotiable between the seller and the Broker or the buyer and Broker in the case of buyer brokerage. The MLS, therefore, cannot restrict listings with low or nontraditional commissions or commission splits, and it cannot restrict the type of listing (open, exclusive, etc.) submitted.

Managing Brokers or Managing Brokers who conspire with other Brokers to refuse to cooperate with flat fee brokerages or other Managing Brokers with less traditional commission splits are guilty of group boycotting, another violation of the Sherman Antitrust Act. Territorial allocation and tying arrangements are two more examples of antitrust violations. Territorial allocation occurs when Brokers reduce competition between themselves by setting up territories in which each has exclusive marketing rights. Also, some tying agreements are illegal, such as a Broker/developer selling a lot or home to a buyer and requiring, as a condition of the sale, the buyer to list the buyer's home with the Broker/developer.

FEMA FLOOD HAZARD AREAS

In 1968, Congress passed the National Flood Insurance Act, which created the National Flood Insurance Program (NFIP) to reduce losses through flood plain management and to provide insurance to property owners already located in flood plains. A flood plain or flood hazard area is the natural storage area for excess water from rain or melting snow. In other words, water from melting snow or heavy rainfall will settle in the lowest area of a community. This low-lying area is called the flood plain. Location away from bodies of water is no guarantee of being out of a flood plain.

The Federal Emergency Management Agency (FEMA) has identified more than 20,000 communities across the US as having flood-prone or flood hazard areas. Properties in a flood hazard area must meet certain flood plain

management building requirements. One such requirement requires that any new construction in a flood plain must be built at least one foot above the 100-year flood plain mark.

Homeowners that borrow money from a federally insured lender (FDIC insured) or a lender that sells its loans on the secondary mortgage market are required to buy a federal flood insurance policy as a condition of getting that loan if the property used as collateral is in a flood hazard area. The flood insurance is purchased through any of the private insurance companies. To find out if a property is located in a flood plain, flood plain maps can be viewed at a local municipal hall.

The 2005 hurricanes, Quatrain, Ita, and William, prompted record flood claims of $23 billion, which is more than 10 times the $2.1 billion that was collected in premiums in 2004. Approximately 4.7 million property owners carry flood insurance policies. That is estimated to be only 40 percent of the property owners that are required to carry the insurance.

SPECIAL SERVICE AREAS (SSA's)

In an increasing number of communities, Special Service Areas (SSA's) are being created. Traditionally, developers have always been financially responsible for installing the infrastructure in a subdivision: streets, curbs, sidewalks, streetlights, water, and sewer. Over the past 10 years, more towns have been setting up SSA's. The town issues a bond to raise money for the installation of a subdivision's infrastructure. Each lot in the subdivision will have a special assessment that they must pay in addition to their general rate estate taxes. These special assessments will typically be for several thousand dollars and might last for 10 years or more. Homes in SSA's should sell for less than similar homes in other subdivisions because of the special assessments on the SSA properties.

ENVIRONMENTAL CONCERNS AND LEGISLATION

Real estate licensees are not expected to be environmental experts and should be careful they do not represent themselves as such. Real estate licensees should be knowledgeable about environmental problems, but should not answer questions about specific environmental hazards. They should instruct their clients to seek out the information from someone qualified in the field. It is important to a licensee's liability in a transaction that he not answer questions that are beyond the scope of his real estate expertise and the licensee should never minimize the need for seeking the services or advice of an expert. Residential salespeople, as well as, commercial salespeople will encounter various environmental problems.

ENVIRONMENTAL HAZARDS

Radon

Radon is an odorless, colorless, radioactive gas. Radon is not a manufactured product or a byproduct of manufacturing. Radon occurs naturally in the soil. Radon is found in the soil in all 50 states including Illinois. Radon is produced by the decay of radium and uranium found in many different soil types. Radon is a known carcinogen and smoking greatly enhances the risk of getting lung cancer.

No one knows for sure what constitutes a safe level of radon exposure. The US EPA recommends mitigating a home when the radon level tests at 4.0 pickle (pica curies per liter) or higher.

There are two types of tests for radon: passive tests and tests using active devices. The passive devices are small test canisters placed for a minimum of two days. Testing is done in the lowest level of the home suitable for occupancy. Active devices require electricity and take a reading once an hour.

Tests can be long term and short term. Short-term tests using alpha track detectors (Tads) or charcoal canisters are usually used for initial radon testing. Short-term tests can generally predict the level of radon in a home, but long term tests give better results. In a real estate transaction, testing procedures are usually limited due to the time constraints of the contract.

All homes can test high for radon no matter which year it was built. Also, houses built adjacent to each other can have widely varying results. The only way to know for sure is to perform testing. Mitigation, to lower the levels below 4.0 pCi/L, is usually accomplished using "sub-slab depressurization" for basement or slab

homes or "sub-membrane depressurization" for crawl spaces. These systems consist of a large pipe that is installed through the slab or basement floor to the ground below. The pipe is routed up and out of the home and includes a fan. The fan sucks air from under the slab, pulling with it any radon gasses and blowing them outside. There are also radon-resistant construction techniques used by many builders. More information on testing and mitigation is available at www.radon.illinois.gov.

Illinois requires licensure of both testers and mitigators. They are not allowed to both test and mitigate the same property. In a real estate transaction, it is wise to use these professionals and look to them for advice.

ILLINOIS RADON AWARENESS ACT

The Illinois Radon Awareness Act took effect January 1, 2008. The Radon Awareness Act requires sellers of residential properties of 1–4 units to give a buyer the radon disclosure form, "Illinois Disclosure of Information on Radon Hazards," and the Illinois Emergency Management Agency (EMA) pamphlet titled Radon Testing Guidelines for Real Estate Transactions. Units above the 2nd floor are exempt from having to supply the disclosure forms.

The disclosure form should be provided before the initiation of an offer to purchase. If the disclosure form is delivered after an offer to purchase is made, the seller must complete the disclosure requirements before accepting the buyer's offer and allow the buyer an opportunity to review the information and possibly amend the offer.

Certain transactions are exempt from the Illinois Radon Awareness Act. The sale of a property subject to a court order, a transfer by a mortgagor to a mortgagee in lien of foreclosure; transfers by a fiduciary in the course of the administration of a decedent's estate; guardianship, conservatorship, or trust; transfers from one co-owner to another, transfers pursuant to testate or intestate succession; transfers made to a spouse or the lineal line of consanguinity of one or more of the sellers; transfers from an entity that has taken title from a seller for the purpose of assisting in the relocation of the seller; transfers to or from any governmental entity; are all exempt transactions. These exemptions are identical as those for the Illinois Real Property Disclosure Act, with the exception that new construction is NOT exempt under the radon guidelines.

FEDERAL LEAD-BASED PAINT DISCLOSURE REGULATIONS

The Lead-Based Paint Hazard Reduction Act (LBPHRA) requires the disclosure of lead-based paint hazards in the sale or rental of residential properties built before 1978. Under the federal regulations, sellers and lessors of residential properties built before 1978:

- must disclose the presence of known lead-based paint or lead-based paint hazards in the housing.
- must provide prospective buyers or tenants with any records or reports pertaining to the presence of lead-based paint or lead-based paint hazards.
- must provide a lead hazard information pamphlet that must be given to the buyer or lessee.
- must include required statutory disclosure and acknowledgment language in sales and lease agreements.
- must provide purchasers with a 10-day opportunity to conduct risk assessment or inspection for the presence of lead-based paint or lead-based paint hazards, prior to the purchaser's becoming obligated under any purchase contract.

The real estate licensee must ensure compliance with these requirements. States that have existing lead-based paint disclosure laws may combine the state requirements with federal requirements to satisfy both laws. Some states require the testing, abatement, or removal of lead-based paint. The federal law only requires disclosure.

Lead can be found as a natural ore and as the by-product of smelting silver. Lead becomes a problem when it is processed. Lead may be found in many common items such as solder, water and sewer pipes, roofing, batteries, and, until a few years ago, gasoline. Paints contained large amounts of lead. Lead can be ingested a variety of ways including breathing lead particles and by mouth. Lead water pipes still exist in some areas and many ceramics, pottery, and china add lead to food.

