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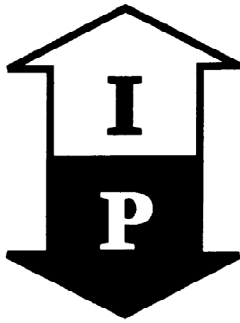
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INFORMATION PROFESSIONALS, INC.

AGENCY RELATIONSHIPS - ARTICLE 15

Article 15, Agency Relationships, of the Illinois Real Estate License Act of 2000, became effective December 31, 1994. This law is not intended to affect contractual relationships that exist between the Sponsoring Managing Broker and their Brokers but is intended to prevent the detrimental misunderstandings and misinterpretations of relationships among consumers, real estate Managing Brokers, and Brokers.

The duties required of an Illinois real estate professional are statutorily defined by Article 15. Article 15 also may serve as a basis for private rights of action and defenses by sellers, buyers, landlords, tenants, and real estate licensees. Licensees are still subject to liability under the Illinois Fraud and Deceptive Practices Act, and there is nothing in Article 15 that should be construed as changing a licensee's duty under common law regarding the negligent or fraudulent misrepresentation of material information.

Article 15 defines several terms. A brokerage agreement is an agreement that could be either a listing agreement or buyer brokerage contract. A client is a person represented by a licensee. A consumer is a person or entity seeking or receiving real estate brokerage services. A customer is a consumer who is not being represented by a licensee, but for whom the licensee is performing ministerial acts. In its most basic definition, the one that most separates it from common law,

Article 15 states that licensees are designated agents considered to be representing the consumer with whom they are working, unless there is a written agreement between the licensee and the consumer providing a different relationship. An exception to this is a licensee who is performing only ministerial acts on behalf of the consumer. (Ministerial acts are discussed later.) Payment or the promise of payment has nothing to do with whether an agency relationship has been created.

If a client is interested in a property and her designated agent shows that property to other prospective buyers, it might seem to be a breach of duty to the client. Article 15 specifically states, however, that a licensee does not breach a duty or obligation as a designated agent by showing alternative properties to prospective buyers or tenants or by showing properties in which the client is interested to other prospective buyers or tenants. A licensee who receives a higher fee or compensation based on a higher selling price or lease cost also does not violate a duty or obligation.

Contemporaneous Offers

Article 15 also says a licensee must follow certain steps when involved in presenting contemporaneous offers. Specifically, if a licensee is presenting two offers on the same property from two of their clients, they must notify the clients in writing they are presenting two offers on the same property and give their clients the opportunity to withdraw from their representation and have the Managing Broker appoint them a different designated agent.

Under Article 15, the licensee must perform to the terms of the brokerage agreement and promote the best interests of the client. The licensee should seek a transaction at a price and terms stated in the brokerage agreement, presenting all offers to and from the client and disclosing any material facts of which the licensee has actual knowledge that concerns the transaction. If this information is confidential, however, the licensee is prohibited from revealing it. The licensee must also provide for a timely accounting of all moneys and property received and must obey the specific instructions of the client that are not contrary to law.

The licensee should exercise reasonable skill and care in the performance of brokerage services and promote the client's best interests as opposed to the

licensee's or any other person's self-interest. A licensee will not be held liable to a client for providing false information to the client if the false information was provided to the licensee by the customer unless the licensee knew or should have known the information was incorrect.

Duties of Licensee to Customer

Under Article 15, the licensee must treat all customers honestly and cannot negligently or knowingly give them false information. The licensee also must provide timely disclosure of all material adverse defects actually known to the licensee concerning the physical condition of the property that could not be discovered by the customer completing a reasonably diligent inspection of the property. This is the only instance in which a licensee owes a duty to disclose information to someone other than the client. A licensee is not liable to a customer for providing false information to the customer if the false information was provided to the licensee by the client unless the licensee knew or should have known the information was incorrect.

Agency Disclosure

Article 15 requires the licensee to advise the consumer of the designated agency relationship that will exist unless there is a written agreement between them providing for a different brokerage relationship. This must be done at the first contact with the consumer.

The licensee, at first contact, must give name or names of the consumer's designated agents in writing. Although the licensee need not state the amount of the commission to be received, the licensee must advise the consumer as to whether the licensee will share the compensation with Brokers who represent others in a transaction.

Confidential Information

Article 15 defines confidential information as information obtained by a licensee from a client during the term of a brokerage agreement, or information that was

made confidential by the written request or written instruction of the client. Any information dealing with the negotiating position of the client or information the disclosure of which could materially harm the position of the client is considered confidential i.e., the designated agent of a buyer could not reveal to the seller or the seller's designated agent that the buyer had to be out of his present home in a week or would make a higher offer for the property if his first offer was rejected.

