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AHI REAL ESTATE & INSURANCE SERVICES
PROFESSIONAL & FINANCIAL SERVICES

APPROVED
CONTINUING EDUCATION
COURSE

LICENSE LAW & ESCROW

(CORE CURRICULUM - PART A)

3 CREDIT HOURS

HOME STUDY PROGRAM

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PUBLISHER'S NOTE

Important Notice

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INTRODUCTION

The goal of Real Estate License Laws is to protect the public. Today, all 50 states, the District of Columbia, all Canadian Provinces and several other countries throughout the world regulate the activities of real estate licensees. The purposes of Real Estate Laws are, not only to regulate the Real Estate Profession, but also, to protect the consumer. This is accomplished by establishing minimum levels of competency and setting limits on behavior.

Laws make sure that the rights of purchasers, sellers, tenants, and owners are protected. Laws make the real estate market a place for the consumer to do business with the confidence that honesty and integrity is being practiced.

Each state has a licensing authority, which enforces the real estate laws, has the power to issue licenses and makes information available to real estate licensees and the public.

Illinois has had a Real Estate License Act since January 1, 1921. Ironically, Chicago first began to license real estate agents in 1874 and in 1884 the Illinois Supreme Court heard and obtained a conviction for the unlicensed practice of real estate.

On April 1, 2004 Governor Rod R. Blagojevich signed an Executive order consolidating the Departments of Financial Institutions, Professional Regulation, Insurance and the Office of Banks and Real Estate into the **Illinois Department of Financial and Professional Regulation, which is called IDFP**. Today the Real estate Profession has been moved to the Division of Professional Regulations within the IDFP. For all Real Estate information you can obtain it on the website at <http://www.idfpr.com/dpr/re/realmain.asp> or go to www.IDFPR.com and then select Professional Regulations and then the Real Estate Profession you are seeking information.

THE REAL ESTATE PROFESSIONS

The Real Estate Professions administer over 90,000 licenses for real estate brokers, salespersons, and leasing agents, real estate corporations, partnerships, limited liability companies and branch offices, real estate pre-license schools, branch schools, instructors and continuing education schools, instructors and courses. The real estate appraisal administration division administers approximately 8,000 licenses for appraisers and education providers and courses. In addition, the bureau is responsible for the registration and regulation of over 800 timeshare and land sales projects marketed to Illinois residents. The auction division administers over 1,600 licenses for auctioneers, auction firms, continuing education schools and courses, and internet auction listing services. As of January 1, 2003, the bureau began regulating home inspectors. The home inspector section administers over 2,000 licenses for home inspectors, home inspector entities, education providers and courses.

THE REAL ESTATE ADMINISTRATION AND DISCIPLINARY BOARD

The Real Estate Administration and Disciplinary Board makes recommendations to the Commissioner and DPR on questions concerning standards of professional conduct, discipline, and examination of license candidates.

The DPR cannot take disciplinary actions against a licensee without a written report of recommendation from the board.

THE ADVISORY COUNCIL

The Advisory Council recommends criteria for the licensing of pre-license schools, pre-license instructors, continuing education schools, and continuing education instructors; review applications for licenses to determine if the applicants meet the qualifications for licensure established in the Act and by rule; approve pre-license school and continuing education curricula; and make recommendations to the Board regarding rules to be adopted for the administration of the education provisions of this Act.

THE REAL ESTATE LICENSE ADMINISTRATION FUND

The Real Estate License Administration Fund is created in the State Treasury. All fees received by the DFPR under this Act are deposited in the Real Estate License Administration Fund. The moneys deposited in the Real Estate License Administration Fund are appropriated to the DFPR for expenses of the DFPR and the Board in the administration of the Act and for the administration of any Act administered by the DFPR providing revenue to this Fund. Upon the completion of any audit of the DFPR, the DFPR must make the audit open to inspection by any interested person.

THE REAL ESTATE RECOVERY FUND

The Real Estate Recovery Fund is created in the State Treasury. The sums received by the DFPR pursuant to the provisions of the Act must be deposited into the State Treasury and held in the Real Estate Recovery Fund. At any time, if the balance remaining in the Real Estate Recovery Fund is less than \$750,000, the State Treasurer shall make transfer of moneys to the Real Estate Recovery Fund from the Real Estate License Administration Fund in an amount necessary to establish a balance of \$800,000 in the Real Estate Recovery Fund

THE REAL ESTATE RESEARCH AND EDUCATION FUND

A special fund known as the Real Estate Research and Education Fund was created and is held in trust in the State Treasury. Annually, on September 15th, the State Treasurer causes a transfer of \$125,000 to the Real Estate Research and Education Fund from the Real Estate License Administration Fund. The Real Estate Research and Education Fund is administered by

the DFPR. Money deposited in the Real Estate Research and Education Fund may be used for research and education at state institutions of higher education or other organizations for research and the advancement of education in the real estate industry. Of the \$125,000 annually transferred into the Real Estate Research and Education Fund, \$15,000 must be used to fund a scholarship program for persons of minority racial origin who wish to pursue a course of study in the field of real estate.

OUR LICENSE LAW TODAY

On July 22, 1999, Governor George Ryan signed House Bill 902, The Real Estate License Act of 2000. This bill became law on December 31, 1999. This law was written in a new format, which makes it much easier to understand and follow.

On Thursday, August 19, 2004, Governor Rod R. Blagojevich signed into law Senate Bill 2887. Following is a summary of this Senate Bill, which contains several important revisions to the Real Estate License Act.

- **Deletes the “grandfather clause”** for continuing education, which had exempted licensees continuously licensed since January 1, 1977 from the continuing education requirement.
Note: Those “grandfathered” Brokers renewing their license in 2006 will need to complete 12 hours of continuing education, 6 Hours in CORE Courses and 6 Hours in Elective Courses licensed by the IDFPR.
- Requires real estate brokers to take an additional 6 hours of continuing education every two years dealing specifically with broker-management issues.
Note: Based on the Department of Financial and Professional Regulations 6 hours must be taken during the period between 5/01/06 and **before renewal in 2008.**
- **Beginning 5/01/06**, new broker licensees will be required to complete a 6-hour broker management course within 180 days of initial licensure. Brokers receiving an initial broker license 90 days or less before the renewal date do not have to take the additional hours for that renewal period but must complete the 6 hours within 180 days of receiving a broker’s license.
- Allows the Real Estate Profession, Department of Professional and Financial Regulation, the option of contracting with a provider to develop one uniform broker management continuing education course that will be offered by all continuing education course providers.
- Provides that brokers receiving an initial broker license 90 days or less before the renewal date do not have to take the additional hours for that renewal period.
- Allows a broker to change license status to “salesperson” at any renewal date.
 - In Sec. 15-75 “**exclusive brokerage agreement**” is defined. **The definition of an “Exclusive Brokerage Agreement”** includes the minimum requirements for ANY Exclusive Brokerage Agreement whether for seller, buyer, lessor, or lessee.
 - ✓ **All exclusive brokerage agreements** must specify that the sponsoring broker, through one or more sponsored licensees, must **provide at a minimum, the following services:**
 - ✓ accept delivery of **and present to the client offers and counteroffers** to buy, sell, or lease the client’s property or the property the client seeks to purchase 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.
 - ✓ This is effective for all exclusive brokerage agreements signed after August 19, 2004. The failure of a broker to provide such services would constitute a violation of the Real Estate License Act.
- Deletes the exemption from taking pre-license courses for individuals who have a bachelor or master’s degree that includes courses involving real estate.
- **NOTE – ALL real estate licensees renewing for the first time should confirm their license date on the state website: www.idfpr.com and how many continuing education hours are required.**

ALL THE INFORMATION IS AVAILABLE ON THE WEBSITE.

Test Your Knowledge

- T F 1. The state is required to notify real estate licensees of real estate license law changes.
- T F 2. The Department of Professional Regulations within The Illinois Department of Financial and Professional Regulations regulates Real Estate licenses.
- T F 3. The exemption from continuing education for licensees licensed prior to January 1977 no longer applies.
- T F 4. Several important changes to the Real Estate License Law was signed by the governor in August 2004.
- T F 5. The maximum fine for practicing real estate without a license or on an expired license is \$10,000.
- T F 6. Continuing Education is not required for a salesperson or broker on their first renewal.
- T F 7. As of May 1, 2006 a newly licensed broker will not be allowed to open an office until additional education is completed.
- T F 8. Licensed real estate brokers will be required to complete 18 hours of continuing education by the renewal period for 2008.
- T F 9. A broker is allowed to change their status to a salesperson license at renewal time.

Answers

True = 2, 3, 4,8, 9

False = 1,5,6,7

REAL ESTATE LICENSING & EDUCATION

WHO IS REQUIRED TO HAVE A REAL ESTATE LICENSE?

Anyone who performs any of the following services for another and for **compensation** either directly or indirectly.

- Sells, exchanges, purchases, rents, or leases real estate.
- Offers to sell, exchange, purchase, rent, or lease real estate.
- Negotiates, offers, attempts, or agrees to negotiate the sale, exchange, purchase, rental, or leasing of real estate.
- Lists, offers, attempts, or agrees to list real estate for sale, lease, or exchange.
- Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or improvements thereon.
- Supervises the collection, offer, attempt, or agreement to collect rent for the use of real estate.
- Advertises or represents himself or herself as being engaged in the business of buying, selling, exchanging, renting, or leasing real estate.
- Assists or directs in procuring or referring of prospects, intended to result in the sale, exchange, lease, or rental of real estate.
- Assists or directs in the negotiation of any transaction intended to result in the sale, exchange, lease, or rental of real estate.
- *Opens real estate to the public for marketing purposes.*

IS A PROPERTY MANAGER REQUIRED TO HAVE A REAL ESTATE LICENSE IN ILLINOIS?

Property management activities that involve general administration, like contracting for property maintenance (garbage pick-up, etc.) and paying general expenses (utilities, etc.), do NOT require a real estate license. Serving as an accountant for association dues also does not require a real estate license.