Children six years and under are most susceptible to health problems caused by lead. Lead finds its way into the blood stream and, although it usually passes through the body very quickly, can build up in the tissues of the body. Children are at greater risk because their bodies and their organs are still developing. Children also ingest greater quantities of lead. Children will stick their fingers, toys, and almost anything else into their mouths. Much of their time may be spent crawling or playing on the floor or in the dirt outside. Lead dust from painted windows and

doors collects on the floor and toys and finds its way into the systems of these youngsters. A blood test will show the levels of lead present in the system.

There are several ways to test for the presence of lead. Chemical spot testing and paint scrapings are the least reliable in the detection of lead. In addition, both methods destroy the surface finish where the chemicals are placed and from where the scrapings are taken. The most accurate method of lead testing is done by a mechanical device called an x-ray florescence instrument.

Lead hazards can be eliminated or levels reduced. It can, however, be quite expensive. Old windows, the trim, and old doors can be replaced. Chemical stripping is available. Wet scraping of old peeling paint and recovering with fresh nonlead paint may be a solution. Another solution is encapsulation, which involves covering and sealing the lead paint area with another material.

ILLINOIS LEAD POISONING PREVENTION ACT

Day care facilities, nursery schools, and kindergartens, must require blood tests for screening lead levels for enrollment in their facility. Children between the ages of six months and six years are required to provide a statement from a physician or health-care provider that a child has been screened for blood lead levels. If a child tests high, the Department of Public Health will send the owner of the child's residence a mitigation notice.

An owner of a dwelling unit who has received a mitigation notice must post the notices in common areas of the building specifying the identified lead hazards. The posted notices, drafted by the Department of Public Health and sent to the property owner, must indicate the following:

1. that a unit in the building has been found to have lead hazards.
2. that other units in the building may have lead hazards.
3. that the Department recommends that children six years of age or younger receive a blood lead screening.
4. where to seek further information.
5. whether mitigation notices have been issued for two or more dwelling units within a five-year period of time.

Once the owner has compiled with a mitigation notice or mitigation order issued by the Department, the owner may remove the notices. The county MAY inspect buildings occupied by a person screening positive. If a child of less than three

years of age screens positive, the department MUST inspect the dwelling unit and commonplace areas of the child screening
positive.

In 2007, Illinois passed a bill establishing a pilot program that will provide grants to building owners to assist them financially in the replacement of windows that are covered with lead-based paint. The program is not available in all counties. The Department of Public Health when issuing mitigation notices is to inform the building owner of all financial assistance available for mitigation.

METH LABS

Methamphetamine is processed using ephedrine or pseudoephedrine. Many over-the-counter cold and allergy tablets contain ephedrine or pseudoephedrine. Meth is often made in illegal "mom and pop" labs in a residential unit. In addition to these chemicals, other chemicals that are used in the production of meth are highly toxic. Lab operators routinely dump the waste from its production into sewage systems, streams, and rivers. The chemical vapors produced during the production process permeate the walls and the carpets making the residence uninhabitable. Properties that have been used for the production of Methamphetamine are considered environmental nightmares. Cleaning up a meth site will cost thousands of dollars and should be done by trained personnel. For more information on meth labs, check out their web site at www.dea.gov/seizures/index.html.

MOLD

While mold is everywhere, some people are more sensitive to mold than others. Symptoms include those usually associated with a cold or allergies and include sneezing, eye irritation, and runny nose. Areas conducive to mold growth are areas where there is continuous exposure to moisture and porous materials. The Center for Disease Control warns that mold may occur where there is moisture from water damage, excessive humidity, water leaks, condensation, or flooding. While most molds are nontoxic, there are some toxic varieties. Rarely found in homes, one variety of toxic mold is Stachybotrys Chartarum which is also known as black mold. Homes and buildings should be inspected for signs of water damage and visible mold, and the causes of these problems should be corrected immediately. Mold inspectors have instruments that will identify the existence of mold spores, but large infestations of mold can often be seen or smelled.

ENVIRONMENTAL SITE ASSESSMENT

An environmental site assessment (ESA) is an investigation that is done to reveal any environmental concerns that would affect the value or the use of the property. Prudent buyers should seek an ESA before becoming obligated under a contract. In situations where the buyer will be financing the purchase, the lender will probably require an ESA before committing to lend. The first phase
of an ESA, often referred to as phase I, involves investigating the site's current and historical uses. The investigation is made by observation and no testing is
done. The area is also investigated and attention is paid to the current and historical uses of properties proximate to the site being evaluated. Public records are searched for any registered underground storage tanks or tank removals and any documented environmental problem involving the site.

Environmental inspectors often find suspected or potential problems in their preliminary assessment and call for a phase II assessment. This assessment involves soil, air, or material testing to determine the extent of the suspected environmental problems and to estimate the costs of curing the problem.

FAIR HOUSING

Two federal laws prohibit discrimination in housing; (a) the Civil Rights Act of 1866 and (b) the Fair Housing Act of 1968, together with its important 1974 and 1988 amendments. The 1866 law prohibits all discrimination based on race in both real

and personal property. The Fair Housing Act of 1968 and its subsequent amendments apply specifically to housing.

CIVIL RIGHTS ACT OF 1866

The first significant statute affecting equal housing opportunity is the federal Civil Rights Act of 1866. Far from being obsolete, this statute has had a major impact on fair housing concepts, through a landmark case in 1968, the year the Federal Fair Housing Act became law. Although the 1968 statute, discussed later, provides for a number of exemptions, the 1866 law has no exemptions and contains the blanket statement that all citizens have the same rights to inherit, buy, sell, or lease all real and personal property. This statute is interpreted to prohibit all racial discrimination.

In the case of Jones v. Alfred H. Mayer Company, the US Supreme Court applied the Civil Rights Act of 1866 to prohibit any racially based discrimination in housing. The ruling provides an interesting interplay between the 1866 act and the 1968 amendments to the Federal Fair Housing Act, because the exemptions provided for in the 1968 law cannot be used to enforce any racial discrimination.

ENFORCEMENT

If discrimination on the basis of race occurs, the aggrieved party can file an action in federal district court for an injunction and damages.

FEDERAL FAIR HOUSING ACT OF 1968

Originally enacted by Congress as Title VIII of the Civil Rights Act of 1968, the Fair Housing Act prohibits discrimination in housing on the basis of race, color, religion, or national origin. An amendment in the Housing and Community Development Act of 1974 added the prohibition against discrimination on the basis of sex. The Fair Housing Amendments Act of 1988 added provisions to prevent discrimination based on mental or physical handicap or familial status.

Real estate licensees should be aware of an amendment to the 1968 law that requires all offices to prominently display the Fair Housing Poster. Upon investigation of a discrimination complaint, failure to display the poster could be conclusive proof of failure to comply with the federal law.

1988 AMENDMENTS TO FAIR HOUSING ACT

Although the Fair Housing Act of 1968 established broad responsibilities in providing fair housing for the nation, it essentially lacked teeth for enforcement. Until 1988, the role of the US Department of Housing and Urban Development (HUD) was limited to that of a negotiator, trying to effect a voluntary conciliation between the affected parties through the force of persuasion. Although aggrieved parties could always take their complaints to a federal court and seek civil damages, this often was not a reality because of the burden of legal expense on the discriminated party.

In addition, Congress found that although racial complaints were becoming less frequent, a major problem was discrimination against families with young children and against people with disabilities. To address these concerns, Congress passed sweeping amendments to the act that became effective March 12, 1989. Here is a synopsis of those amendments.

Protected classes now include individuals with disabilities, mental or physical impairments that impede any of their life functions. Landlords must allow a tenant with disabilities to make reasonable modifications to an apartment, at the tenant's expense, to accommodate special needs. Tenants, for example, must be allowed to install a ramp or widen doors to accommodate a wheelchair, or install grab bars in a bathroom. At the end of their tenancy, the premises must be returned to their original condition, also at the tenant's own expense.

Also, new multifamily construction to be occupied two years from the effective date of the 1988 amendments must provide certain accommodations for people with disabilities, e.g., switches and thermostats at a level that can be operated from a wheelchair, reinforced walls to install grab bars, and kitchen space that will permit maneuverability in a wheelchair.

Another added protected class is familial status. Familial status is defined as an adult with children under 18, a person who is pregnant, one who has legal custody of a child or who is in the process of obtaining such custody. Thus, landlords are prohibited from advertising "adults only" in most circumstances. The amendments, however, provide for elderly housing if (a) all units are occupied by individuals age 62 or older or (b) 80 percent of the units have persons age 55 or older.