Confidential information can be disclosed only if (a) the client permits disclosure, (b) the disclosure is required by law, (c) the information becomes public from another source, or (d) the information concerns the physical condition of the property.

Ministerial Acts

A licensee representing a client in a real estate transaction may provide assistance to a customer by performing ministerial acts. Ministerial acts should not be performed in a manner that would violate the brokerage agreement with the client or would form a brokerage agreement with the customer. Ministerial acts include, but are not limited to those acts that are informative in nature but that do not rise to an active level of representation on behalf of the customer. Some examples of ministerial acts are

- responding to phone inquiries by consumers as to the availability and pricing of brokerage services;
- responding to phone inquiries from consumers concerning the price or location of property;
- attending an open house and responding to questions about the property from a consumer;
- setting an appointment to view property with a consumer;
- responding to questions of walk-in consumers concerning brokerage services or particular properties;
- accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property;
- describing a property or a property's condition in response to a consumer's inquiry;

- completing business or factual information for a consumer on an offer to purchase on behalf of the client;
- showing a client through a property being sold by an owner; and
- referring a consumer to another broker or service provider.

Dual Agency

Dual agency situations arise when a licensee is representing both the buyer and the seller in the same transaction. This usually takes place on the licensee's personal listings rather than the office's listings, as the licensee would probably not have been named the designated agent on an office listing if there were any question of dual agency.

A licensee answering a phone call in response to an ad on a personal listing or talking to a consumer at an open house on a personal listing would not be considered the agent of that consumer, as these situations are ministerial acts. However, the licensee must be careful not to go beyond ministerial acts and act as an agent for such consumers. The licensee should keep in mind the written disclosure requirements previously mentioned. Article 15 allows for consensual dual agency, provided certain requirements are met. Consent to a dual agency requires that the licensee who is to act as a dual agent must present the clients with a dual agency disclosure form that includes required statutory language. This form should be presented to the clients at the time the brokerage agreement is entered into and must be signed by the clients before the licensee may act as a dual agent. Consent to act as a dual agent is presumed to have been given when the clients sign this form. A licensee cannot, however, be a dual agent in any transaction where the licensee or an entity in which the licensee has an ownership interest is a party to the transaction.

In addition to this initial disclosure, when the clients are executing an offer to purchase or lease in a transaction in which the licensee acted as a dual agent, the licensee must obtain a written confirmation from the clients that they previously gave their consent for the licensee to act as a dual agent. This confirmation may be

included in another document such as a contract to purchase, in which case the clients must initial the confirmation of dual agency.

If a client declines to enter into or wishes to withdraw from a dual agency agreement, the withdrawing client may be referred to another designated agent. To receive a referral fee in this situation, written disclosure of the licensee receiving a fee must be given to the withdrawing client and the client that continues to be represented. Note that only disclosure is required, not permission.

In a dual agency relationship, the client and the licensee are considered to possess only actual knowledge and information. There is no imputation of knowledge or information among or between the clients, Sponsoring Brokers, or their affiliated licensees.

Licensees cannot act as a dual agent when selling a property in which they hold an interest.

Sub agency

Article 15 states that a Broker is not considered a subagent of another Managing Broker solely by reason of membership in or other affiliation with the Managing Brokers in a multiple listing service (MLS) or other similar information source. It also prohibits offering sub agency through a MLS or other similar information source. The only way a sub agency can be created in Illinois is through a written brokerage agreement.

Vicarious Liability

Common law agency calls for vicarious liability, stating that a principal is responsible for his agent's actions whether or not he is aware of the actions committed by the agent. In contrast, Article 15 states that the consumer shall not be vicariously liable for the acts of omissions of a licensee for or on behalf of the consumer.

Exclusive Listings

In order for an exclusive list to be an exclusive listing they must meet the

minimum service requirements required by the License Act. These requirements apply to both exclusive agency and exclusive right-to-sell listings. Any listing, to be considered exclusive, must provide for the licensee to do the following:

- accept delivery of and present to the client offers and counteroffers to buy, sell, or lease;
- assist the client in developing, communicating, negotiating, and presenting offers, counteroffers, and notices that relate to the offers and counteroffers until a lease or purchase agreement is signed and all contingencies are satisfied or waived; and
- answer the client's questions relating to the offers, counteroffers, notices and contingencies.