Only those property management activities that involve a conveyance of real estate by contract or lease require a real estate license. Accordingly, **property management activities that require a real estate license include: showing a unit for sale or lease, negotiating lease or real estate contract terms, maintaining security deposits, rent payments or earnest money deposits.**

DEFINITION OF COMPENSATION

In the Real Estate License Law of 2000 Compensation is defined as: 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:

- commissions;

- referral fees;
- bonuses;
- prizes;
- merchandise;
- finder fees;
- performance of services;
- coupons or gift certificates;
- discounts;
- rebates;
- a chance to win a raffle, drawing, lottery, or similar game of chance not prohibited by any other law or statute;
- retainer fee; or
- salary.

PAYING REFERRAL FEES

It is legal for an Illinois licensee to pay or receive a referral fee to/from **another Illinois real estate licensee**. It is also legal for an Illinois real estate licensee to pay or receive a referral fee to/from a person who has a real estate license in another state

IT IS ILLEGAL FOR AN ILLINOIS REAL ESTATE LICENSEE to pay a fee for the referral of a real estate client to any individual or business entity **that does not have a real estate license**. For example, an Illinois real estate licensee cannot pay a referral fee to an unlicensed friend or neighbor. Nor can an Illinois real estate licensee pay a referral fee to an unlicensed professional otherwise involved in real estate transactions, e.g., to an unlicensed employee of a mortgage company.

One of the top complaints to the IDFPR is regarding the unlicensed practice of real estate. Paying a referral fee to an unlicensed individual would be a violation.

WHO IS EXEMPT FROM A REAL ESTATE LICENSE?

Exemptions from the license requirement are set forth in Section 5-20 of the Act. In other words, some individuals and entities who engage in the ***"PRACTICE OF REAL ESTATE"*** in Illinois do not need to obtain a real estate license from IDFPR.

Included in the exemptions are owners of real estate and the employees of the owners of real estate. See Section 5-20(1) of the Act. Accordingly, owners of real estate and their employees may advertise the sale or lease of their property and negotiate real estate contracts and leases without a license.

NOTE that for this exemption to apply:

- the "practice of real estate" must be limited to those properties "owned,"
- the employment relationship **must be per a "W-2" wage basis, not per an independent contract basis**, and
- the employer must hold title to the real estate, NOT just have a financial interest in the real estate (there must be a direct connection between the unlicensed employee and the holder of title).

Also included in the exemptions are (i) attorneys acting under an executed and recorded power of attorney and (ii) attorneys whose services for a real estate consumer are limited to the practice of law. See Section 5-20(2) of the Act. Note that attorneys who engage in the practice of real estate must obtain a real estate license (attorneys are exempt from the pre-license education but attorneys still must pass the exam and obtain a real estate license to practice real estate).

WHAT ARE THE REQUIREMENTS FOR OPERATING A REAL ESTATE OFFICE?

The following is the IDFPR's answer to this question on their website at www.IDFPR.com

The scope of this question is very broad. All brokers operating their own real estate brokerage business should carefully review the Act and Rules. By way of overview, consider the following:

- In the case of corporations, partnerships, and LLCs, the main office and each branch office must be licensed. The main office for a sole proprietor does not need a main office license (the individual broker license of the sole proprietor constitutes the main office license) but each branch office of a sole proprietorship must have a branch office license.
- Every real estate office must have a managing broker of record. The managing broker does not need to be the owner of the business. **The same individual who serves as the managing broker of a main office may serve as the managing broker of each branch office**, or a different individual may serve as the managing broker of some or all of the branch offices. **The managing broker of each office is responsible for the supervision of all of the real estate activities performed by the office.** See Rule 1450.130

- ✓ **NOTE** - The same broker may NOT serve as the managing broker for multiple offices under different sponsoring broker licenses. For example, the same broker cannot serve as the managing broker of the main offices of two broker corporations.
- **The license of every sponsored licensee must be displayed in the office.** The "display" of a license may be satisfied by hanging the license on a wall in the office that is open to the public, or by including the license in an album or binder which is kept on a desk or shelf in the office that is accessible to the public. See Rule 1450.155.
- **Each office must have a "sign."** The sign must be outside the office and must be of a size and nature that will be reasonably readable by the public (a listing on a building directory fulfills this requirement). The sign must include the name of the sponsoring broker. The sign must be professional in appearance and meet all applicable zoning restrictions and restrictive covenants - in other words, if you live in a subdivision that does not allow commercial signs, you CANNOT maintain your office out of your home. **Each branch office must also have a sign that meets with these same requirements.** The sign for the branch office should include the same name as the main office or clearly delineate the branch office's relationship with the main office (e.g. "Affiliated with"). See Rule 1450.150.
- Consumers and clients must be welcome in the office.
- **The managing broker must maintain all of the required records at the office.** Please see Rule 1450.180 for record keeping requirements. The required records include a written employment agreement with each sponsored licensee. See Rule 1450.160. If escrow monies are maintained, the managing broker must ensure that the proper Consent to Audit forms are filed with the Licensing Department in Springfield and must ensure compliance with every provision of the Escrow Rule 1450.175.
- Other businesses may be operated out of the same office location. However, **the real estate business must be physically separated from the other businesses.** The intention here is to ensure that real estate consumers know where they can meet with their real estate broker and know where their real estate records will be maintained. The real estate business may use a shared reception area and may use other common areas at a multi-business location.
- Any changes in sponsoring brokers must be reported to the DFPR in writing within 15 days of the change. Failure to do so shall subject the sponsoring broker to discipline. The sponsoring broker shall immediately notify the DFPR in writing of any opening, closing, or change in location of any principal or branch office.

LEASING AGENT LICENSE


The Act provides for a Limited Scope License to enable individuals who wish to engage in activities limited to the leasing of residential real property. Every person who desires to obtain a leasing agent license shall apply to the DFPR in writing on forms provided by the DFPR.

LEASING AGENT APPLICANT:

- Must be at least 18 years of age.
- Must be of good moral character.
- High school diploma or GED or its equivalent.
- Must successfully complete 15 hours of instruction in an approved course of study relating to the leasing of residential real property. Must meet all prescribed continuing education requirements during the renewal period.
- License expire on July 31st, of the even years.

A leasing agent license shall allow the licensee to engage only in residential leasing activities. Such activities include but are not limited to leasing or renting residential real property, attempting, offering, or negotiating to lease or rent residential real property, or supervising the collection, offer, attempt, or agreement to collect rent for the use of residential real property. Licensed leasing agents must be sponsored and employed by a sponsoring broker.

The Act allows a person to engage in residential leasing activities **for a period of 120 consecutive days without being licensed. That person must be acting under the supervision of a licensed real estate broker and the broker is required to register that individual with the DFPR on the form required** (See EXP 1) and also paid the fee for their registration. During the 120-day period all requirements of the Act with respect to education, successful completion of an examination, and the payment of all required fees must be satisfied.

	120-DAY STUDENT LEASING AGENT PERMIT/APPLICATION ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION 500 East Monroe, Suite 200 Springfield, Illinois 62701-1509 Real Estate Licensing 217/782-3414
120-DAY STUDENT LEASING AGENT PERMIT/APPLICATION	
STUDENT LEASING AGENT INFORMATION (Note: Must be submitted within 24 hours of employment)	
NAME _____	SOC SEC NO. _____
MAILING ADDRESS _____	
CITY, COUNTY, STATE, ZIP CODE _____	
DATE OF BIRTH _____	TELEPHONE NO. (___) ___ - ____
SPONSOR/FIRM INFORMATION	
SPONSOR NAME _____	LICENSE NO. _____
D/B/A (IF APPLICABLE) _____	
MAILING ADDRESS _____	
CITY, STATE, ZIP CODE _____	
TELEPHONE NUMBER (___) ___ - ____	
<p>I/We certify that the Student Leasing Agent Applicant is at least 18 years of age, has not been a Student Leasing Agent within the past 2 years, and has a high school diploma or an equivalent course of study (i.e., GED). I/We further certify that the Student Leasing Agent Applicant shall be subject to the standards of practice and disciplinary provisions of a Leasing Agent licensee and the Managing Broker shall be responsible for the activities and actions of the Student Leasing Agent as if the Student Leasing Agent was a Leasing Agent licensee.</p>	
_____ Student Leasing Agent Signature	_____ Managing Broker Signature
_____ Date	_____ Managing Broker License No.
\$25 Fee Payable to the Illinois Department of Financial and Professional Regulation is required with this Form.	
<small>500 EAST MONROE STREET • SPRINGFIELD, ILLINOIS • 62701-1509 • PHONE: 217-785-9300 • FAX: 217-782-3390 • TDD: 217-524-6644 http://www.idfpr.com</small>	
<small>IL 505-0362 (Revised 7/04)</small>	

BROKER OR SALESPERSON LICENSE

Every person who desires to obtain a license must make application to the IDFPR in writing upon forms prepared and furnished by the IDFPR. In addition to any other information required to be contained in the application, every application for an **original or renewed** license must include the applicant's Social Security number.

The requirements to obtain a salesperson or broker's license are that an individual must:

- Must be at least 18 years of age.
 - Must be of good moral character.
 - High school diploma or GED or its equivalent.
 - The minimum age of 21 years shall be waived for any person seeking a license and has attained the age of 18 and can provide evidence of the successful completion of at least 4 semesters of post-secondary school study as a full-time student or the equivalent, with major emphasis on real estate courses, in a school approved by the DFPR.
-
- An applicant for a **Salesperson's License** must successfully complete 45 credit hours of instruction in an approved Real Estate Transaction Course.
 - An applicant for a **Broker's License** must successfully complete **120 credit hours** of instruction in approved courses. Credit shall be given for class hours successfully completed in the following manner:
 - ✓ 45 credit hours for a Real Estate Transactions course;
 - ✓ 75 credit hours of Broker's courses which consist of 5 – 15 hours courses 3 mandatory and 2 electives.