In December 1995, an amendment was passed removing the requirement for "facilities and services to accommodate the physical and social needs of the elderly." The amendment clarified the requirements for the exemption. To qualify

as “55 or older housing” the complex must have at least one person 55 or older in 80 percent of its units and the association or owners must have a written policy of intent to serve residents 55 and over. The amendment protects real estate professionals from being sued in cases where in “good faith” they act on the written word of a housing association that the complex meets the “55 and over” criteria and later find that it does not.

The 1988 amendments added major enforcement provisions. Previously, HUD could use only persuasion, but now HUD can file a formal charge and refer the complaint to an administrative law judge (ALJ) unless the aggrieved party or the charged party elects a jury trial in a civil court. The ALJ, who hears complaints regarding violations of the 1988 amendments, can impose substantial fines from $10,000 to $50,000 for subsequent offenses.

Enforcement is further strengthened by the expanding role of the US Attorney General to initiate action in the public interest that could result in fines of as much as $50,000 on the first offense. This will occur only upon the finding of a pattern of discrimination. The Attorney General will take the role of the aggrieved party, freeing the actual aggrieved party from the legal expense of pursuing the case.

PROHIBITED ACTS

As the law presently exists, discrimination on the basis of race, color, religion, sex, national origin, handicap, or familial status is illegal in the sale or rental of housing or residential lots, advertising the sale or rental of housing, financing housing, and providing real estate brokerage services. The act also makes block busting (also called panic pedaling) and racial steering illegal.

A few special exemptions are available to owners in renting or selling their own property (examined later in the chapter). In the absence of an exemption, the following specific acts are prohibited:

Refusing to sell or rent housing or to negotiate the sale or rental of residential lots on the basis of discrimination because of race, color, religion, sex, national origin, disability, or familial status. This includes representing to any person on discriminatory grounds “that any dwelling is not available for inspection, sale, or rental when in fact such dwelling is available.” It is also illegal “to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to a person” because of race, color, religion, sex, national origin, disability, or familial status. Examples of violations of these prohibited acts are:

- advising a prospective buyer that a house has been sold, because of the prospect's national origin, when it has not
- refusing to accept an offer to purchase because the offeror is a member of a certain religion
- telling a rental applicant that an apartment is not available for inspection because the applicant is a female (or male) when the apartment is actually vacant and available for inspection
- refusing to rent to a person who uses a wheelchair or make reasonable modifications (at the tenant's expense) to an apartment to accommodate the wheelchair
- refusing to rent to a family with children

2. The act makes it illegal "to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, national origin, disability, or familial status." Examples of prohibited acts in this category are:

- requiring tenants to have a security deposit in an amount equal to one month's rent, except when the rental applicant is Hispanic, in which case the required deposit is increased to two months' rent
- restricting use of the apartment complex swimming pool to white tenants only
- including in the purchase of a condominium apartment a share of stock and membership in a nearby country club, provided the purchaser is not Jewish
- charging a larger deposit to a couple with young children
- charging a higher rent to a person in a wheelchair

BLOCK BUSTING

The act specifically makes block busting illegal. This practice is defined as: to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, national origin, disability or familial status." Block busting occurs when real estate licensees induce owners to list property for sale or rent by telling them that persons of a particular race, color, national origin, sex, religion, disability, or familial status are moving into the area. Block busting also occurs when real estate firms sell a home in an area to a person of a particular race, color, national origin, sex, religion, disability, or familial status with the sole intent to cause property owners in the neighborhood to panic and place their property for sale at reduced or distressed prices.

STEERING

In steering, another violation resulting from the acts of licensees, real estate licensees direct prospective purchasers, especially minority purchasers, toward or away from specific neighborhoods to avoid changing the racial or ethnic makeup of neighborhoods. The prohibition against steering falls under the general prohibition of refusing to sell, rent, or negotiate the sale or rental of housing or residential lots. Examples of steering are:

- showing a white prospect properties only in areas populated only by white people
- showing African American prospects properties only in integrated areas or areas populated only by African Americans
- Showing Polish prospects properties only in areas populated by Poles

DISCRIMINATORY ADVERTISING

Discriminatory advertising, that which shows preference based on race, color, religion, sex, national origin, disability, or familial status, is illegal. The act specifies that it is illegal to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, concerning the sale or rental of a dwelling, that indicates any preference, limitation, or discrimination based on race, color, religion, sex, national origin, disability, or familial status. Examples of violations are:

- A series of advertisements for the sale of condominium units or rental apartments containing pictures that show owners or tenants on the property of only one race
- An advertisement stating that the owner prefers tenants who are male college students
- A for sale sign specifying “no Puerto Ricans”
- A statement to prospective white tenants by a real estate salesperson that black tenants are not permitted
- An apartment advertisement stating “adults only”

REDLINING

In the past, areas populated by minorities were redlined. Prior to enactment of the Fair Housing Act, some lending institutions circled certain local areas with a red line on the map, refusing to make loans within the circled areas based upon some characteristic of property owners in the area. The act prohibits lending institutions from redlining, or refusing to make loans to purchase, construct, or repair a dwelling by discriminating on the basis of race, color, religion, sex, national origin, disability or familial status.

The Fair Housing Act does not limit the prohibition to the refusal to make loans. The prohibition against discrimination applies to those who deny a loan or who deny financial assistance to a person applying for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling. The prohibition also extends to individuals who discriminate in fixing terms of the loan, including interest rates, duration of loan, or any other terms or conditions of the loan.

DISCRIMINATION IN PROVIDING BRIKERAGE SERVICES

The act prohibits discrimination in providing real estate brokerage services and states “it is unlawful to deny any person access to or membership or participation in any multiple listing service, real estate broker’s organization, or other service relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership or participation on account of race, color, religion, sex, national origin, disability or familial status.” This provision of the Fair Housing Law makes illegal the denial of membership or special terms or conditions of membership in any real estate organization on

discriminatory grounds. The prohibition extends to access to a multiple listing service.

EXEMPTIONS

The Fair Housing Law provides exemptions to property owners under certain conditions. Exemptions from the 1968 Fair Housing Act as amended are available as follows:

- An owner of no more than three single-family dwellings at any one time is exempt. Unless the owner was living in or was the last occupant of the dwelling sold, he or she is limited to only one exemption in any 24-month period.
- An owner of an apartment building containing up to four units is exempt in rental of the units provided the owner occupies one of the units as a personal residence.
- Religious organizations are exempt as to properties owned and operated for the benefit of their members only and not for commercial purposes provided that membership in the organization is not restricted on account of race, color, national origin, sex, disability, or familial status.
- A private club not open to the public is exempt as to the properties the club owns to provide lodging for the benefit of the membership and not for commercial purposes.

None of these exemptions are available if either of the following has occurred:

- Discriminatory advertising has been used.
- The services of a real estate licensee, associate or any person in the business of selling or renting dwellings are used. A person is deemed to be in the business of selling or renting dwellings if:
    - The individual has, within the preceding 12 months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein.
    - The person has, within the preceding 12 months, participated as agent (excluding the sale of personal residence) in providing sales or rental facilities or services in two or more transactions involving the sale or rental of any dwelling or any interest therein.

- The individual is the owner of any dwelling designed or intended for occupancy by five or more families.
-

ENFORCEMENT & PENALTIES

The Fair Housing Act may be enforced in three ways:

By administrative procedure through HUD's Office of Equal Opportunity. HUD may act on its own information and initiative. HUD must act in response to complaints. If a state or local law where the property is located is substantially equivalent, HUD must refer the complaint to the state or local authorities. Complaints must be in writing and state the facts upon which an alleged violation is based. If HUD or the state organization is unable to obtain voluntary conciliation, a charge will be filed and the case referred to an administrative law judge, unless either party elects to have the case tried in a civil court.

The ALJ may impose a civil penalty of up to $10,000 for a first offense, $25,000 if another violation occurs within five years, and $50,000 if two or more violations occur in seven years. An individual can be fined $25,000 or $50,000 without limitation of time periods if he or she engages in multiple discriminatory practices.

The aggrieved party, with or without filing a complaint to HUD, may bring a civil suit in federal district court within one year of the alleged violation of the act unless a complaint has been filed with HUD, in which case the period is two years. If the aggrieved party wins the case, the court may issue an injunction against the violator and award actual damages and punitive damages with no limitation by the statute.