Termination of Brokerage Agreement

After the termination, expiration, or completion of a brokerage agreement, the licensee does not owe any further duties except to account for all moneys and property relating to the transaction, to keep confidential information confidential, or as provided by written agreement. In any action brought under Article 15, relief is limited to an injunction, actual damages, and court costs. The action must have been started within two years of the time the party bringing the action knew or reasonably should have known of such act or omission. In no case can the action be brought more than five years from the time the alleged act occurred.

Written Agreements

A Managing Broker must have a written agreement with each licensee they sponsor that cover the salient aspects of their relationship: supervision, duties, termination, etc.

Employee vs. Independent Contractor

Employees get told the job and how to do the job. Independent contractors get told the job and they go about doing the job any way they wish.

Brokerage Firms

A brokerage firm, or company, may be owned by a single licensed Managing Broker (a sole proprietor) or by more than one licensed person, such as a partnership or a corporation or limited liability company. If a Managing Broker who was a sole proprietor dies, the listings are terminated. Association with a franchise, licenses the brokerage firm to use the franchise's trade name, operating procedures, reputation, and referral services. The franchisee still owns and operates the brokerage firm. Brokerage firms usually have more than one licensed Broker working with the firm. Sales associates affiliated with a brokerage firm employed by the Managing Broker and may be named by the Managing Broker as designated agents for the firm's clients. The fiduciary duty of the sales associates thus extends to both their employing firm and the firm's clients. Brokerage contracts are between the clients and the firm and are owned by the firm; if an associate quits the firm, her listings remain the sponsoring Managing Broker's. The Managing Broker is in two separate agency relationships: (a) the agent for the principal under the brokerage agreement and (b) the principal of the sales associates under an employment agreement in the brokerage firm. Therefore, the Managing Broker is responsible for the actions of the sales associates even though in almost all cases the sales associate is an independent contractor. As an agent of the sponsoring Managing Broker, the sales associate is required to comply with the terms of the brokerage agreement and all rules of the brokerage firm.

Illinois licensees are either independent contractors or employees and are required to have a written employment contract defining the relationship with their employing broker. The contract states the terms regarding supervision, duties, compensation, and termination, as well as other aspects of their relationship. Independent contractors do not receive any compensation or benefits directly from an employer and must file and pay their own social security tax.

Illinois license law requires that all sponsoring Managing Brokers have a written agreement with all licensees they sponsor. Illinois license law leaves it open as to whether the licensee will have the status of independent contractor or employee. Most licensees, especially those in residential sales, will be hired as independent contractors. Most licensees in the property management field will be employees.

Licenses involved in office leasing and commercial and industrial sales are often employees. A licensee's status depends on the salient aspects of their employment. An employer is able to exercise more control over an employee. An employee may also have their business cards, board dues, MLS dues, health care, and education expenses, etc. paid for. They may also be given draws or advances against commissions and may even receive paid vacations. Federal, state, and local payroll taxes are withheld by the employer.

An independent contractor cannot receive any such benefits and receives the gross amount of earnings without any taxes withheld. An independent contractor is responsible for his own taxes. The independent contractor is considered to be operating his own business and has the opportunity to make money or lose money performing the job. Simply, the independent contractor is to be told what the job is, and then decides on his own how to complete the job. The employee can be told step by step how to complete the job. Most sponsoring Managing Brokers choose the independent contractor relationship because of its tax benefits to the sponsoring Managing Broker and the licensee.

Licenses may have only one sponsoring Managing Broker at a time. All commissions earned are paid to the Managing Broker by the sponsoring Managing Broker. Gifts or extra bonuses from appreciative clients must be conveyed to the licensee through the sponsoring Managing Broker.

VIOLATIONS OF THE ACT AND DISCIPLINARY PROCEDURES

Unlicensed Practice

The DFPR maintains an index of formal decisions regarding the issuance, refusal to issue, renewal, refusal to renew, revocation, and suspension of licenses and probationary or other disciplinary action. This index is available for inspection by the public during the DFPR's regular business hours.

The DFPR may impose a fine against an unlicensed person engaged in real estate activities. Any person who practices, offers to practice, attempts to practice, or holds himself out to practice as a real estate licensee without being licensed by the DFPR, in addition to any penalty by law, is subject to a civil fine up to \$25,000 for each offense. The DFPR has the authority and power to investigate all unlicensed

real estate activities. The civil fine must be paid within 60 days and constitutes a judgment against the offender. The judgment is filed and executed in the same manner as any civil judgment.