- ❑ The educational requirements specified above do not apply to applicants who:
 - ✓ are currently admitted to practice law by the Supreme Court of Illinois and are currently in active standing; or
 - ✓ An applicant for a broker license who is licensed as an Illinois real estate salesperson is presumed to have completed a 45 credit hour Real Estate Transactions course provided that the licensee has not been non-renewed for two years or more.
- ❑ Approved education shall be valid for 3 years after the date of satisfactory completion of the education.
- ❑ If a person who has received a passing score on the written examination fails to file an application and meet all requirements for a license under the License Act **within one year** after receiving the passing score; credit for the examination shall terminate. The applicant would have to retake the examination.
- ❑ If an applicant fails the examination 3 times, the applicant must repeat the pre-license education required to sit for the examination.

NOTE: AS OF AUGUST 19, 2004 INDIVIDUALS HOLDING A BACHELOR OR MASTER'S DEGREE ARE NO LONGER EXEMPT FROM THE PRELICENSING EDUCATION.

SPONSOR CARD

A Sponsor Card or 45-Day Permit (See EXP 2) must accompany every valid application for issuance of an initial license and the fees. No applicant shall engage in any of the activities covered by the Act until a valid sponsor card has been issued to the applicant. The sponsor card shall be valid for a maximum period of 45 days from the date of issuance unless extended for good cause.

The sponsoring broker shall issue a sponsor card to an individual only in the following instances:

- Upon presentation of a real estate examination pass score report which states that the broker may issue a sponsor card;
- Upon presentation of an original license endorsed by the broker by whom the licensee was previously employed or with whom the licensee was previously associated; or
- Upon presentation of a license expired for less than 2 years.

The sponsoring broker is responsible to provide the Sponsor Card (45 Day Permit) on forms provided by the DFPR and deliver to each licensee employed by or associated with the sponsoring broker a copy of the sponsor. The sponsoring broker must send, by certified mail, return receipt requested, or other delivery service requiring a signature upon delivery, a duplicate of each sponsor card, along with a valid license or other authorization as provided by the rule and the appropriate fee, to the DFPR within 24 hours of issuance of the sponsor card. It is a violation of the Act for any broker to issue a sponsor card to any licensee or applicant unless the licensee or applicant presents a valid license or other authorization as required.

HOW TO TERMINATE A SPONSORED LICENSE


In order to terminate sponsorship, the sponsoring broker should:

- Sign the license of the sponsored licensee, indicate "terminated," and mark the date of the termination.
- **Submit a copy of the endorsed license to IDFPR within 2 business days after termination by signature restricted mail delivery.**
- Retain a copy of the endorsed license at least until the next renewal date; and
- Give **THE ORIGINAL ENDORSED LICENSE TO THE LICENSEE.**

In most cases, the managing broker of the office will be responsible for the endorsement required of the sponsoring broker. However, in the event the managing broker is unavailable, any broker authorized to sign on behalf of the sponsoring broker may provide the endorsement. Either the sponsoring broker or the sponsored licensee may demand the endorsement of the licensee. Failure of the sponsoring broker to endorse the license upon demand may subject the sponsoring broker (or managing broker) to discipline. The reason for this is DFPR has complete jurisdiction over each license. However, the endorsement should not preclude either the sponsoring broker or sponsored licensee from pursuing any right or obligation pursuant the terms of the written employment agreement, or pursuant to any other civil remedy. See Section 5-40(b) of the Act and Rule 1450.75

INOPERATIVE LICENSE

Only persons holding valid pocket or sponsor cards are entitled to engage in any manner as a licensee. **UPON TERMINATION OF ASSOCIATION WITH A BROKER, THE LICENSEE'S LICENSE BECOMES INOPERATIVE AND UNTIL A NEW SPONSORING BROKER IS SECURED, THE PRACTICE OF REAL ESTATE IS UNLAWFUL.**

**45-DAY PERMIT SPONSOR CARD**

ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION
500 East Monroe, Suite 200
Springfield, Illinois 62701-1509
Real Estate Licensing 217/782-3414

45-DAY PERMIT SPONSOR CARD
If you will be self-sponsored you must complete the 45-day permit on your own behalf.
This form is required to be completed in order to apply for licensure as a Salesperson, Broker or Leasing Agent.

EMPLOYEE INFORMATION (Note: Must be submitted within 24 hours of Issuance)

CURRENT DATE _____ LICENSE NO. _____
NAME _____ SOC SEC NO. _____
DBA(if applicable) _____
MAILING ADDRESS _____
CITY, COUNTY, STATE, ZIP CODE _____
TELEPHONE NUMBER (____) ____ - ____ - ____ SEX _____
BROKER SALESPERSON LEASING AGENT

SPONSOR/FIRM INFORMATION

SPONSOR NAME _____ LICENSE NO. _____
D/B/A (IF APPLICABLE) _____
MAILING ADDRESS _____
CITY, STATE, ZIP CODE _____
TELEPHONE NUMBER (____) ____ - ____ - ____
BY _____ LICENSE NO. _____
MANAGING BROKER SIGNATURE

Retain two copies, one for the sponsor and one for the employee.
If you have any questions, please contact our office at 217/782-3414.

Return Original To:
Illinois Department of Financial and Professional Regulation
500 E. Monroe, Suite 200
Springfield, Illinois 62701-1509

500 EAST MONROE STREET • SPRINGFIELD, ILLINOIS 62701-1509 • PHONE: 217-785-9300 • FAX: 217-782-3390 • TDD: 217-524-6644
http://www.idfpr.com

IL 505-0345 (Revised 7/09)

EMPLOYMENT AGREEMENTS

The License Law and the Rules requires the sponsoring broker to have a written employment agreement with each licensee sponsored by the broker, **even if they are employees**, which includes licensed personal assistants. This written agreement should detail the relationship between the broker and the personal assistant, including the responsibilities of the salesperson for which the personal assistant works.

This agreement must be in writing and must be dated and signed by the parties. At the minimum, this agreement must include:

- supervision,
- duties,
- compensation,
- duration*

***Duration** is not intended to require a specific termination date, but rather allow the parties to negotiate the term of the agreement, such as "at will", or a specific length of time, and how the agreement is renewed or terminated, and that these provisions be included in the agreement.

- The employing broker shall give to every employee and independent contractor a copy of the employment agreement and any modifications.
- A licensee may perform activities as a licensee only for his or her sponsoring broker. A licensee must have only one sponsoring broker at any one time.
- Every sponsoring broker must have a written employment agreement with **every** licensee (leasing agent, salesperson, broker) they sponsor, even if they are employees.
- Every sponsoring broker must have a written employment agreement with **each licensed personal assistant** that assists a licensee sponsored by the sponsoring broker. This requirement applies to all licensed personal assistants whether or not they perform licensed activities in their capacity as a personal assistant. The agreement must address the employment or independent contractor relationship terms, as stated above.

UNLICENSED PERSONAL ASSISTANTS

An Unlicensed Assistant may not engage in licensed activities.

The following list is intended to be illustrative and declarative of the Act and is not intended to increase or decrease the scope of activities for which a license is required under the Act. **An unlicensed assistant of a licensee may:**

- answer the telephone, take messages, and forward calls to a licensee;
- submit listings and changes to a multiple listing service;
- follow up on a transaction after a contract has been signed;
- assemble documents for a closing;
- secure public information from a courthouse, sewer district, water district, or other repository of public information;
- have keys made for a company listing;
- draft advertising copy and promotional materials for approval by a licensee;
- place advertising;
- record and deposit earnest money, security deposits, and rents;
- complete contract forms with business and factual information at the direction of and with approval by a licensee;
- monitor licenses and personnel files;
- compute commission checks and perform bookkeeping activities;
- place signs on property;
- order items of routine repair as directed by a licensee;
- prepare and distribute flyers and promotional information under the direction of and with approval by a licensee;
- act as a courier to deliver documents, pick up keys, etc.;
- place routine telephone calls on late rent payments;
- schedule appointments for the licensee (this **does not include** making phone calls, telemarketing, or performing other activities to solicit business on behalf of the licensee);
- respond to questions by quoting directly from published information;
- sit at a property for a broker tour which **is not open** to the public;
- gather feedback on showings; and
- perform other administrative, clerical, and personal activities for which a license under the Act is not required.

An unlicensed assistant of a licensee may not perform the following activities for which a license under the Act is required. The following list is intended to be illustrative and declarative of the Act and is not intended to increase or decrease the scope of activities for which a license is required under the Act. An unlicensed assistant of a licensee **may not:**

- host open houses, kiosks, or home show booths or fairs;
- show property;
- interpret information on listings, titles, financing, contracts, closings, or other information relating to a transaction;
- explain or interpret a contract, listing, lease agreement, or other real estate document with anyone outside the licensee's company;
- negotiate or agree to any commission, commission split, management fee, or referral fee on behalf of a licensee;
or
- perform any other activity for which a license under the Act is required.

An Unlicensed Assistant may be employed directly by the licensee being assisted. The licensee being assisted is responsible for the actions of the Unlicensed Assistant.

Compensation for an Unlicensed Assistant does NOT need to pass through the sponsoring broker of the licensee being assisted.

REMEMBER THE LICENSEE WHO HIRED THE UNLICENSED INDIVIDUAL IS THE ONE RESPONSIBLE.

Amendments of the Administrative Rules, which went into effect July 2003 state:

A licensee is prohibited from acting as an unlicensed assistant for any licensee other than his or her sponsoring broker or a licensee sponsored by the sponsoring broker.

LICENSED PERSONAL ASSISTANTS

Licensed Personal Assistants must be sponsored by the same broker that sponsors the licensee being assisted. The license of the Licensed Personal Assistant must be displayed in the office of the sponsoring broker.

The sponsoring broker must have a written employment agreement with the Licensed Personal Assistant. The written employment agreement must set forth the employment or independent contractor terms, supervision, duties, compensation and termination terms. See Section 10-20(d) of the Act.