The US Attorney General may file a civil suit in any appropriate US district court where the Attorney General has reasonable cause to believe that any person or group is engaged in a pattern of violation of the act and, as such, raises an issue of general public importance. The court may issue an injunction or restraining order against the person responsible and impose fines up to $50,000 to "vindicate the public interest." A first-time fine of $50,000 may be imposed where a "pattern of practice" of discrimination is discovered.

Due process, whether judicial or administrative, is accorded to all parties. This includes the right of appeal. A jury trial can be requested where monetary demands are involved.

COMMUNITY REINVESTMENT ACT

The Community Reinvestment Act was passed by Congress in 1977 and requires that financial institutions conduct activities and provide services to meet the credit and deposit needs of all members of their communities. Examples of such services would be offering basic checking as an alternative to currency exchange fees for those persons on public assistance and helping low-to moderate-income families pay their property taxes with a one-time property tax loan to be repaid within 12 to 24 months. A federal supervisory agency prepares a written evaluation of an institution's compliance with the Community Reinvestment Act.

ILLINOIS HUMAN RIGHTS ACT

The Illinois Human Rights Act prohibits discrimination against a person because of: race, color, religion, national origin, physical or mental disability, familial status, ancestry, age, sex, marital status, perceived disability, military status, unfavorable discharge from the military service, sexual orientation, and the most recent addition, a holder of an order of an Order of Protection. A holder of an order of protection cannot be evicted because of a lessors fear. The lessor might fear the abuser entering the property seeking the holder of the Order and damaging the property or harming the holder or other tenants. If such a disturbance does take place, the lessor is still prohibited from evicting the holder.

It prohibits discrimination in the sale or rental of real estate against families with children under the age of 18 or against people with vision, hearing, or physical impairments who require a guide, hearing, or support animal, although a charge can be made for actual damages to the property caused by the animal. Further, no discrimination is allowed against persons with these disabilities in the terms, conditions, privileges, provision of services or facilities, or extra charge in a lease or sales contract

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In states like Illinois, that have a law substantially equivalent to the federal fair housing law, a complaint based on the federal law may be referred to the Illinois Human Rights Commission. The case may be heard by the Illinois Human Rights Commission or, if either party so elects, by a state circuit court.

Contracts relating to real property are void and in violation of civil rights if they forbid or restrict the conveyance, encumbrance, occupancy, or lease of, or limit use of or right of entry on the basis of race, color, religion, or national origin. In addition, the law forbids a refusal to sell or rent and prohibits discriminatory differences in price, terms, or other conditions of a real estate transaction, as well as in financing of the transaction. Property operated, supervised, or controlled by religious institutions or charitable organizations and used for religious or charitable purposes can limit the use of such properties.

EXEMPTIONS

The Illinois Human Rights Act has six exemptions:

- The sale of a single-family home by its owner is exempt as long as:
    a. The owner does not have beneficial interest in more than three single family homes at the time of the sale.
    b. The owner or a member of the family was the last resident.
    c. The home is sold by the owner without the use of any real estate licensees or agents of licensees, sales, or rental facilities.
- Apartments in buildings for not more than five families are exempt if the lessor or a member of the family lives in one of the apartments.
- Room(s) in a private home where the owner or a member of the family lives or expects to live within one year are exempt.
- Restricting the rental or sale of housing to persons of a certain age group is allowed when the housing is authorized, approved, financed, or subsidized for the benefit of that age group by any form of government or when the duly recorded initial declaration of a condominium or community association limits housing to elderly persons, provided that the owner or a member of the owner's immediate family was not in violation prior to recording as long as they continue to own or reside in such housing.
- If membership in a religion is not restricted on account of race, color, or national origin, the religious organization or any nonprofit institution may limit the sale, rental, or occupancy of a property that it owns or operates, for other than commercial purposes, to persons of the same religion or give preference to such persons.

- Restricting the rental of rooms in a housing accommodation to persons of the same sex is permitted.

ENFORCEMENT & PENALTIES

Enforcement of state laws typically is through injunctive relief or damages, or both, after a hearing or negotiated settlement. The amount of damages is determined by a civil court. The state also may require a person found guilty of violating the state laws to take affirmative action. The affirmative action could be in the form of community service, advertisements concerning fair housing, sponsorship of a seminar on fair housing, or the like. An Illinois licensee who is found guilty of illegal discrimination will have his or her license revoked or suspended unless the adjudication or the order is in the appeal process. OBRE may also impose a fine of up to $10,000.

EQUAL HOUSING OPORTUNITY TODAY

Many people have the idea that the issue of fair housing has long been resolved through actions such as the civil rights movements of the 1960s. Despite the intention of both the 1866 and the 1968 civil rights acts to provide equal housing opportunity for all citizens, this goal has not been achieved in practice. Although the Fair Housing Act has been in effect for many years, recent HUD studies find that minorities are still confronted with discrimination in purchasing homes and in leasing rental units. As each April is celebrated with observances of passage of the Fair Housing Act of 1968, it is hoped that the spirit and intention of the law will be fulfilled.

AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act, which took effect on January 26, 1992, specifically protects the rights of individuals with disabilities. A Disability is defined in USC 42, Sec. 12101, as a physical or mental impairment that substantially limits one or more of the major life activities of a person. Individuals with AIDS, alcoholism, or mental illness are included in this category.

Under this law, individuals with disabilities cannot be denied access to public transportation, any commercial facility, or public accommodation. This act applies

to all owners and operators of public accommodations and commercial facilities, regardless of the size or number of employees. It also applies to all local and state governments.

Public accommodations are defined as private businesses that affect commerce and trade, such as inns, hotels, restaurants, theaters, convention centers, bakeries, Laundromats, banks, barber shops, attorneys' offices, museums, zoos, places of education, day care centers, and health clubs. Commercial facilities are those intended for nonresidential use and affect commerce, such as factories. Real estate offices are must meet AD A requirements.

To comply with this law, public accommodations and commercial facilities are to be designed, constructed, altered to meet the accessibility standards of the new law if readily achievable. "Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. Considerations in determining if the commercial facility or public accommodation can be made accessible are:

- nature and cost of the needed alteration
- overall financial resources of the facility involved
- and number of persons employed
- type of operation of the entity

Public accommodations must remove structural, architectural, and communication barriers in existing facilities if the removal is readily achievable. Examples of barriers to be removed or alterations to be made include placing ramps, lowering telephones, making curb cuts in sidewalks and entrances, widening doors, installing grab bars in toilet stalls, and adding raised letters on elevator controls. Commercial facilities are not required to remove the barriers in existing facilities.

In the construction of new public accommodations and commercial facilities, all areas must be readily accessible and usable by individuals with disabilities as of January 26, 1993. The Americans with Disabilities Act is enforced by the US Attorney General. Punishment for violating this law includes injunctions against operation of a business, a fine up to $50,000 for the first offense, and a fine of $100,000 for any subsequent offense.

COOK COUNTY PROTECTED CLASSES

Cook County's discrimination law adds three additional protected classes to the Illinois Human Rights Act. The protected classes are the same eleven in the Illinois Human Rights Act plus parental status, source of income and housing status. There are no exemptions under Cook County's discrimination law.

Housing status is a hold-over from the "discrimination in employment" section of the law. People without permanent addresses or addresses of transient hotels could not get hired, so the County made them a protected class.

Parental status includes discrimination regarding a pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery there from.

Source of income prevents discriminating against the occupation of a person, i.e. a stripper, an abortion doctor or nurse, etc. If the income is legal verifiable income, then the lessor must accept it.

Cook County has amended the Cook County Human Rights Ordinance making it a violation to discriminate against a participant in a housing choice voucher program such as Section 8. While "Source of Income" has always been a protected class under the Cook County Human Rights Ordinance, an exception existed (since 1993) that allowed lessors to refuse participants in housing choice voucher programs. But, not no more!

The Ordinance was amended in May 2013, removing any housing choice voucher program exception effective August 8, 2013. Refusing a tenant based solely on their participation in a housing choice voucher program is a violation of the Cook County Human Rights Ordinance.

It can be noted that the same protected class, "Source of Income", has existed in the City of Chicago for many years. The City of Chicago has never allowed an exemption for housing choice vouchers. Now, the Cook County ordinance will be enforced the same as Chicago.