Violations of the Act

The DFPR may refuse to issue or renew a license, may place on probation, suspend, or revoke any license, or may censure, reprimand, or otherwise discipline a licensee, or impose a civil fine not to exceed \$25,000 upon any licensee for any of the following:

1. Committing fraud in obtaining or seeking to obtain a license.
2. When the applicant has been convicted of any crime, an essential element of which is dishonesty; fraud; larceny; embezzlement; obtaining money, property, or credit by false pretenses; or commission of a confidence game, or has been convicted in this or another state of a crime that is a felony under Illinois law, or has been convicted of a felony in a federal court.
3. Practicing or attempting to practice real estate from an office in a retail establishment not separate and distinct from a retail business.
4. The applicant has been adjudged to be a person under legal disability or subject to involuntary admission or to meet the standard for judicial admission as provided in the Mental Health and Developmental Disabilities Code.
5. Disciplined by another state if one of the grounds for the discipline is the same as or equal to grounds set forth in this act.
6. Engaging in licensed activities without a license, after a licensee's license has expired, or while the licensee's license was inoperative.
7. When an applicant or a licensee attempts to subvert or cheat on the real estate licensing exam or a continuing education exam administered by a continuing education school.
8. Engaging in real estate activities and found guilty of:
 - a. Making any substantial misrepresentation or untruthful advertising.
 - b. Making any false promises of a character likely to influence, persuade, or induce.
 - c. Pursuing a continued and flagrant course of misrepresentation in the making of false promises through licensees, employees, agents,

advertising, or any other means.

- d. Any misleading or untruthful advertising, or using any trade name or insignia of membership in any real estate organization of which the licensee is not a member.
 - e. Acting for more than one party in a transaction without providing written notice to all parties for whom the licensee acts.
 - f. Representing or attempting to represent a Managing Broker other than the sponsoring Managing Broker.
 - g. Failure to account for or to remit any moneys or documents coming into a licensee's possession that belong to others.
 - h. Failure to maintain and deposit in a special account, separate and apart from personal and business accounts, all escrow moneys belonging to others entrusted to a licensee while acting as a Broker, escrow agent, or temporary custodian of the funds of others, or failure to maintain all moneys on deposit in the account until the transactions are consummated or terminated, except to the extent that the moneys may be disbursed prior to the consummation or termination of the transaction in accordance with:
 - (i) The written direction of the principals to the transactions or their duly authorized agents.
 - (ii) Directions providing for the release, payment, or distribution of escrow moneys contained in any written contract signed by the principals to the transaction or their duly authorized agents.
 - (iii) An order of a court.
9. Escrow accounts must be noninterest bearing unless the principals to the transaction specifically require, in writing, that the deposit be placed in an interest-bearing account.
10. Failure to make available to DFPR enforcement personnel all escrow records and related documents maintained in connection with the practice of real estate within 24 hours of the request for those documents.
11. Failing to furnish upon request all documents relating to a real estate transaction to all the parties executing them.
12. Failure of a sponsoring Managing Broker to timely provide information, sponsor cards, or terminated licenses to DFPR.

13. Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public.
14. Commingling the money or property of others with the licensee's own.
15. Employing any person on a purely temporary or single-deal basis as a means of evading the law regarding the payment of a commission to nonlicensees on some contemplated transactions.
16. Permitting the use of his license as a Managing Broker to enable a Broker or unlicensed person to operate a real estate business without actual participation and control.
17. Any conduct constituting dishonest dealing.
18. Displaying a "for rent" or "for sale" sign without the written consent of the property owner or the owner's agent.
19. Advertising by any means that a property is for sale or rent without the written consent of the property owner or the owner's agent.
20. Failing to provide information requested by the DFPR within 30 days of the request, either as the result of a formal or informal complaint to the DFPR or as a result of a random audit conducted by the DFPR.
21. Running a blind ad.
22. Participating in any integration maintenance plan or promoting the continuance or maintenance of racially or religiously segregated housing.
23. Engaging in any act that constitutes a violation of the Illinois Human Rights Act
24. Inducing any party to a contract, lease, or brokerage agreement to break the agreement for the purpose of substituting a new agreement with another party.
25. Negotiating the sale, exchange, or lease of real estate directly with any person if the licensee knows that the person has a written exclusive brokerage agreement with another Managing Broker, unless specifically authorized by that Managing Broker.
26. Advertising or offering merchandise or services for free if any conditions or obligations necessary for receiving the merchandise or services are not disclosed in the same advertisement.
27. Disregarding or violating any provision of the Illinois Land Sales Registration Act, the Illinois Real Estate Time-Share Act, or the published rules promulgated by DFPR to enforce these Acts.
28. Violating the terms of a disciplinary order issued by the DFPR.