ALL COMPENSATION EARNED BY THE LICENSED PERSONAL ASSISTANT MUST BE PAID THROUGH THE SPONSORING BROKER. See Section 10-5(c) of the Act.

A License Personal Assistant MAY serve as an assistant to a licensee sponsored by a broker AND actively practice real estate for the same sponsoring broker.

A Licensed Personal Assistant may NOT assist a licensee sponsored by one broker and also practice real estate for another sponsoring broker.

THIS PROHIBITION APPLIES EVEN IF THE "ASSISTANT" DUTIES ARE ONLY ADMINISTRATIVE OR CLERICAL.

PAYMENT OF COMPENSATION TO LICENSEES

The Act also provides that a licensee employed by a broker shall only accept compensation (**any form-including salaries**) for licensed activities from the broker by whom the licensee is employed. Thus, the licensed personal assistant **cannot** be paid for licensed activities by the salesperson that uses that personal assistant. The broker accepts responsibility for not only the supervision of those licensees sponsored by the broker, but also for personal assistant.

A CORPORATION FOR INDIRECT PAYMENT OF COMPENSATION

If properly set up, a sponsoring broker may pay compensation earned by a licensee directly to the corporation rather than to the licensee individually.

Note the following:

- It is a corporation, and therefore the licensee **must register the corporation with the Illinois Secretary of State**. Questions on how to register the corporation should be placed to the Illinois Secretary of State, not the IDFPR.
- The licensee must be the **SOLE** shareholder of the corporation. Accordingly, licensees who are related (ex. husband/wife) **or who work together as a team may NOT use the same corporation for receipt of each licensees' compensation.**
- After the corporation is registered with the Illinois Secretary of State, the licensee must file a copy of the certificate of incorporation with the IDFPR's Licensing Department in Springfield.
- The corporation does **NOT** require a real estate broker corporation license issued by IDFPR.
- **The licensee may NOT use the corporation to perform real estate activities, associate other licensees with the corporation, or advertise to the public under the corporation's name.**
- The licensee may use the corporation for receiving compensation earned by the licensee arising out of activities unrelated to the practice of real estate.

PAYMENT OF COMPENSATION TO UNLICENSED INDIVIDUALS

The Real Estate License Act authorizes the offer or payment of compensation ("cash, gifts, prizes, awards, coupons, merchandise, rebates or chances to win a game of chance") to a consumer as an inducement to that consumer to use the services of a licensee, even if the consumer and licensee ultimately do not enter into a client relationship. Any advertisement under this Section must also comply with all requirements regarding real estate advertisements.

All advertising incentives must clearly state any and all conditions of the incentive in the advertisement.

CAUTION - offering compensation to unlicensed individuals for referrals of clients – IS AGAINST THE LAW.

CORPORATIONS, LIMITED LIABILITY COMPANIES, PARTNERSHIPS, AND LIMITED PARTNERSHIPS

A licensed real estate broker may practice as a sole proprietor, partnership, corporation, or Limited Liability Company if prior to doing business the broker complies with the licensing requirements for partnerships, corporations or limited liability companies. Anyone who desires to practice real estate in Illinois in the form of a corporation, limited liability company, or partnership shall, file an application with the DFPR, on forms provided by the DFPR.

No partnership, limited liability company, or corporation shall be licensed to conduct a brokerage business where an individual salesperson or leasing agent, or group of salespersons or leasing agents, owns or directly or indirectly controls more than **49%** of the shares of stock or other ownership in the partnership, limited liability company, or corporation.

CORPORATIONS

Corporations, in addition to the items listed above shall submit the following:

- ◆ The name of the corporation and its registered address, a list of all officers, and the license number for each officer who is licensed as a real estate broker;
- ◆ A copy of the Articles of Incorporation bearing the seal of the office, in the jurisdiction in which the corporation is organized, whose duty it is to register corporations under the laws of that jurisdiction. If it is a foreign corporation, a copy of the certificate of authority to transact business in this State is also required;

- ◆ All unlicensed officers shall submit affidavits of non-participation with the corporation application. **Licensed salespersons shall not be officers** of the corporation even if they submit an affidavit of non-participation; and
- ◆ A list of all shareholders, the number of shares of the corporation owned and the license number for each shareholder that is a licensee.

LIMITED LIABILITY COMPANIES

Limited Liability companies, in addition to the items listed in the first section shall submit the following:

- ◆ The name of the limited liability company and its registered address, a list of all members, and the license number for each member who has an Illinois real estate license. If a member of the limited liability company is a business entity, the applicant shall identify any licensees who are owners, officers, managers, or partners of the business entity;
- ◆ A list of all managers and their broker license numbers;
- ◆ A copy of the Articles of Organization filed with the Secretary of State or, if it is a foreign limited liability company, a copy of the application for admission endorsed by the Secretary of State.
- ◆ All unlicensed members shall submit with the limited liability company application affidavits of non-participation. Licensed salespersons shall not be managers of the limited liability company even if they submit an affidavit of non-participation.

PARTNERSHIPS

Partnerships, in addition to the items listed in the first section shall submit the following:

- ◆ An application containing the name of the partnership and its business address and the names of all general partners, and the broker license number of each general partner. Licensed salespersons shall not be general partners.
- ◆ An affidavit stating that the partnership has been legally formed.

LIMITED PARTNERSHIPS

Limited Partnerships, in addition to the items listed in the first section shall submit the following:

- ◆ A letter of authority from the Secretary of State's Limited Partnership Department or, if it is a foreign limited partnership, a copy of the application for admission endorsed by the Secretary of State;
- ◆ A listing of all general partners and, if any general partner is a real estate licensee, the broker license number for each licensed general partner;
- ◆ All unlicensed general partners must submit with the partnership application affidavits of non-participation; and
- ◆ If the general partner is an entity, the identity and license number of any brokerage licenses who are owners, managers, members, or partners of the entity.

Upon receipt of the above documents and review of the application, the DFPR shall issue a license authorizing the corporation, limited liability company, or partnership to engage in the practice of real estate or shall notify the applicant of the reason for the denial of the license.

ASSUMED NAME

Registration for an assumed business name is **REQUIRED ANY TIME** a real estate business is marketed to the public under a name that is IN ANY WAY different than the name appearing on the sponsoring broker license. The sponsoring broker is **REQUIRED** to register the ASSUMED NAME. Registration must first be made in each county in Illinois in which the sponsoring broker is doing business. Copies of the registration documents must then be filed with the IDFPR Licensing Department in Springfield. See Rule 1450.90.

NON-RESIDENT LICENSE

The DFPR may issue a broker's or salesperson license to a licensed broker or salesperson under the laws of another state, under the following conditions:

- ✓ the broker holds a broker's license in his or her state of residence; the salesperson maintains an active license in the state in which he or she resides
- ✓ the standards for that state for licensing as a broker are substantially equivalent to or greater than the minimum standards in the State of Illinois;
- ✓ the broker has been actively practicing as a broker in the broker's state of residence for a period of not less than 2 years, immediately prior to the date of application;
- ✓ the salesperson is domiciled in the same state as the broker with whom he or she is associated;
- ✓ the broker furnishes the DFPR with a statement under seal of the proper licensing authority of the state in which the broker is licensed showing that the broker has an active broker's license, that the broker is in good standing, and that no complaints are pending against the broker in that state;
- ✓ The non-resident broker with whom the salesperson is associated shall comply with the provisions of the Act and issue the salesperson a sponsor card upon the form provided by the DFPR.
- ✓ the broker or sale person completes a course of education and passes a test on Illinois specific real estate brokerage laws.
- ✓ **DFPR** has a reciprocal agreement with that state that includes all of the provisions of this section.

As a condition to the issuance of a license to a non-resident broker or salesperson, the broker or salesperson must agree in writing to abide by all the provisions of the Act with respect to his or her real estate activities within the State of Illinois. The agreement shall be filed with the DFPR and shall remain in force for as long as the non-resident broker or salesperson is licensed by the State of Illinois.

- ❑ Prior to the issuance of any license to any non-resident, verification of active licensure issued for the conduct of such business in any other state must be filed with the DFPR by the non-resident, and the same fees must be paid for obtaining of a broker's or salesperson's license in this State. Licenses previously granted under reciprocal agreements shall remain in force, unless suspended, revoked, or terminated by the DFPR. Licenses granted under reciprocal agreements may be renewed in the same manner as a resident's license.
- ❑ If the non-resident broker or salesperson does not maintain a definite office or place of business within the State of Illinois, prior to the issuance of a license they must file a written statement, with the DFPR which:
 - ◆ appoints the Commissioner to act as their agent upon whom all judicial and other processes may be served;
 - ◆ acknowledges and agrees to abide by all of the provisions of the Act.
 - ◆ assents to jurisdiction of the DFPR.

Any person holding a valid non-resident license shall be eligible to obtain a resident broker or salesperson's license without examination should that person change their residence to Illinois.

RENTAL FINDING SERVICES

A rental finding service is any business which finds, attempts to find or offers to find, for any person who pays or is obligated to pay a fee or other valuable consideration, a unit of rental real estate or a lessee to occupy a unit of rental real estate, not owned or leased by the business. Any person, association, co-partnership, or corporation that operates a rental finding service must obtain a broker's license and comply with all provisions of the License Act. General circulation newspapers that advertise rental property and leasing contracts between owners or lessors of real estate and registrants are exempt from this rule.

Before accepting a fee or other valuable consideration for the services, a rental finding service must enter into a written contract with the person for whom the services are to be performed and deliver to the individual a copy of the contract.