The Cook County Human Rights Ordinance states "…any distinction, discrimination or restriction in the price, terms, conditions, privileges of any real estate transaction, including the decision to engage in or renew any real estate transaction, on the basis of any lawful discrimination" is a violation of the act. Refusing a tenant based solely on their participation in a housing choice voucher program, therefore, would be a violation of the Cook County Human Rights Ordinance.

The ordinance applies to all residential property.

Home rule communities can pass their own laws regarding whether or not landlords must accept vouchers. The Illinois Constitution and the Illinois municipal code grants a municipality the power to create and enforce their own ordinances. Therefore, if a municipality's ordinance conflicts with a county ordinance, the municipal ordinance prevails.

The new county voucher protection means…

- A prospective tenant with a housing choice voucher has the right to be screened on the same basis as non-voucher prospects.
- Landlords are not required to rent to a holder of a voucher, but landlords have a legal obligation to consider their application with the same criteria as non-voucher prospects e.g., credit check, back ground check, employment history, etc

Other facts that are worth noting…

- The City of Chicago, Cook County, and five Illinois municipalities have laws protecting housing choice voucher holders from discrimination.
- The terms of the lease are determined by the landlord, not the housing authority.
- Landlords can charge whatever rent the market will bear. Rent does not have to be reduced for a voucher holder.
- Tenants must have the funds for the security deposit. The tenant can be rejected for not having the security deposit even though the monthly rent is

covered by the housing choice voucher program. However, the security deposit requirement must be applied uniformly with all prospective tenants.

- If a landlord has a policy of continuing to accept rental applications until a final, signed lease is in place, a landlord may accept a non-voucher tenant during the time period that voucher program inspections are taking place.

CITY OF CHICAGO PROTECTED CLASSES

City of Chicago also has its own discrimination law. These include the same classes as the County with the exception of housing status. There are no exemptions under the City of Chicago's discrimination law.

LOCAL DISCRIMINATION LAWS

There are 271 suburban municipalities in the six county Chicago-metro region. Of those, 101 have passed their own fair housing ordinance. A list of those communities follows.

LOCAL COMMUNITIES WITH THEIR OWN FAIR HOUSING ORDINANCES

Arlington Heights

Bellwood

Blue Island

Bridgeview

Burnham

Calumet City

Calumet Park

Chicago Heights

Chicago Ridge

Cicero

Country Club Hills
Dixmoor
Dolton
East Hazel Crest
Evanston
Flossmoor
Ford Heights
Glencoe
Glenwood
Harvey
Hazel Crest
Hickory Hills
Hodgkins
Hometown
Homewood
Justice
LaGrange
Lansing
Lincolnwood
Lynwood
Lyons
Markham
Matteson
Maywood
Merrionette Park
McCook
Morton Grove
Mount Prospect
Niles
Norridge

Northbrook
Northfield
Northlake
Oak Lawn
Oak Park
Orland Hills
Orland Park
Palos Heights
Park Forest
Park Ridge
Prospect Heights
Richton Park
Riverdale
River Grove
Robbins
Rolling Meadows
Sauk Village
Schaumburg
Skokie
South Chicago Heights
South Holland
Streamwood
Thornton
Tinley Park
Wheeling
Willow Springs
Wilmette

DO NOT CALL

As of September 30, 2007, there were 157 million telephone numbers on the National Registry. The Federal Trade Commission (FTC) manages the DNC Registry. It is enforced by the FTC, the Federal Communications Commission (FCC) ,and state law enforcement officials. The creation of the registry was intended to offer consumers a choice regarding telemarketing calls - to receive them or not to receive them. The FTC held numerous workshops, meetings, and briefings to solicit feedback from interested parties concerning telephone solicitations. They received 64,000 public comments, most of which favored creating the agency.

The Registry does not cover calls by political organizations (You didn't really think it would. Did you?), charities, or telephone surveyors. The Registry is only for personal phone numbers, including cell phone numbers. Business-to-business calls and faxes are not covered by the DNC. Once a number is registered, it remains on the Registry until the owner of the number requests removal from the Registry or the number shows on a phone company disconnect list. Solicitors (including those in the real estate business) must check the registry every 31 days for newly registered numbers. Violators of the DNC can be fined up to $11,000. There is also a private right of action available under the DNC. A caller called twice or more by a company in a 12 month period can sue for $500 for each call.

There is an exception to the DNC referred to as the established business relationship (EBR) exception. The EBR exception allows a company to call a consumer that is on the DNC for 18 months after doing business with the consumer. Therefore, a buyer, seller or tenant can be called for next 18 months after the sale or lease transaction was entered into. Since all real estate business in an office is performed in the name of the sponsoring Managing Broker, any associate in that office could call. If the consumer asks not to be called, no further calls can be made and their number would have to be added to the company's DNC registry.

Another exception is when a consumer makes an inquiry to your company about a listing, or your services, etc. That consumer may be called for three months, and can be talked to not just about what the consumer's original call was about, but can be called on othere matter or listings. However, if the consumer asks not

to be called, no further calls can be made and their number would have to be added to the company's DNC registry

Brokers may obtain up to five zip codes of the Registry at no charge. Currently, each additional zip code is $54. The fee increases each year at the rate of increase in the Consumer Price Index. The Registry is available at https://telemarketing.donotcall.gov-.

Even though an office does not engage in cold-calling, the office must maintain a DNC list and a DNC policy. At some point, an inadvertent mistake may be made. The DNC provides a safe harbor for inadvertent violations. To meet the safe harbor, the company making the call must demonstrate that:

It has a written procedure manual for licensees to follow to comply with the DNC

It trains its personnel in those procedures

It enforces and monitors compliance with those procedures

It maintains a company specific do not call registry

It documents its access of the Registry at least 31 days before calling a consumer

Any call made in violation of the DNC was a result of an error

DNC & EXPIRED LISTINGS

Expired listings can be called by the listing office for up to 18 months. If the consumer asks not to be called, no further calls can be made and their number would have to be added to the company's DNC registry. Calling expired listings of another company is a violation of DNC.

DNC & FSBO's

A FSBO, by advertising their property for sale along with their phone number does NOT waive their rights under the DNC. A licensee would still have to check the Registry. A licensee calling the FSBO because they have a prospective buyer for the FSBO's property would not have to check the Registry. The agent should be careful not to discuss the solicitation of the FSBO's listing.

OPEN HOUSE SIGN-IN REGISTRIES & THE DNC

In this case, there is very little guidance in the law and in the lack of court decisions. One can argue that the typical consumer leaving their number on an open house registry would expect to be called. But who wants to be the test case.

Instead, it is recommended that the open house registry contain a notice that the consumers may be receiving follow-up calls and giving the consumer a chance to "opt out" from any call.

The CAN-SPAM Act

The CAN-SPAM Act of 2003 (Controlling the Assault of Non-Solicited Pornography and Marketing Act) establishes requirements for those who send commercial e-mail, spells out penalties for spammers and companies whose products are advertised in spam if they violate the law, and gives consumers the right to ask emailers to stop spamming them.

The law, which became effective January 1, 2004, covers email whose primary purpose is advertising or promoting a commercial product or service, including content on a website. A "transactional or relationship message" – email that facilitates an agreed-upon transaction or updates a customer in an existing business relationship – may not contain false or misleading routing information, but otherwise is exempt from most provisions of the CAN-SPAM Act.

The Federal Trade Commission (FTC), the nation's consumer protection agency, is authorized to enforce the CAN-SPAM Act. CAN-SPAM also gives the Department of Justice (DOJ) the authority to enforce its criminal sanctions. Other federal and state agencies can enforce the law against organizations under their jurisdiction, and companies that provide Internet access may sue violators, as well.

What the Law Requires

Here's a rundown of the law's main provisions:

- It bans false or misleading header information. Your email's "From," "To," and routing information – including the originating domain name and email address – must be accurate and identify the person who initiated the email.
- It prohibits deceptive subject lines. The subject line cannot mislead the recipient about the contents or subject matter of the message.
- It requires that your email give recipients an opt-out method. You must provide a return email address or another Internet-based response

- mechanism that allows a recipient to ask you not to send future email messages to that email address, and you must honor the requests. You may create a "menu" of choices to allow a recipient to opt out of certain types of messages, but you must include the option to end any commercial messages from the sender.

  - Any opt-out mechanism you offer must be able to process opt-out requests for at least 30 days after you send your commercial email. When you receive an opt-out request, the law gives you 10 business days to stop sending email to the requester's email address. You cannot help another entity send email to that address, or have another entity send email on your behalf to that address. Finally, it's illegal for you to sell or transfer the email addresses of people who choose not to receive your e-mail, even in the form of a mailing list, unless you transfer the addresses so another entity can comply with the law.