29. Paying compensation in violation of the Act.
30. Requiring a party to a transaction, who is not a client of the licensee, to allow the licensee to retain a portion of the escrow moneys for payment of the licensee's commission or expenses as a condition for release of the escrow moneys to that party.
31. Disregarding or violating any provision of the Act or aiding or abetting any individual, partnership, registered limited liability partnership, limited liability company (LLC), or corporation to disregard any provision of the Act or the rules promulgated by the DFPR to enforce the Act.
32. Failure to provide minimum services required on an exclusive listing.

Inducements

Licenses cannot advertise or offer merchandise or services as free if any conditions or obligations necessary for receiving the merchandise or services are not disclosed in the same advertisement or offer. These conditions or obligations may include such requirements as having to attend a promotional activity or visit a real estate site. The offer of "free" includes terms such as award, prize, no charge, without charge, and any similar words or phrases that would lead a person to believe he may receive something of value without any conditions or obligations his part.

ESCROW REGULATIONS

Escrow Accounts

In Illinois, escrow accounts, often referred to as special accounts, trust accounts, or earnest money accounts, must be maintained in a federally insured depository. Escrow moneys in Illinois include earnest moneys and rental security deposits. Illinois requires all escrow accounts to be noninterest-bearing, unless the principals have a written agreement stating that escrow funds be placed in an interest-bearing account. This agreement also must specify the recipients of the interest earned in the account. A broker may maintain more than one special account. It is a violation of the laws of agency for a Managing Brokers to commingle the funds or property held in trust for others with personal accounts or with the operating account of the real estate firm. Misappropriation of a client's money is called conversion.

Escrow Moneys, Time of Deposit, And Bookkeeping Systems

Escrow moneys are defined in the Act as all moneys, promissory notes, or other type and manner of legal tender or financial consideration deposited with any person for the benefit of the parties to the transaction. This includes earnest money and security deposits. An exception to this definition is security deposits held by a person who is the sole owner of the property being leased. All escrow moneys collected by a licensee on behalf of owners and pursuant to property management activities must be placed in a special account. These requirements may be waived in writing by the tenants. Such waiver, if included in the lease, shall appear in bold print.

Escrow moneys must be put into a special account separate from the operating account. This account must be noninterest bearing, unless the principals to the transaction agree in writing that the money is to be placed in an interest bearing account. This agreement must also state who is entitled to the interest.

All earnest money accounts must be in a federally insured depository. A Managing Broker may have more than one escrow account. For instance, a Managing Broker may have an interest-bearing and a noninterest-bearing account, an account for each transaction, or an account for each branch office. If the Managing Broker changes depositories or a signatory on the account, a new form must be filed with the DFPR within 10 days of the change.

Licensees sponsored by a Managing Broker cannot have an escrow account. Only sponsoring sponsoring Managing Brokers can maintain such an account. A Sponsoring Managing Broker is not required to have an escrow account unless the Sponsoring Managing Broker receives earnest money or is the custodian of the funds of others. An attorney involved in a transaction may hold the earnest money.

Earnest money and security deposits must be deposited in the Managing Broker's escrow account not later than the next business day following acceptance of the contract. A transaction is considered accepted when the contract or lease is signed by the buyer and the seller or the lessor and lessee. In cases where a branch office has its own escrow account, the money must be deposited not later than the next business day following the contract's acceptance.

Where a branch office does not maintain an escrow account, the branch office must hand deliver or mail the money by the next business day to the main office. The main office must deposit the money by the next business day following the receipt of the money from the branch office. All branch offices, even those that send all escrow moneys to a main office, must maintain records showing the date the escrow moneys were deposited or transferred to the main office.

The master escrow account log must identify all escrow bank account numbers, the name and address of the bank where the escrow accounts are located

Security deposits held by a broker must be maintained in an escrow account for the duration of the lease unless the tenant waives this requirement in writing. Such waiver, if included in the lease, must appear in bold print.

A Managing Broker who acts as an escrow agent must notify all the principals in writing if a principal fails to tender escrow moneys, a principal's escrow tender is dishonored by the financial institution on which it is drawn, or when there appears, according to the governing contract, to be a deficiency in the amount of the deposit.

Consent to Audit Escrow Accounts

Each Managing Broker must, at the time of the original application for licensure and upon each renewal, file with the DFPR the name of the federally insured institution in which each escrow account is maintained, the name of the account, the names of the persons authorized to withdraw funds from the account, and give the DFPR consent to examine and audit the account. Brokers must notify the DFPR by filing a new form with the DFPR within 10 days of changing the depository, method of doing business, or the persons authorized to withdraw.