The contract must include at a minimum, the following provisions:

- ❑ The term of the contract;
- ❑ The total amount to be paid for the services to be performed and a clear designation of the amount paid in advance of the performance of the services;
- ❑ A statement regarding the refund or non-refund of the fee paid in advance, must be in type larger than used in the contract, and must include:
 - the precise conditions, if any, upon which a refund is based;
 - the fact that the conditions shall occur within 90 days from the date of the contract;
 - the fact that the refund shall be paid no later than 10 days after demand, provided the check has been honored;
- ❑ The type of rental unit desired, the geographical area requested, and the rent the prospective tenant is willing to pay;
- ❑ a detailed statement of the rental finding services to be performed (including the disclosures to the tenant listed below);
- ❑ A statement that the contract shall be null and void if the information concerning possible rental units or locations furnished by the licensee is not current or accurate with respect to the type of rental unit desired and described.
- ❑ A listing for a rental unit that has not been available for rent for over two days shall be proof of not being current;
- ❑ A statement that information furnished by the licensee concerning possible rental units may be up to 2 days old;
- ❑ A statement requiring the licensee to refund all fees paid in connection with the contract if the contract is null and void for any reason. The licensee shall not impose any condition for the refund and the contract must state when the refund will be paid.

A rental finding service must provide proper disclosure to prospective tenants. The disclosure must include:

- ❑ The name, address, and the telephone number of the owner of each rental unit, or his authorized agent;
- ❑ A description of the rental unit;
- ❑ The amount of rent requested;
- ❑ The amount of security deposit required;
- ❑ A statement describing utilities which are located in the rental unit and included in the rent;
- ❑ The occupancy date and the term of lease;
- ❑ A statement setting forth the source of the rental information (i.e., owner, agent);
- ❑ All other information, which may reasonably be expected to be of concern to the prospective tenant.

A rental finding service must not list or advertise any rental unit without the express written permission of the owner or agent of each unit.

A licensee who violates any provision of this rule, including failure to refund a finding fee to anyone entitled to a refund, will be said to have demonstrated unworthiness or incompetence as a broker and may be fined or have his or her license refused, revoked or suspended.

LICENSE RENEWALS

This is in the top category of complaints to The IDFPR. Licensees practicing on non-renewed licenses.

All licensees are required to complete 12 hours of continuing education. 6 hours must be in CORE the other 6 hours in elective. Effective with the Brokers renewal of April 2008, all brokers will be required to complete 18 hours for the 2008 renewal.

- The initial salesperson's license was issued **less than one year** prior to the renewal date;
- Effective May 1, 2006, Brokers receiving an initial broker license 90 days or less before the renewal date will not be required to complete CE for that renewal period but must complete the 6 hours Broker Management Course within 180 days of receiving a broker's license.

PLEASE NOTE

ALL Licenses are now required to complete CE.

Note: Brokers renewing their license in 2006 will need to complete 12 hours of continuing education.

- A broker may change their license status to "salesperson" at any renewal date. The DFPR shall conduct random audits to verify compliance.

LICENSE EXPIRATION DATES

- Every **leasing agent license** issued under the Act shall expire on **July 31** of each even numbered year.
- Every **salesperson's license** issued under the Act shall expire on **April 30** of each odd numbered year.
- Every **broker's license** issued under the Act shall expire on **April 30** of each even numbered year. Sponsoring brokers shall also submit a properly completed consent to audit and examine special accounts form.

Every license issued to a corporation, Limited Liability Company, partnership, limited partnership, or branch office under the Act shall expire on **October 31** of each even numbered year.

- ◆ Practicing or offering to practice on an expired or inoperative license shall constitute unlicensed or unauthorized practice and shall be grounds for discipline.

Any licensee whose license under the Act has expired for more than 2 years shall not be eligible for renewal of that license, the individual will have to retake the courses and pass the state exam to obtain a license.

Any licensee whose license has been **expired for less than 2 years** may renew the license at any time by complying with the requirements, paying the fees and providing the DFPR with evidence that the licensee has satisfactorily completed the required continuing education courses, including the continuing education while the license was non-renewed.

If the license is not renewed in a timely manner, then the licensee should not be practicing real estate brokerage. It is that simple. In addition, if a sponsored licensee is practicing on an expired license, the sponsoring broker can be liable for allowing unlicensed practice along with the licensee.

CHANGE OF INFORMATION

It is the **responsibility of each licensee** to immediately notify the DFPR of any change of name, address, or office location. If the licensee regularly practices under a diminutive of their first name (e.g., Meg for Margaret or Mark for Mariusz or Sam for Shamim) or a middle name instead of the licensee's full legal name, the licensee must notify the DFPR of the alternate name. **For proper credit, the licensee must make sure that all continuing education certificates are issued under the name of licensure.**

It is the responsibility of each sponsoring broker to immediately notify the DFPR of any change of business information.

- When a licensee acquires or transfers any interest
- When a licensee becomes an officer or manager of a corporation, limited liability company, partnership, or limited partnership licensed under the Act,
- Any changes in sponsoring brokers, branch or principal offices shall be reported in writing to DFPR within 15 days after the change.

Test Your Knowledge

- T F 1. A licensee can offer gift certificates or other gifts to the consumer as an incentive to do future business with the licensee. All the conditions of the incentive must be in the ad.

- T F 2. A licensee is prohibited from giving a past client a gift certificate to a local restaurant for each buyer or seller referral.
- T F 3. Employees of the owner, selling the owners new construction homes are required to have a real estate license.
- T F 4. An individual failing the State Exam 3 times must repeat all the pre-licensing education.
- T F 5. A leasing agent is not allowed to lease commercial property for the owner.
- T F 6. An applicant for a Broker's License must have completed a total of 120 hours of licensed courses, unless exempt by the DFPR.
- T F 7. A licensee whose license has been expired for 4 years may reinstate their license after paying the required fees.
- T F 8. An applicant for a broker's license must have successfully passed the state exam for a salesperson.
- T F 9. A newly employed licensee is not required to carry a sponsor card until their license is received from the DFPR.
- T F 10. A Broker can manage multiple offices of different real estate corporations at any given time.
- T F 11. Any changes in managing brokers must be reported to the DFPR in writing within 15 days of the change.
- T F 12. Every real estate office is required to have a sign including the sponsoring broker's name.
- T F 13. A licensee, that is an employee, is not required to have a written employment agreement with their sponsoring broker.
- T F 14. An employment agreement a licensee has with their sponsoring broker requires a termination date.
- T F 15. An inoperative salesperson can show property to potential buyers.
- T F 16. A salesperson can form a corporation for compensation and must register this corporation with the Illinois Secretary of State and file a copy of the corporation papers with the IDFPR.
- T F 17. Other licensees on the same team cannot use a corporation that was registered by a licensee for compensation purposes.
- T F 18. The licensee that hires an unlicensed personal assistant is the person responsible for their actions.
- T F 19. A licensed personal assistant of a licensee can be paid their salary from the licensee they work for.
- T F 20. A Licensed Personal Assistant may assist a licensee sponsored by one broker and also practice real estate for another sponsoring broker.
- T F 21. A salesperson can have up to 49% ownership in a real estate corporation but is not allowed to be an officer of the corporation.
- T F 22. Any new non-resident licensee must pass a test on Illinois Real Estate Law.
- T F 23. A licensed real estate broker, who wishes to practice real estate in Illinois in the form of a corporation, must file an application with the DFPR and regularly renew the corporation license and their own license.
- T F 24. In a contract, used by the Rental Finding Service, they are required to have a detailed list of the services they offer.
- T F 25. A licensee that does not receive a renewal form will be granted an extension to renew their license without penalties.
- T F 26. A licensee is not required to notify the DFPR if they regularly practice under an alternative of their first name. (i.e. Meg for Margaret or Sam for Samuel)

- T F 27. The broker renewal period of 2008 requires brokers to complete 18 hours of continuing education in subjects of their choice.
- T F 28. A licensee selling real estate after the expiration of their license is in violation of the Law.
- T F 29. The sponsored licensee will be the only one liable for the unlicensed practice of real estate, when practicing on an expired license.
- T F 30. Rental Finding Services are required by the License Law to enter into written agreements with individuals that they are providing services for.

ANSWERS

True = 1,2,4,5,6,11,12,16,17, 18, 21, 22, 23, 24, 28, 30

False = 3,7,8,9,10,13,14,15, 19, 20, 25, 26, 27,29

ADVERTISING IN REAL ESTATE TODAY

ALL ADVERTISING, by any means, that any property is for sale or for rent, must have the written consent of an owner or his or her duly authorized agent. Licensees must adhere to this no matter what type of media is used. This includes displaying a "for rent" or "for sale" signs on any property or any other form of advertisement.

No advertising shall be fraudulent, deceptive, inherently misleading, or proven to be misleading in practice. It shall be considered misleading or untruthful if, when taken as a whole, there is a distinct and reasonable possibility that it will be misunderstood or will **deceive the ordinary purchaser, seller, lessee, lessor, or owner**. ALL representations in your advertising must be truthful. In other words, you had better be able to deliver the promises that you make in your advertising. Advertising shall contain all information necessary to communicate the information contained therein to the public in a direct and readily comprehensible manner. Deceptive and misleading advertising includes, but is not limited to, the following:

- advertising a property that is subject to an exclusive listing agreement with a sponsoring broker other than the licensee's own without the permission of and identifying that listing broker; and
- failing to remove advertising of a listed property within a reasonable time, given the nature of the advertising, after the earlier of the closing of a sale on the listed property or the expiration or termination of the listing agreement.

ADVERTISING A TEAM NAME

Can a TEAM advertise with the **TEAM name** and NOT the **Sponsoring Broker's name**?

The Real Estate License Act and The Administrative Rules specify that all advertising of a sponsored licensee must be done under the sponsoring Broker's Name. The Real Estate License Act States: *"A sponsored licensee may not advertise under his or her own name. Advertising shall be under the direct supervision of the sponsoring or managing broker and in the sponsoring broker's business name, which in the case of a franchise shall include the franchise affiliation as well as the name of the individual firm."* Also, the content of advertising must not be false, deceptive or misleading in any way.

A group of sponsored licensees operating under an assumed "team name" would be in violation of the Real License Act and The Administrative Rules. The Sponsoring Broker **MUST** Register the Assumed name and assign it to the Team Group within the sponsoring Broker's Office. The Advertisement would need the Sponsoring Broker's Name and the Assumed Team Name because ads must not be deceptive or misleading.