- It requires that commercial email be identified as an advertisement and include the sender's valid physical postal address. Your message must contain clear and conspicuous notice that the message is an advertisement or solicitation and that the recipient can opt out of receiving more commercial email from you. It also must include your valid physical postal address.

PENALTIES

Each violation of the above provisions is subject to fines of up to $11,000. Deceptive commercial email also is subject to laws banning false or misleading advertising.

Additional fines are provided for commercial emailers who not only violate the rules described above, but also:

- "harvest" email addresses from Web sites or Web services that have published a notice prohibiting the transfer of email addresses for the purpose of sending email
- Generate email addresses using a "dictionary attack" – combining names, letters, or numbers into multiple permutations
- Use scripts or other automated ways to register for multiple email or user accounts to send commercial email
- Relay emails through a computer or network without permission – for example, by taking advantage of open relays or open proxies without authorization.

The law allows the DOJ to seek criminal penalties, including imprisonment, for commercial emailers who do – or conspire to:

- Use another computer without authorization and send commercial email from or through it
- Use a computer to relay or retransmit multiple commercial email messages to deceive or mislead recipients or an Internet access service about the origin of the message
- Falsify header information in multiple email messages and initiate the transmission of such messages
- Register for multiple email accounts or domain names using information that falsifies the identity of the actual registrant
- Falsely represent themselves as owners of multiple Internet Protocol addresses that are used to send commercial email messages.

DO NOT FAX

The Telephone Consumer Protection Act (TCPA) gave The Federal Communication Commission (FCC) the authority to make rules and to enforce the rules affecting fax transmissions. The TCPA defines an "unsolicited advertisement" as any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

The TCPA requires all faxes clearly indicate:

- the date and time the message is sent
- identification of the sender
- the telephone number of the machine sending the message or the number of the individual or business sending the message
- sender must have a established business relationship (EBR) with the recipient
- sender must provide a 24/7 opt-out mechanism with no cost to the recipient
- sender has 30 days to remove any opt-out notices received

This information must be on the top or bottom margin of each page sent or can be on the first page sent. The penalties for violating the TCPA include $500 per unsolicited fax as well as treble damages for willful violators. In addition the TCPA provides for a private right of action, meaning the public can make its own case..

Stigmatized Properties

When a property's appeal to buyers is compromised by factors or events relating to the property that do not affect the environment or the physical condition of the property, the property is often referred to as stigmatized. These factors or events may be real or perceived. Events may include a suicide on the property or a previous occupant with AIDS or HIV. Illinois specifically prohibits any cause of action against a licensee for the failure to disclose:

- That an occupant of the property was afflicted with HIV or any other medical condition.
- That the property was the site of an act or occurrence that had no affect on the physical condition of the property, its environment, or its structures.
- Fact situations relating to a property that is not involved in the transaction.
- Physical conditions located on a property, not the subject of the transaction tthat do not have a substantial adverse effect on the value of the real estate that is the subject of the transaction.

The 1989 amendments to the 1968 Fair Housing Act include people with AIDS, HIV, cancer, or any other terminal illness as a protected class. Agents are, therefore, prohibited by federal law from disclosing or discussing an occupant's illness.

Smoke Detector Act

The Illinois Smoke Detector Act that went into effect July 1, 1988 requires smoke detectors to be installed within 15 feet of each sleeping area and on every level of the home, including the basement. On floors without bedrooms detectors should be installed near living areas such as dens, living rooms, or family rooms. In the case of rentals, the owner of the unit must supply and install all required alarms. A landlord must ensure that the alarms are operable on the date of initiation of a lease. The tenant is responsible for testing and maintaining the alarm after the lease commences.

Illinois Carbon Monoxide Alarm Detector Act

Carbon monoxide (CO) is an odorless, colorless, gas created by the burning of fossil fuels and is a significant health hazard in high concentrations. The Illinois Carbon Monoxide Alarm Detector Act went into effect January 1, 2007. It requires

homeowners and landlords to install carbon monoxide detectors in all buildings containing bedrooms or sleeping facilities. The primary features of this law are:

- Every "dwelling unit" must be equipped with at least one operable carbon monoxide alarm within 15 feet of every room used for sleeping purposes.
- The alarm may be combined with smoke detecting devices provided the audible alarm for smoke detection sounds different than the audible alarm for carbon monoxide.
  - A "dwelling unit" means a room or suite of rooms used for human habitation, and includes single family residences, multiple family residences, and mixed use buildings.
- If a structure contains more than one "dwelling unit", i.e. apartment building, townhouse, etc, an alarm must be installed within 15 feet of every sleeping room in each "dwelling unit".
- The owner of the unit must supply and install all required alarms. A landlord must ensure that the alarms are operable on the date of initiation of a lease.
- The tenant is responsible for testing and maintaining the alarm after the lease commences.
- Willful failure to install or maintain in operating condition any alarm is a Class B criminal misdemeanor.
- Alarms can be battery powered, plug-in with battery back-up or wired into the AC power with a battery back-up.

RESPA

The Real Estate Settlement Procedures Act (RESPA) is a consumer protection statute, first passed in 1974. The purposes of RESPA are to help consumers become better shoppers for settlement services and to eliminate kickbacks and referral fees that unnecessarily increase the costs of certain settlement services.

RESPA covers loans secured with a mortgage placed on a one-to-four family residential property. These include most purchase loans, assumptions, refinances, property improvement loans, and equity lines of credit. HUD's Office of RESPA and Interstate Land Sales is responsible for enforcing RESPA

RESPA requires that borrowers receive disclosures at various times. Some disclosures spell out the costs associated with the settlement, outline lender servicing and escrow account practices and describe business relationships between settlement service providers.

In Section 8, RESPA prohibits a person from giving or accepting any thing of value for referrals of settlement service business related to a federally related mortgage loan. It also prohibits a person from giving or accepting any part of a charge for services that are not performed.

In Section 9, RESPA also prohibits home sellers from requiring home buyers to purchase title insurance from a particular company.

When borrowers apply for a mortgage loan, mortgage brokers and/or lenders must give the borrowers:

- a Special Information Booklet, (*Buying Your Home*) which contains consumer information regarding various real estate settlement services. (Required for purchase transactions only) and
    - a Good Faith Estimate (GFE) of settlement costs, which lists the charges the buyer is likely to pay at settlement. This is only an estimate and the actual charges may differ. If a lender requires the borrower to use a particular settlement provider, then the lender must disclose this requirement on the GFE.
    - a Mortgage Servicing Disclosure Statement, which discloses to the borrower whether the lender intends to service the loan or transfer it to another lender. It also provides information about complaint resolution.

If the borrowers don't get these documents at the time of application, the lender must mail them within 3 business days of receiving the loan application. If the lender turns down the loan within 3 days, however, then RESPA does not require the lender to provide these documents.

The RESPA statute does not provide a specific penalty for the failure to provide the Special Information Booklet, Good Faith Estimate or Mortgage Servicing Statement. However, bank regulators may choose to impose penalties on lenders who fail to comply with federal law.

An Affiliated Business Arrangement (AfBA) Disclosure is required whenever a settlement service provider involved in a RESPA covered transaction refers the consumer to a provider with whom the referring party has an ownership or other beneficial interest. The referring party must give the AfBA disclosure to the consumer at or prior to the time of referral. The disclosure must describe the business arrangement that exists between the two providers and give the borrower an estimate of the second provider's charges.

Except in cases where a lender refers a borrower to an attorney, credit reporting agency or real estate appraiser to represent the lender's interest in the transaction, the referring party may not require the consumer to use the particular provider being referred.

HUD-1 Settlement Statement

The HUD-1 Settlement Statement is a standard form that clearly shows all charges imposed on borrowers and sellers in connection with the settlement. RESPA allows the borrower to request to see the HUD-1 Settlement Statement one day before the actual settlement. The settlement agent must then provide the borrowers with a completed HUD-1 Settlement Statement based on information known to the agent at that time.

The HUD-1 Settlement Statement shows the actual settlement costs of the loan transaction. Separate forms may be prepared for the borrower and the seller.

Where it is not the practice that the borrower and the seller both attend the settlement, the HUD-1 should be mailed or delivered as soon as practicable after settlement.