Bookkeeping System

The Managing Broker must maintain an in-office bookkeeping system for the escrow account. The bookkeeping system can be of any form, traditional paper systems or computerized systems, but it must comport with sound accounting principles. Computerized bookkeeping systems must be able to produce printed

records containing all of the information required by the DFPR. Each bookkeeping system must have a journal, a ledger, and a master escrow account log.

The master escrow account log must identify all escrow bank account numbers and the name and address of the bank(s) where the escrow accounts are located. The master escrow account log must specifically include all bank account numbers for individual accounts even if they are under an umbrella account number.

The journal shows the chronological sequence of deposits and disbursements. Information on deposits must include the deposit date, the name of the party who delivered the funds, the name of the person on whose behalf the funds were delivered, and the amount of the funds. For disbursements, the journal must record the date, the payee, the check number, and the amount disbursed. The journal must indicate a running balance of the account.

Although a journal records all deposits and disbursements together, a ledger shows the receipt and disbursement of all funds involved in a single transaction. The ledger must include the names of both parties to the transaction, the amount of the funds received by the Managing Broker, and the date of the receipt. Disbursements are identified by the date, the payee, the check number, and the amount disbursed.

The ledger must segregate one transaction from another. When ledgers are generated by computer programs that use the same information to create both the journal and the ledger, the Managing Broker must maintain copies of the bank deposit slips, disbursement slips, or other bank receipts to account for the data on the ledger.

Earnest money cannot be withdrawn any earlier than the day of the transaction and not later than the next business day following the transaction. Any withdrawals different than this, must be agreed to in writing by the principals

Within 10 days of receiving the monthly bank statement, the Managing Broker must reconcile each account. When there has been no activity in the account, no reconciliation is required. The reconciliation must include a written worksheet that compares the balances of the account, the ledger, and the journal. Computerized escrow bookkeeping systems must be backed up monthly. The monthly reconciliation, including its worksheet, must be printed out and the hard copy

maintained. The journal also must be printed out monthly and the hard copy maintained.

The only personal money a Managing Broker can have in an escrow account is the amount required by the institution to open or maintain the account. Even the inadvertent mixing of personal or operating funds with the earnest money funds is commingling. Managing Brokers using earnest money deposits for their own personal or business purposes are guilty of conversion. Earnest money cannot be withdrawn any earlier than the day of the transaction and not later than the next business day following the transaction. Any variation in this schedule of withdrawals must be agreed to by the principals. In the event of a dispute over the return or the forfeiture of any escrow moneys held by the Broker or if the Managing Broker should reasonably know that the disposition of the money will be contested, the Managing Broker should continue to hold the money in the escrow account:

1. Until receiving written direction from all of the parties.
2. Until a civil action is filed by either the Managing Broker or one of the parties to determine its disposition, at which time the money may be paid into the court.
3. Until such funds are turned over to the Illinois Treasury Unclaimed Asset Division because of account inactivity or the inability to locate the parties.

In the event of a dispute over the return of escrow moneys, a Managing Broker is authorized to withdraw from his special account such amounts as may be provided for by contract and which are necessary to reimburse the Managing Broker for the handling of the escrow moneys. The Managing Broker can file a civil action called an interpleader to determine the appropriate disposition of the escrow moneys.

The earnest money, however, cannot be disbursed by the Managing Broker unless the Broker has the written direction of all parties to the transaction. Even if it is obvious that the buyer has defaulted, the Managing Broker does not have the authority to determine that any performance or lack of performance is a default and must continue to hold the earnest money.

If the parties cannot arrive at a mutual agreement as to the disposition of the earnest money, the Managing Broker may file an interpleader action and pay the money to the clerk of the circuit court. A Managing Broker need not disburse any escrow moneys until the funds have been honored by the payor's depository. Managing Brokers may not withhold an authorized disbursement of escrow moneys due to any claim for a commission or compensation. If a Managing Broker receives written direction from all parties to the transaction or their duly authorized agents agreeing to a disbursement of earnest moneys, the Managing Broker must disburse the funds not later than the next business day following receipt of the last written direction.

Earnest money must be turned over to Illinois Department of Financial Institutions (unclaimed assets) 6 months from a written demand by the seller or buyer for the earnest money. If the Managing Broker does not receive a written demand, the earnest money must be turned over after 5 years.