There are other LEGAL issues when operating within an office as a TEAM and the sponsoring broker and "Team Member" should seek legal council.

MISLEADING OR PUFFING?

The following is a list of several promises that a licensee might make in advertising; any of them, if untrue, could subject the licensee to a disciplinary complaint:

- "Completely remodeled"
 - ⇒ Is the property or room **COMPLETELY REMODELED** or partially?
- "Possible in-law"
- "We will sell your home in less than 90 days"
- "Possible Commercial Potential"

With today's technology, there are other forms of misleading and untruthful advertising developing. The use of digital camera and computers has become very popular in the real estate profession. Enhancement of the pictures can be considered misleading, such as:

- Adding landscaping that is not there.
- Expanding the size of the property.
- Removing property located next to the subject property to make a lot appear larger.

The use of digital cameras and computers to make the dark cloudy sky blue, would not be considered misleading, but be cautious of what you change in the pictures.

PUFFERY is a permissible form of advertising and usually involves descriptive adjectives such as "great", "perfect," etc.

BLIND ADVERTISEMENTS

No Blind Advertisements may be used by any licensee - Licensees shall not list his or her name under the heading or title "Real Estate" in the telephone directory or otherwise advertise in his or her own name to the general public through any medium of advertising as being in the real estate business without listing his or her sponsoring broker's business name. The sponsoring broker's business name and the name of the licensee must appear in all advertisements, including business cards.

Nothing in the Act requires **specific print size** as between the broker's business name and the name of the licensee or the **telephone number** used. This is considered a management decision, and should be approved by the sponsoring or managing broker.

A Sponsoring Broker is not required to include the name of its sponsored licensees on signs or other general advertising of the sponsoring broker.

LICENSEES - SELLING, LEASING, BUYING PROPERTY

A sponsored licensee may not advertise under his or her own name. Advertising must be under the direct supervision of the sponsoring or managing broker and in the sponsoring broker's business name, which in the case of a franchise must include the **franchise affiliation as well as the name of the individual firm**. This provision does not apply under the following circumstances:

- ❑ When a licensee enters into a brokerage agreement relating to his or her own real estate, or real estate in which he or she has an ownership interest, with another licensed broker; or
- ❑ When a licensee is selling or leasing his or her own real estate or buying or leasing real estate for himself or herself, after providing the **appropriate written disclosure of his or her ownership interest**.

Licensees working under the direction of a sponsoring or managing broker should get permission from the managing broker to market their own property on their own. The managing broker can still be held liable for the licensees.

LICENSEE AS PRINCIPAL

Every time a licensee is a principal (the seller, buyer, landlord or tenant) in a real estate transaction, the licensee must disclose in writing his or her status as a real estate licensee. The best way to comply with this requirement is to write the disclosure (e.g. "Illinois real estate licensee," "real estate salesperson," "real estate broker," etc.) next to the licensee's signature on the real estate contract or lease. Another way to comply is to add the disclosure as a printed provision within the contract or lease.

Disclosure may also be made by a separate writing (e.g. via a letter to all of the other principals) tendered prior to the execution of the contract or lease.

Simply providing the licensee's business card to all of the principals is NOT sufficient disclosure.

If a licensee signs a real estate contract or lease as an employee of the principal (e.g. as an officer of a corporation that is the seller), the licensee must make the same disclosure.

Sponsored or inoperative licensees selling or leasing "By Owner" must comply with the following if advertising by owner:

- On "By Owner" yard signs, the sponsored or inoperative licensee must indicate "broker owned" or "agent owned".
- ✓ "By Owner" advertisements used in **any medium of advertising** must include the term "broker owned" or "agent owned".

REMEMBER - THIS ALSO PERTAINS TO A LICENSEE LEASING THEIR PROPERTY!

If a sponsored or inoperative licensee runs advertisements, for the purpose of purchasing or leasing real estate, they must disclose in the advertisements their status as a licensee.

A sponsored or inoperative licensee shall not use the sponsoring broker's name or the sponsoring broker's company name in connection with the sale, lease, or advertisement of the property, or in connection with the sale, lease, or advertising of

the property in a manner likely to create confusion among the public as to whether or not the services of a real estate company are being utilized or whether or not a real estate company has an ownership interest in the property.

BEWARE!!

When advertising any property for sale, lease, or for purchase, you have to consider your agency relationship with your client. It is so easy today, to try to make the property appealing to other agents or customers, that you may possibly be violating your agency relationship. You should get written consent, from your client, before using certain phrases such as:

- Priced to Sell
- Owner Needs Fast Sale
- Transferred Owner
- Original Owner
- Bring All Offers

By using phrase such as these, without written permission, you could be violating your agency relationship.

Also, in all your advertisement beware of Fair Housing advertising violation, which will be discussed later in this text.

Regarding Fair Housing and your advertisement one rule of thumb you want to remember is to **advertise the property NOT the people for the property**. You want to use phrases like:

- Executive Style Home instead of Home for the Executives
- Starter Home instead of Home for the First-Time Buyers
- Bachelor Pad or Apartment instead of Perfect for the Bachelor

INTERNET ADVERTISING

The Rules under the License Law 2000 contain provisions regarding Internet advertising.

A sponsoring broker who has authorized advertising or marketing real property must include on the page on which the company or firm's advertisement or marketing appears the following data:

- ◆ the city or geographic area in which the property being advertised or marketed is located;
- ◆ the company's name as registered with the DFPR or the assumed name it has registered with the DFPR (commonly recognized abbreviations are permitted);
- ◆ if the sponsoring broker does not hold a real estate brokerage license for the jurisdiction in which the property is located, the regulatory jurisdictions in which the sponsoring broker does hold a real estate brokerage license; and
- ◆ if this information is contained on the frame on the sponsoring broker's site, it does not have to be included on every page of the site.

Any licensee who has authorized advertising or marketing real property must include on the page of the site on which the licensee's advertisement or information appears the ALL THE PREVIOUS DATA LISTED IN THE ABOVE PARAGRAPH PLUS the following data:

- ◆ the licensee's name;

E-MAIL

A sponsoring broker using e-commerce or electronic communications, such as e-mail, e-mail discussion groups and bulletin boards for marketing or transactional purposes, must include on the first or last page of all communications the following data:

- the company or firm's name as registered with the DFPR or the assumed name it has registered with the DFPR (commonly recognized abbreviations are permitted);
- the city and state in which the sponsoring broker's main office or the office from which the communication originated is located.

This shall not apply to communications between a sponsoring broker and a member of the public if the member of the public has sent a communication to the licensed company and that the sponsoring broker's initial communication contained the information.

Any licensee using e-commerce or electronic communications, such as e-mail, e-mail discussion groups, and bulletin boards, for marketing or transactional purposes, must include on the first or last page of all communications the following data:

- the licensee's name;
- the name of the company with which the licensee is affiliated as that company name is registered with the DFPR (commonly recognized abbreviations are permitted);
- the city and state in which the licensee's office is located.

This shall not apply to communications between a licensee and a member of the public if the member of the public has sent a communication to the licensee and that the licensee's initial communication contained the information required.

All the other provisions regarding advertising pertain to advertising on the Internet, too. **Remember** do not use any deceptive or misleading advertising. A common misleading advertisement on the Internet is:

- failing to remove advertising of a listed property within a reasonable time, after the closing of a sale on the listed property or the expiration or termination of the listing agreement.

All licensees, including sponsoring brokers, must periodically review the advertising and marketing information on their site and update as necessary to assure that the information is current and will not be misleading.

Test Your Knowledge

- | | | |
|---|---|--|
| T | F | 1. Written permission from the owner of the property is required for a licensee display a "For Sale" or "For Rent" Sign on the property. |
| T | F | 2. A licensee is not allowed to add additional landscaping to a picture of a property they have listed. |
| T | F | 3. The sponsored licensee can have their name larger then the company's name in advertisement. |
| T | F | 4. A sponsored licensee can place advertisement without the sponsoring broker's name. |
| T | F | 5. Continuing to advertise a property "For Sale" after the closing is a form of deceptive and misleading advertising. |
| T | F | 6. In a lease a licensee must disclose their status as a licensee, and any interest the licensee may have. |
| T | F | 7. A sponsored licensee may sell their own home "For Sale By Owner" with their broker's permission, but on the sign and on all ads they must state "agent owned" or "broker owned". |
| T | F | 8. A real estate team can advertise with the team's name, as long as the sponsoring broker's name is in the ad. |
| T | F | 9. A sponsoring broker does not have to include the name of their licensee on the real estate signs placed on listed property. |
| T | F | 10. An inoperative licensee has to disclose on their "For Sale By Owner" sign "agent owned" or "broker owned". |
| T | F | 11. When a licensee is advertising property on their website the company name, company address, and the licensee's name must appear. |
| T | F | 12. The city or geographic area of a property that the real estate company is advertising does not have to be included in the property's advertisement on the internet. |
| T | F | 13. The licensee must disclose in writing their status as a real estate licensee when signing a real estate contract as an officer of a corporation, which is the seller. |
| T | F | 14. The company name and location of the real estate office is required on the initial email sent to a customer or client. |
| T | F | 15. Using phrases like "Motivated Sellers", "Empty Nesters", "Transferred Sellers" and "No children allowed" in the advertisement of a property would not be in violation of any laws. |
| T | F | 16. The sponsoring broker must register the team's assumed name and assign it to the Team Group within the office. |

ANSWERS

True = 1,2,3,5,6,7,9,10,11,13,14,16

False = 4,8,12,15

ESCROW ACCOUNTS

Most licensees believe that escrow accounts or rules do not pertain to their everyday business. They believe that it is their sponsoring broker's responsibility to know all the rules pertaining to escrow accounts. It may seem that escrow rules do not pertain to your everyday business but they do either directly or indirectly.