The Initial Escrow Statement itemizes the estimated taxes, insurance premiums and other charges anticipated to be paid from the Escrow Account during the first twelve months of the loan. It lists the Escrow payment amount and any required cushion. Although the statement is usually given at settlement, the lender has 45 days from settlement to deliver it.

Loan servicers must deliver to borrowers an Annual Escrow Statement once a year. The annual Escrow account statement summarizes all escrow account deposits and payments during the servicer's twelve month computation year. It also notifies the borrower of any shortages or surpluses in the account and advises the borrower about the course of action being taken.

A Servicing Transfer Statement is required if the loan servicer sells or assigns the servicing rights to a borrower's loan to another loan servicer. Generally, the loan servicer must notify the borrower 15 days before the effective date of the loan transfer. As long the borrower makes a timely payment to the old servicer within 60 days of the loan transfer, the borrower cannot be penalized. The notice must include the name and address of the new servicer, toll-free telephone numbers, and the date the new servicer will begin accepting payments.

Kickbacks, fee-splitting, unearned fees
Section 8 of RESPA prohibits anyone from giving or accepting a fee, kickback or

any thing of value in exchange for referrals of settlement service business involving a federally related mortgage loan. In addition, RESPA prohibits fee splitting and receiving unearned fees for services not actually performed.

Violations of Section 8's anti-kickback, referral fees and unearned fees provisions of RESPA are subject to criminal and civil penalties. In a criminal case a person who violates Section 8 may be fined up to $10,000 and imprisoned up to one year. In a private law suit a person who violates Section 8 may be liable to the person charged for the settlement service an amount equal to three times the amount of the charge paid for the service.

Seller required title insurance

Section 9 of RESPA prohibits a seller from requiring the home buyer to use a particular title insurance company, either directly or indirectly, as a condition of sale. Buyers may sue a seller who violates this provision for an amount equal to three times all charges made for the title insurance.

Section 10: Limits on escrow accounts

Section 10 of RESPA sets limits on the amounts that a lender may require a borrower to put into an escrow account for purposes of paying taxes, hazard insurance and other charges related to the property. RESPA does not require lenders to impose an escrow account on borrowers; however, certain government loan programs or lenders may require escrow accounts as a condition of the loan.

During the course of the loan, RESPA prohibits a lender from charging excessive amounts for the escrow account. Each month the lender may require a borrower to pay into the escrow account no more than 1/12 of the total of all disbursements payable during the year, plus an amount necessary to pay for any shortage in the account. In addition, the lender may require a cushion, not to exceed an amount equal to 1/6 of the total disbursements for the year.

The lender must perform an escrow account analysis once during the year and notify borrowers of any shortage. Any excess of $50 or more must be returned to the borrower.

RESPA enforcement

Civil law suits

Individuals have one (1) year to bring a private law suit to enforce violations of Section 8 or 9. A person may bring an action for violations of Section 6 within three years. Lawsuits for violations of Section 6, 8, or 9 may be brought in any federal district court in the district in which the property is located or where the violation is alleged to have occurred.

HUD, a State Attorney General or State insurance commissioner may bring an injunctive action to enforce violations of Section 6, 8 or 9 of RESPA within three (3) years.

Loan Servicing Complaints

Section 6 provides borrowers with important consumer protections relating to the servicing of their loans. Under Section 6 of RESPA, borrowers who have a problem with the servicing of their loan (including escrow account questions), should contact their loan servicer in writing, outlining the nature of their complaint. The servicer must acknowledge the complaint in writing

within 20 business days of receipt of the complaint. Within 60 business days the servicer must resolve the complaint by correcting the account or giving a statement of the reasons for its position. Until the complaint is resolved, borrowers should continue to make the servicer's required payment.

A borrower may bring a private law suit, or a group of borrowers may bring a class action suit, within three years, against a servicer who fails to comply with Section 6's provisions. Borrowers may obtain actual damages, as well as additional damages if there is a pattern of noncompliance.

Other Enforcement Actions

Under Section 10, HUD has authority to impose a civil penalty on loan servicers who do not submit initial or annual escrow account statements to borrowers. Borrowers should contact HUD's Office of RESPA and Interstate Land Sales to report servicers who fail to provide the required escrow account statements.

Filing a RESPA complaint

Persons who believe a settlement service provider has violated RESPA in an area

in which the Department has enforcement authority (primarily sections 6, 8 and 9), may wish to file a complaint. The complaint should outline the violation and identify the violators by name, address and phone number. Complainants should also provide their own name and phone number for follow up questions from HUD. Requests for confidentiality will be honored. Complaints should be sent to:

Director, Office of RESPA and Interstate Land Sales
US Department of Housing and Urban Development
Room 9154
451 7th Street, SW
Washington, DC 20410

SPONSORED LICENSEES CORORATION FOR COMPENSATION & DISCLOSURE OF COMPENSATION

Sponsored licensees performing real estate activities can only be compensated by their sponsoring Managing Broker and cannot accept any kind of compensation directly from a buyer, seller, landlord, tenant, or even another Managing Broker. A licensed personal assistant must be compensated by the sponsoring Managing Broker of the licensee for whom they act as an assistant.

A licensee must disclose to a client the sponsoring managing Broker's compensation and their policy regarding cooperation with Brokers who represent other parties in a transaction. The licensee is also required to disclose to a client any compensation from a third party. If a licensee refers a client to a third party (corporation, partnership, LLC, etc.) in which the licensee has more than 1 percent ownership, or a third-party business (other than a publicly held or traded company) from which the licensee receives dividends or profit sharing, these facts must be disclosed to the client at the time the referral is made. Brokers must give written disclosure to the client if they are receiving compensation from both the buyer and seller or the lessor and lessee in the same transaction. It is legal for a real estate licensee Managing Broker in Illinois to pay a commission to, or receive a commission from, a broker in another state.

INDUCEMENTS

A licensee may offer compensation to an unlicensed person as an inducement to use their services. Compensation may take the form of prizes, merchandise, services, rebates, discounts, or contests. The person receiving the inducement must

be a party to the transaction. Parties to the transaction include the buyer, seller, landlord, tenant, or the Brokers.

SPONSORING MANAGING BROKER & EMPLOYMENT AGREEMENTS

Licensees are allowed to have only one sponsoring Managing Broker at a time and all real estate activities must be performed for the sponsoring Managing Broker. A sponsoring Managing Broker must have an employee or independent contractor agreement with each licensee they sponsor. The agreement must address whether the licensee is an employee or an independent contractor. The agreement should also state the terms of their relationship, supervision, duties, compensation, termination, and other salient aspects of their relationship.

Licensed personal assistants must also have an employment agreement with the sponsoring Managing Broker, even if they are not performing licensed activities. This includes any licensed personal assistant that has been hired directly by a sponsored Broker. The sponsoring Managing Broker must hold the license of the licensed assistant.

LICENSEE'S CORPORATION FOR INDIRECT PAYMENT

Licensees can receive compensation for the performance of real estate activities only from their sponsoring Managing Brokers. The sponsoring Managing Broker can directly pay the corporation of a licensee they sponsor. The employee's corporation must be solely owned by the licensee and must be formed for the sole purpose of receiving compensation earned by the licensee. Corporations formed for this very specific purpose are not licensed by the DFPR; however, the licensee must file with the DFPR a copy of their certificate of incorporation.

The licensee's corporation may receive other moneys from other sources that is deposited into the corporate account. The corporation may not be used by the licensee to sponsor, employ, or associate itself with other licensees. The licensee may not advertise to the public in the corporation's name.

RULES REGARDING THE SALE OF A LICENSEE'S OWN PROPERTY

Licensees may sell, lease, and advertise property that is solely owned by them using "by owner" designation when the transaction does not use the services of a

real estate Broker. Under the act, property is solely owned by a sponsored or inoperative licensee if the licensee:

- Has a 100 percent ownership interest.
- Has ownership as a joint tenant or tenant by the entirety.
- Holds a 100 percent beneficial interest in a land trust.

On “by owner” yard signs and in “by owner” newspaper ads, the sponsored or inoperative licensee must indicate the property is “agent owned” or “Broker owned.” A sponsored licensee cannot use the sponsoring Managing Broker’s company name in connection with the sale, lease, or advertisement of the property or utilize the sponsoring Managing Broker’s name in a manner likely to create confusion among the public as to whether or not the services of a brokerage firm are being used. No notice of ownership is required when using a broker’s yard sign or in advertising run by a broker. When consumers respond to this ad or a sign, it must be immediately disclosed to them the property is “agent” or “Broker owned.”