Record Keeping

Managing Brokers must retain copies of all escrow money instruments received from a party as part of the transaction, including copies of all personal checks, cashier's checks, certified checks, money orders, promissory notes, or other financial instruments. The Managing Broker must retain copies of all disbursements from escrow accounts.

If escrow records are lost, stolen, or destroyed due to fire, flood, or any other circumstances, the Managing Broker must report such loss to the DFPR enforcement division within 30 days by signature-restricted delivery. The Managing Broker must also immediately obtain copies of monthly bank statements, deposit and disbursement receipts, and any other available records to reconstruct the lost escrow records. Escrow records and all transaction records must be retained for at least five years. The records for the earliest two years shall be maintained in the office location and the balance of the records for the later years can be maintained at another location. Records kept on-site must be made available to DFPR enforcement personnel within 24 hours of a request. Records kept at another location must be made available within 30 days.

Employment agreements with the sponsoring Managing Broker must be maintained for five years after the sponsored licensee is no longer affiliated with the sponsoring Managing Broker. A copy of the employment agreement must be maintained at the branch in which the licensee worked. Records reflecting the payment of compensation for the performance of licensed activities must be maintained for five years.

Definitions

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

Broker means an individual, partnership, limited liability company, corporation, or registered limited liability partnership, a leasing agent who for another and for compensation, or with the intention or expectation of receiving compensation, either directly or indirectly:

- (1) Sells, exchanges, purchases, rents, or leases
- (2) Offers to sell, exchange, purchase, rent, or
- (3) Negotiates, offers, attempts, or agrees to
- (4) Lists, offers, attempts, or agrees to list real
- (5) Buys, sells, offers to buy or sell, or otherwise
- (6) Supervises the collection, offer, attempt, or
- (7) Advertises or represents himself or herself as
- (8) Assists or directs in procuring or referring of
- (9) Assists or directs in the negotiation of any
- (10) Opens real estate to the public for marketing
- (11) Sells, leases, or offers for sale or lease real

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

- (1) commissions;

- (2) referral fees;
- (3) bonuses;
- (4) prizes;
- (5) merchandise;
- (6) finder fees;
- (7) performance of services;
- (8) coupons or gift certificates;
- (9) discounts;
- (10) rebates;
- (11) a chance to win a raffle, drawing, lottery, or
- (12) retainer fee; or
- (13) salary

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

- (1) the client permits the disclosure of information
- (2) the disclosure is required by law; or
- (3) the information becomes public from a source

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

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

Dual agency means an agency relationship in which a licensee is representing both buyer and seller or both landlord and tenant in the same transaction. When the agency relationship is a designated agency, the question of whether there is a dual agency shall be determined by the agency relationships of the designated agent of the parties and not of the sponsoring Managing Broker.

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

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

Ministerial acts means those acts that a licensee may perform for a consumer that are informative or clerical in nature and do not rise to the level of active representation on behalf of a consumer. Examples of these acts include without limitation (i) responding to phone inquiries by consumers as to the availability and pricing of brokerage services, (ii) responding to phone inquiries from a consumer concerning the price or location of property, (iii) attending an open house and responding to questions about the property from a consumer, (iv) setting an appointment to view property, (v) responding to questions of consumers walking into a licensee's office concerning brokerage services offered or particular properties, (vi) accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property, (vii) describing a property or the property's condition in response to a consumer's inquiry, (viii) completing business or factual information for a consumer on an offer or contract to purchase on behalf of a client, (ix) showing a client through a property being sold by an owner on his or her own behalf, or (x) referral to another broker or service provider.

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

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 Brokerage 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 and 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.

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 and 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 Opportunity 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 ADA 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 Ordinance

Arlington Heights	Ford Heights	Matteson
Bellwood	Glencoe	Maywood
Blue Island	Glenwood	Merrionette Park
Bridgeview	Harvey	McCook
Burnham	Hazel Crest	Morton Grove
Calumet City	Hickory Hills	Mount Prospect
Calumet Park	Hodgkins	Niles
Chicago Heights	Hometown	Norridge
Chicago Ridge	Homewood	Northbrook
Cicero	Justice	Northfield
Country Club Hills	LaGrange	Northlake
Dixmoor	Lansing	Oak Lawn
Dolton	Lincolnwood	Oak Park
East Hazel Crest	Lynwood	Orland Hills
Evanston	Lyons	Orland Park
Flossmoor	Markham	Palos Heights

Park Forest

Rolling Meadows

Thornton

Park Ridge

Sauk Village

Tinley Park

Prospect Heights

Schaumburg

Wheeling

Richton Park

Skokie

Willow Springs

Riverdale

South Chicago Heights

Wilmette

River Grove

South Holland

Worth

Robbins

Streamwood

Test Yourself

The following questions are True/False questions testing your knowledge on what you have just read. The answer key follows the questions. For best results, answer the questions like it was the “real test.” Then check your answers.