- Who is the first one to handle that earnest money check? Sponsoring Broker or Agent? Majority of the time it is the Agent. Correct?
- Who gets busy with everyday business and forgets at times to turn that earnest money check over to the Sponsoring Broker, within the period required by law? Sponsoring Broker or Agent?
- Would you believe most licensees do not remember the period a sponsoring broker has to deposit the earnest money after an accepted contract?

Many of the disciplinary procedures taken by the DFPR against a licensee come from improper handling of money belonging to others. More severe disciplinary action is taken against the licensee found guilty of commingling, rather than just poor bookkeeping. No matter what is not being done properly, this chapter will guide you to know what is required, although it may not affect you directly or indirectly, it could affect your Clients!

The Rules of License Law 2000 clearly set forth the defined rules for the handling of Escrow Monies.

Let's Take a Look

WHAT IS ESCROW MONEY?

The Rules of the License Act define Escrow Money as:

- 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 accepted real estate contract is signed or lease agreed to by the parties.**
- Escrow moneys include without limitation
 - earnest moneys
 - security deposits, except those security deposits in which the person holding the security deposit is also the **sole owner** of the property being leased or sold and for which the security deposit is being held.
- Earnest money constitutes escrow moneys whether in the form of:
 - personal checks
 - cashier's checks
 - money orders
 - cash
 - or any other forms of legal tender.?

NOTE: that absent any other written agreement, earnest money deposits should NOT be deposited until a real estate contract is executed.

CAN ALL REAL ESTATE LICENSEES MAINTAIN REAL ESTATE ESCROW ACCOUNTS?

No. Only sponsoring brokers may hold real estate escrow money. The managing broker of each office is responsible to ensure compliance with the Escrow Rule. Branch offices have the option to either maintain escrow money or to forward escrow money to the main office. Managing brokers of branch offices should refer to paragraph 1450.175(k) of the Escrow Rule for the requirements regarding branch offices.

Leasing agents, salespersons, or brokers who are sponsored by another broker may NOT hold real estate escrow money.

Unlicensed persons, leasing agents, salespersons, or brokers who are sponsored by another broker may assist in the escrow bookkeeping duties in the office.

WHO NEEDS AN ESCROW ACCOUNT (SPECIAL ACCOUNT)?

Most licensees think that every sponsoring broker needs to maintain an escrow account. That assumption is not correct. The Act and Rules do NOT require that a sponsoring broker accept escrow money. It is the choice of the sponsoring broker whether to accept escrow money. The sponsoring broker may recommend to the principals to the transaction that an attorney, or closing agent, or other professional serve as the escrow agent. The sponsoring broker should ensure that the real estate contract, or any other document, does not contain language in conflict with the sponsoring broker's choice not to accept the escrow money.

NOTIFICATION TO THE IDFPR REGARDING ESCROW ACCOUNTS.

The Escrow Rule requires that a managing broker file with the Licensing Department in Springfield ***A Consent to Audit All Escrow Accounts form at the time of application for license and at every renewal date.*** In addition, in between renewal dates, the managing broker **MUST file a new Consent to Audit All Escrow Accounts form within 10 days after adding new escrow account(s) with the existing bank, changing signatories on an existing escrow account(s), or changing or adding a new bank at which escrow accounts will be maintained.** However, a new form is not required if a new escrow account is opened which falls under an umbrella escrow account which has already been identified in a prior form.

INTEREST BEARING OR NON-INTEREST BEARING?

The Escrow Rule provides that the escrow **MONEY MUST BE DEPOSITED INTO A NON-INTEREST BEARING** escrow account unless **all of the principals to the transaction provide written instructions** requiring the deposit into an interest bearing escrow account, or unless some other law requires a deposit into an interest bearing escrow account (e.g. security deposits for leases at some types of buildings).

- If an interest bearing account is required, the recipient of the interest shall be specifically indicated, in writing, by the principals of the transaction.
- A sponsoring broker may maintain more than one escrow account.
- An escrow account need not be maintained by a sponsoring broker, who does not receive escrow moneys entrusted to him or her while acting as a real estate broker, or as escrow agent, or as temporary custodian of the funds of others.
- Every Escrow Account, whether interest bearing or non-interest bearing, must be maintained at a Federally Insured Depository. It is wise to maintain the escrow accounts at a depository close to the office, due to the required timeliness of the deposit, as we will discuss later in this chapter. Since the rules require the reconciliation of the accounts, you will want to make sure that the depository provides monthly bank statements.

COMMINGLING IS PROHIBITED.

Each sponsoring broker shall deposit **Only Escrow Moneys** received in connection with any real estate transaction in an escrow account. The sponsoring broker **Shall Not Deposit Personal Funds In An Escrow Account**, except he or she may deposit from his or her own personal funds, and keep in any escrow account, an amount sufficient to avoid incurring service charges relating to the escrow account. The sum shall be specifically documented as being for service charges and the sponsoring broker shall have proof available that the amount of his or her own funds in the escrow account does not exceed the minimum amount required by the depository to maintain the account without incurring service charges.

The sponsoring broker Must provide a receipt to the payer of any cash constituting escrow funds and shall retain a copy of the receipt.

- **A sponsoring broker serving as escrow agent must notify All Principals In Writing if:**
 - a principal fails to tender escrow moneys,
 - when a principal's payment as escrow moneys is dishonored by the financial institution on which it was drawn
 - when there appears on the face of the governing contract to be a deficiency in the amount on deposit.

DEPOSITING AND DISBURSING ESCROW FUNDS

All escrow moneys accepted by a sponsoring broker must be placed in the sponsoring broker's escrow account No Later Than The Next Business Day Following The Transaction.

DEPOSITS –

Once a real estate contract or lease **is executed**, escrow monies should be deposited into an escrow account not later than the end of the next business day following the broker's receipt of the escrow money. Accordingly, if an earnest money check is tendered days prior to the execution of a contract, the check must be deposited into an escrow account not later than the end of the next business day after the **date of the execution of the contract**. If subsequent installments of earnest monies are received, those earnest monies must be deposited not later than the end of the next business day following their receipt.

DISBURSEMENTS –

If a transaction closes and the managing broker is directed to forward the escrow money to the closing agent, the managing broker must forward the escrow money to the closing agent as instructed. If a transaction closes and the managing broker is directed to pay commissions (either the broker's own commission or a cooperating commission) directly from the escrow deposit, the escrow money must be transferred out of the escrow

account not later than the end of the next business day after the closing. This is true even if there is a dispute regarding commissions - the escrow money must be moved out of the escrow account by the end of the next business day after closing (unless of course a possession escrow is in issue). If a transaction does not close, the managing broker must keep the escrow money in the escrow account until the broker receives written authorization from **all of the principals to the transaction** (or their *"DULY AUTHORIZED AGENT"*) showing agreement as to how the escrow money is to be disbursed, or until receipt of a court order. Upon receipt of the written authorization or court order, the broker must disburse accordingly by **no later than the end of the next business day**. However, a sponsoring broker **May Not Disburse Funds until they have been honored by the payer's depository**.

- A sponsoring broker shall not withhold, for any period of time, an authorized disbursement of escrow moneys due to any claim for a commission or compensation to any licensee.
- The sponsoring broker may release escrow moneys according to the Act which allows a sponsoring broker to disburse escrow moneys prior to the consummation or termination of the transaction in accordance with 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. In any such case, the sponsoring broker must adhere to the terms of the contract concerning the release of the escrow moneys.

Amendments of the Administrative Rules, which went into effect July 2003 define "DULY AUTHORIZED AGENT" as an attorney-in-fact, an attorney-at-law who represents that he or she is acting on behalf of one of the principals to the transaction, or any other person the licensee can prove was authorized to act on behalf of a principal to the transaction.

Note - "duly authorized agent" does NOT include the principal's real estate agent.

DISPUTES REGARDING ESCROW MONEYS.

The Escrow Rule sets forth the options when there is a dispute. The options consist of:

- hold the money in the escrow account until the managing broker receives written direction from all principals to the transaction showing agreement as to disbursement;
- hold the money in the escrow account until the managing broker receives a court order providing for disbursement of the escrow money. Some courts in Illinois allow the managing broker to turn the escrow money over to the court during the tendency of the proceedings.
- hold the money in the escrow account until the funds are turned over to the State Treasurer. Note that the State Treasurer can only accept the funds pursuant to the Uniform Disposition of Unclaimed Property Act which requires that the escrow money be abandoned for five years. The term "abandoned" is satisfied if the managing broker is unable to contact a principal for five years or is unable to obtain the written direction from all principals for five years.

BE AWARE- the "dispute" requirements trump any other escrow provision regarding escrow disbursement. For example, the Act provides that a managing broker may disburse escrow money prior to a closing pursuant to directions in any written contract signed by the principals, **if there is any basis for the managing broker to believe that any principal disputes a disbursement pursuant to those directions, the managing broker must follow the options set forth in the Escrow Rule.**

A note on the nature of a "dispute" - be aware that **the dispute must consist of a disagreement between the principals to the transaction rather than between a principal and principal's agent, associate, etc.** For example, a husband and wife want to buy a home, but only the wife signs the contract as the buyer: If the contract does not close and the wife and the seller tender written direction to the broker releasing the earnest money to the seller, the broker must disburse accordingly - even if the broker knows that the husband disputes the release of the earnest money to the seller.

CAN ESCROW ACCOUNTS BE CLOSED?

You can close the escrow account(s) if you obtain **WRITTEN DIRECTION FROM ALL PRINCIPALS** on each escrow deposit consenting to the identity of a replacement escrow agent. You must forward each escrow deposit according to the written direction.

Or you can keep the escrow account(s) open. You can continue to serve as an escrow agent by keeping the escrow money in the escrow account until closing or until you receive the necessary written authorizations. You must continue to comply with the escrow record keeping requirements and all other provisions of the Escrow Rule. However, another broker can sponsor you during this period (because a real estate license is not required to serve as escrow agent).

If the escrow money has been abandoned for at least five years, you may turn the escrow money over to the State Treasurer.

ESCROW RECORDS.