ILLINOIS RESIDENTIAL REAL PROPERTY DISCLOSURE ACT

The Illinois Residential Real Property Disclosure Act requires that all sellers of residential properties of four units or less make prospective buyers aware of known material defects of the property with a residential real property disclosure form. A seller is defined as all owners, beneficiaries of a trust, contract purchasers, or lessees of a residential ground lease, who have an interest in residential real property.

A person or entity that never occupied the property and did not have the management responsibility for the property is not considered a seller under this act. This form consists of 22 statements to which the seller must respond regarding the condition of certain aspects of the property, based on the seller’s actual knowledge of any known defects in the residential property. The disclosures are intended to reflect the current condition of the property and do not include previous problems, if any, that the seller reasonably believes have been corrected. While this form does not constitute a warranty by the seller, the buyer may rely on the information in choosing to purchase and defining the terms of the offer. The seller is responsible for completing the disclosure form. Real estate salespeople and even the seller’s attorneys should refrain from assisting in the completion of the disclosure form.

The following persons or entities are exempt from this act: transfers pursuant to a court order, including, but not limited to, transfers ordered by a probate court in administration of an estate; transfers between spouses resulting from a judgment of dissolution of marriage or legal separation; transfers pursuant to an order of possession; transfers by a trustee in bankruptcy; transfers by eminent domain; and transfers resulting from a decree for specific performance. Also exempt are transfers from a mortgagor to a mortgagee by deed in lieu of foreclosure or consent judgment, transfer by judicial deed issued pursuant to a foreclosure sale to the successful bidder or the assignee of a certificate of sale, transfer by a collateral assignment of a beneficial interest of a land trust, or transfer by a mortgagee or a successor in interest to the mortgagee's secured position or a beneficiary under a deed in trust who has acquired the real property by deed in lieu of foreclosure, consent judgment, or judicial deed issued pursuant to a foreclosure sale. Exemptions are further extended to transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust. Transfers from one co-owner to one or more co-owners, transfers pursuant to testate or intestate succession, and transfers made to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the sellers are exempt. Transfers from an entity that has taken title to residential real property from a seller for the purpose of assisting in the relocation of a seller, so long as the entity makes available to all prospective buyers a copy of the disclosure form furnished to the entity by the seller, are exempt. Transfers to or from a government entity and transfers of newly constructed residential property that has not been occupied are exempt.

The act requires that the written disclosure statement be delivered to the prospective buyer before the signing of a contract to purchase. If a material defect is revealed by the disclosure after an accepted offer, the prospective buyer may, within three business days after receipt of the report, terminate the contract without liability or recourse. No right to terminate the contract exists once the property has been conveyed. The buyer has no right to terminate the contract if the report is delivered before the prospective buyer enters into a contract for the conveyance of the property.

The act requires the seller to supplement the original disclosure in writing if a seller gains actual knowledge of a material defect after the original disclosure form was delivered. The supplement may take any written form. If a seller discloses a material defect in a supplement, the buyer has no right to terminate the contract. The only exception to this rule is when the seller completes a supplement to the

original disclosure form indicating a material defect that the seller had actual knowledge of
before completing the original disclosure form. A buyer may terminate a contract if the seller refuses to provide the disclosure document prior to the actual conveyance of the property.

No action can be taken under this act later than one year from the earlier of the date of possession, date of occupancy, or date of recording of the deed. However, this one-year limit applies only to actions available under the act, not to a cause of action that would take place under common law.

TEST YOURSELF

1. Two or more Brokers getting together and conspiring to fix prices is an antitrust violation.

2. Two or more Brokers getting together and conspiring to set commission splits is an antitrust violation.

3. FEMA is the federal agency in charge of the National Flood Insurance program.

4. Flood insurance is required as a condition of getting a real estate loan.

5. Lead is a natural ore and a by-product of smelting silver.

6. Children under 6 are most susceptible to problems caused by lead.

7. The LBHRA (lead paint law) covers all residential property built before 1978.

8. Stachybotrys chartarum, a black mold, is a of toxic mold.

9. A phase I is completed by observation and research. There is no testing.

10. Actual testing of the premises, air, etc. called for in the findings of a Phase I is called a Phase II.

11. The Civil Rights Act of 1866 made it illegal to discriminate on the basis of race.

12. The Civil Rights Act of 1866 affects real and personal property.

13. The Civil Rights Act of 1968 prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, mental and physical handicap and familial status.

14. The fair housing poster must be prominently displayed in all Managing Brokers' offices.

15. Not making listings available in an area would be an example of steering.

16. Preying on the racial fears of the inhabitants of a neighborhood is panic pedaling or block busting.

17. It is legal to advertise no pets allowed.

18. The licensee should make all the units that are available, available to a handicap tenant, not just handicap units or first floor units.

19. Redlining is refusing to make loans in an area because the area is populated by minorities.

20. The Community Reinvestment Act requires financial institutions to conduct activities and provide services to meet the credit and deposit needs of their communities.

21. The Illinois Human Rights Act prohibits discrimination because of race, color, religion, national origin, physical or mental disability, familial status, ancestry, age, sex, marital status, perceived disability, military status, unfavorable military discharge, sexual orientation, and a holder of an Order of Protection.

22. The American's With Disabilities Act specifically protects the rights of individuals with disabilities.

23. A disability is defined under the ADA as a physical or mental impairment that substantially limits one or more of the major life activities of a person.

24. Your real estate office must comply with the ADA.

25. The Cook County Human Rights Act adds three more protected classes: parental status, source of income, and housing status.

26 . There are no exemptions under the Cook County or City of Chicago discrimination ordinances.

27. Housing choice vouchers are no longer an exception to "source of income" for the Cook County Human Rights ordinance.

28. The ADA affects public accommodations and commercial facilities.

28. The Fair Housing Act affects residential properties.

29. To be sure their list is current, a "cold-caller" must check the Do-Not-Call registry every 31 days.

30. Under the EBR, the buyer and seller can be called for the next 18 months after the sale or lease transaction was entered into.

31. Expired listings can be called by the listing office for up to 18 months.

32. Calling expired listings of another company is a violation of the DNC if they are on the registry.

33. You must check the registry if calling a FSBO to solicit their listing.

34. CAN-SPAM stands for Controlling the Assault of Non-Solicited Pornography and Marketing.

35. The smoke detector act states that smoke detectors are to be installed within 15 feet of each sleeping area and on each level of the home, including the basement.

36. Illinois specifically prohibits a cause of action against a licensee for the failure to disclose the property was the site of and act or occurrence that had no affect on the physical condition of the property.

37. Carbon Monoxide is an odorless, colorless, gas created by the burning of fossil fuels.

38. Illinois Carbon Monoxide Alarm Detector Act requires homeowners and landlords to install carbon monoxide detectors in all buildings containing bedrooms or sleeping facilities.

39. RESPA stands for Real Estate Settlement Procedures act.

40. RESPA requires that borrowers receive disclosures at various times.

41. The Office of RESPA in HUD is responsible for enforcing RESPA.

42. A HUD-1 settlement statement is a standard form that clearly shows all charges imposed on borrowers and sellers in connection with the settlement.

43. Loan servicers must deliver to borrowers an Annual Escrow Statement once a year.

44. A Servicing Transfer Statement is required if the loan servicer sells or assigns the servicing rights to a borrower's loan to another loan servicer.

45. Section 8 of RESPA prohibits anyone from giving or accepting a fee, kickback or anything of value in exchange for referrals of settlement service business.

46. Section 9 of RESPA prohibits a seller from requiring the home buyer to use a particular title insurance company, either directly or indirectly, as a condition of sale.

47. A lender can have in escrow what is owed plus a two 2 month cushion.

48. A Broker can only have 1 sponsoring Managing Broker.

49. A sponsoring Managing Broker must have a written agreement with the licensees they s[ponsor.

50. Sponsored licensees may set-up a corporation to receive commissions.

51. Illinois Residential Property Disclosure Act covers four units or less.

52. If a seller discloses a material defect in a supplement, the buyer has no right to terminate the contract.

Answers

The answers to each if the above questions is true. This testing exercise was provided to reinforce what you read in the materials, not to cause possible confusion by presenting statements that would have been false.