1. A licensee’s duties are statutorily defined.
2. Part of the Illinois Real Estate License Act is Article 15 which is agency law.
3. A licensee is the designated agent of the consumer with whom they are working.
4. If a licensee is presenting two offers on the same property from two of their clients, they must notify the clients in writing that they are presenting the two offers.
5. Under Article 15, the licensee must perform the terms of the brokerage agreement and promote the best interest of the client.
6. The licensee does have duties to the customer.
7. The licensee must give the consumer the name of his designated agent in writing at first contact.
8. Confidential information is anything that would affect the negotiating position of the client.

9. Ministerial acts are acts that are informative in nature that do not rise to a level of representation.
10. Dual Agency is when a licensee is representing both the buyer and the seller in the same transaction.
11. A licensee must get permission to act as a dual agent before acting as a dual agent.
12. While acting as a dual agent, the licensee must obtain written confirmation from their clients that they previously gave their consent for the licensee to act as a dual agent.
13. In a dual agency relationship, the licensee is considered to possess only actual knowledge and information and there is no imputation of any knowledge.
14. Licensees cannot act as a dual agent when selling any property in which they hold an interest.
15. In order for an exclusive listing to be an exclusive listing they must meet the minimum service requirements of the license act.
16. The minimum services in an exclusive listing can be summarized as accept, assist, and answer.
17. Confidential information remains confidential even after the termination of the brokerage agreement.
18. A Managing Broker must have a written agreement with each licensee that they sponsor that covers the salient aspects of the relationship; supervision duties, termination, etc.
19. Employees get told what the job is and how to do the job.
20. Independent contractors get told what the job is and they go about doing the job any way they wish.
21. If a sponsoring Managing Broker who was a sole proprietor dies, the listings are terminated.

22. An employee can have their business cards, board dues, MLS dues, healthcare, and education expenses paid for by the Managing Broker.
23. The IDFPR may impose a fine against an unlicensed person engaged in real estate activities.
24. All earnest money and rental security deposits must be placed in a non- interest baring account.
25. Escrow money may be placed in an interest baring account if the principles agree.
26. Earnest money must be placed in a federally insured depository.
27. A Managing Broker can have as many escrow accounts as he wishes but he does not have to have any.
28. Only a Managing Broker holding escrow money is required to have an escrow account.
29. Earnest money and security deposits must be deposited in the escrow account no later than the next business day following acceptance of the offer.
30. If there is a branch office, the branch office must mail or deliver the earnest money to the main office by the next business day following acceptance of the offer.
31. Upon the receipt of the earnest money by the main office, the main office has until the next business day to deposit it.
32. The escrow account bookkeeping system must be maintained in the office.
33. Earnest money cannot be withdrawn any earlier than the day of the transaction and not later than the next business day following the transaction.
34. Within 10 days of receiving the monthly bank statement, the Managing Broker must reconcile his escrow account.
35. The reconciliation of the escrow account must include a written worksheet that compares the balance of the escrow account with the ledger and the journal.

36. A Managing Broker must have written direction from the parties to the transaction to return the earnest money.
37. A Broker holding earnest money for five years, turns it over to the state Treasury Division of Unclaimed Assets.
38. If a deal that falls apart and the buyer and the seller can't agree on the disposition of the earnest money, then the Managing Broker will pay the earnest money into the estate Treasury after six months from the first written demand for the money by the buyer or seller.
39. Managing Brokers must retain all copies of transaction records, escrow records, and personal records for a period of two years on site and a total of five years.
40. The Civil Rights Act of 1866 made it illegal to discriminate on the basis of race.
41. The Civil Rights Act of 1866 affects real and personal property.
42. 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.
43. The fair housing poster must be prominently displayed in all Managing Brokers' offices.
44. Not making listings available in an area would be an example of steering.
45. Preying on the racial fears of the inhabitants of a neighborhood is panic pedaling or block busting.
46. It is legal to advertise no pets allowed.
47. The licensee should make all the units that are available, available to a handicap tenant, not just handicap units or first floor units.
48. Redlining is refusing to make loans in an area because the area is populated by minorities.

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

50. 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.

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

52. 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.

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

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

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

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

57. The ADA affects public accommodations and commercial facilities.

58. The Fair Housing Act affects residential properties.

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.