Each sponsoring broker who accepts earnest money must maintain, in his or her office or place of business, a bookkeeping system in accordance with sound accounting principles, this bookkeeping system must consist of at least the following:

JOURNAL.

A journal shall be maintained for each escrow account. Such journal shall show the chronological sequence in which funds are received and disbursed by the sponsoring broker.

- For each entry, such journal shall identify a serial number assigned to the respective transaction from the Master Transaction Log discussed later in this chapter.
- For Funds Received, the journal shall include:
 - the date the funds were received,
 - the name of the person on whose behalf such funds are delivered to that broker
 - the amount of such funds so delivered.
- For Fund Disbursement, the journal shall include:
 - the date,
 - the payee,
 - the check number
 - the amount disbursed.
 - A running balance shall be shown after each entry (receipt or disbursement).

NOTE : *With the Amendments of the Administrative Rules, which went into, effect July 2003, the name of the party that delivers the funds is not required in the journal.*

LEDGER.

A ledger shall be maintained for each transaction. The ledger shall show the receipt and the disbursement of funds affecting a single particular transaction such as between buyer and seller, or landlord and tenant, or the respective parties to any other relationship.

- The Ledger shall include:
 - the names of all parties to a transaction,
 - the amount of such funds received by the sponsoring broker
 - the date of such receipt.
- The Ledger shall show, in connection with the disbursements of the funds:
 - the date
 - the payee,
 - the check number
 - the amount disbursed.
- The Ledger shall segregate one transaction from another transaction, and shall identify the serial number assigned to the respective transaction from the Master Transaction Log.
- There shall be a separate ledger or separate section of each ledger, as the broker shall elect, for each of the various kinds of real estate transactions (e.g., lease).
- If the ledger is computer generated from the same data entry from which the journal is generated, the sponsoring broker must maintain copies of:
 - the bank deposit slips,
 - bank disbursements slips
 - other bank receipts, to account for the data on the ledger.

MONTHLY RECONCILIATION STATEMENT

Each sponsoring broker shall reconcile, within **Ten Days After Receipt** of the monthly bank statement, each escrow account maintained by such broker except where there has been no transactional activity during the previous month.

- The reconciliation shall include a written work sheet comparing the balances as shown on the bank or savings and loan association statement, the journal and the ledger, respectively, in order to insure agreement between the escrow account and the journal and the ledger entries with respect to the escrow account.
- Reconciliation shall be kept for at least 5 Years from the last day of the month covered by such reconciliation.
- Escrow moneys that are transferred from one escrow account to another account for disbursement; the sponsoring broker must maintain a copy of all records reflecting a disbursement from the other account.

MASTER ESCROW ACCOUNT LOG

Each sponsoring broker shall maintain a Master Escrow Account Log identifying all escrow bank account numbers, and the name and address of the bank where the escrow accounts are located. The Master Escrow Account Log must specifically include all bank account numbers opened for individual transactions, even if such account numbers fall under another umbrella account number.

- A sponsoring broker may employ a more sophisticated bookkeeping system based on sound accounting principles, including a system of electronic data processing equipment. However, a system of electronic data processing Must produce printed records containing all of the information required by the bookkeeping system rules.
- The DFPR shall have available for distribution, on request, samples of an approved journal, ledger, monthly reconciliation statement, and Master Escrow Account Log.

ESCROW RECORD MAINTENANCE

Pursuant to Section 20-20(h)(9) of the Act, the sponsoring broker shall make available to the real estate enforcement personnel of the DFPR during Normal Business Hours All Escrow Records and Related Documents maintained in connection with the practice of real estate within 24 Hours after a request.

- The broker shall retain copies of All Escrow Money Instruments received from a principal as part of a transaction, including:
 - ✓ copies of all personal checks,
 - ✓ cashier's checks,
 - ✓ certified checks,
 - ✓ money orders,
 - ✓ promissory notes, or
 - ✓ other financial instruments.

The broker shall also retain copies and/or documentation of all disbursements or transfers into or out of an escrow account.

- Escrow records **Must Be Retained For 5 Years.**
- The escrow records for the **immediate Prior 2 Years must be maintained in the office** location and the balance of the records can be maintained at another location.
- If escrow records are lost, stolen, or destroyed due to fire, flood, or any other circumstances, the broker must report such loss to the DFPR enforcement division within 30 days by signature restricted delivery. The broker must also immediately obtain copies of monthly bank statements, deposit and disbursement receipts, and any other available records, to reconstruct such loss of escrow records.

A sponsoring broker may delegate the bookkeeping duties to another person, including a managing broker, a bookkeeper, certified public accountant, unlicensed assistant, licensed assistant, or sponsored licensee. However, compliance with the bookkeeping duties remains the responsibility of the sponsoring broker. The sponsoring broker is ultimately responsible for the proper administration of the escrow account.

Sponsoring brokers must institute office policies to ensure that the sponsored licensees tender escrow moneys received in compliance of the Rules. Sponsored licensees, whether salespersons, brokers, or leasing agents, may not maintain their own escrow accounts.

BRANCH OFFICES AND ESCROW RECORDS

Branch Offices may maintain escrow accounts or may transmit all escrow moneys received to the main office, but not to another branch office.

- If the branch office does not maintain escrow accounts but instead transmits all escrow moneys received to the main office, all escrow moneys must be transmitted by the branch office to the main office No Later Than The Next Business Day Following The Transaction.

ESCROW REQUIREMENTS FOR PROPERTY MANAGEMENT ACTIVITIES.

Security deposits 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**.

ADDITIONAL RECORD KEEPING

Records relating to transactions must be kept in the office involved in the transaction. These records might include copies of the following:

- **Residential Property Transactions:** Signed contracts, including offers and counteroffers, written release of escrow funds, Dual Agency Authorization, written direction for deposit into interest bearing special account, power of attorney, disclosures (e.g., lead paint, seller disclosure) and closing statements.
- **Property Management/Leasing:** Any rental finding agreement, leases, periodic accounting or statement to the owner regarding the receipts and disbursements.
- **Commercial Representation:** Tenant or owner representation agreement, letters of intent, leases, and any written modifications to an executed lease.

These lists are not intended to be all-inclusive rather they are intended to be examples of pertinent documents to be retained. Any similar documents pertinent to a particular transaction must also be retained. Any information contained on the outside of a transaction file must be considered part of that file. Transaction records must be maintained for 5 years. The sponsoring broker must ensure that any transaction records involving any active or pending transaction or

representation, or any transaction in which escrow funds or monies belonging to others were received and have not yet been disbursed must be maintained in the office location. All transaction records maintained at the office location must be made available for inspection and audit during normal business hours by the DFPR staff no later than 24 hours after a request for escrow records and related documents. Any transaction records stored at a location other than the office must be made available for inspection during normal business hours within 30 days after the request

Employment agreements, as required, must be maintained for 5 years after the sponsored licensee is no longer affiliated with the sponsoring broker. The broker must maintain the written employment agreement for every licensee who is employed by or affiliated with the sponsoring broker. A copy of the employment agreement for each sponsored licensee at a branch office must be maintained at the respective branch office.

Records reflecting the payment of compensation for the performance of licensed activities must be maintained for 5 years.

If the records are kept electronically, the sponsoring broker must ensure that a back up is made. In the case of escrow records, the back up must be made at least monthly. The monthly reconciliation, including its worksheet, must be printed out and maintained by hard copy. The journal must be reduced to hard copy at least monthly.

TEMPORARY SUSPENSION OF LICENSE

The grounds for temporary suspension under the Act, shall be based on evidence sufficient to cause the DFPR to reasonably believe that the Public Interest, Safety, Or Welfare Imperatively Requires Emergency Action. Emergency action is imperatively required when a licensee's conduct poses a threat that the public's or another licensee's money will be stolen or defalcated or that the continued licensure of a licensee will be a threat to the physical safety of the public or another licensee. When determining imminent harm, the DFPR may consider any combination of acts committed by a licensee including, but not limited to:

- ◆ Failure to account for or to remit any moneys or documents that belongs to others.
- ◆ Failure to maintain and deposit in a special or escrow account, separate and apart from personal and other business accounts, all escrow moneys belonging to others entrusted to a licensee while acting as a real estate broker, escrow agent, or temporary custodian of the funds of others.
- ◆ Failure to make available to real estate enforcement personnel of the DFPR during normal business hours all escrow records and related documents within 24 hours after a request for those documents by the DFPR personnel. However, this action in and of itself shall not be sufficient grounds for a temporary suspension; and
- ◆ Commingling money or property of others with the licensee's own.

AUDITS OF SPECIAL FUNDS BY OUTSIDE AUDITORS

With the Amendments of the Administrative Rules, which went into, effect July 2003:

The DFPR may cause audits of special accounts of sponsoring brokers to be conducted by licensed certified public accountants under certain circumstances. They base an outside audit upon receipt of:

- A complaint from one or more members of the public.
- Information from another regulatory or law enforcement agency
- Evidence developed by the DFPR which causes the DFPR to reasonably believe that the escrow moneys required to be kept in a special account have been misappropriated.

NOTICE OF AN AUDIT BY AN OUTSIDE AUDITOR

The DFPR shall notify in writing the sponsoring broker that an auditor has been retained to audit the special accounts. The sponsoring broker is required to submit all pertinent records for audit within 30 days after receipt of the notice.

PROCEDURES FOR AN OUTSIDE AUDIT

The auditor or The DFPR shall contact the sponsoring broker. The sponsoring broker shall provide the records requested at the scheduled time and the location or otherwise agreed by the sponsoring broker and the audit or DFPR.

WRITTEN REPORT

Any licensed certified public accountant performing an audit for the DFPR shall provide a written report to the DFPR with a copy to the sponsoring broker, detailing the findings of the auditor with specific reference to compliance.

NONCOMPLIANCE AND COST OF THE AUDIT

The sponsoring broker shall be liable for the cost of the audit if an order is issued by the Commissioner, finding that the sponsoring broker, or their employees, independent contractors or designees misappropriated escrow moneys.

Test Your Knowledge

- T F 1. There are very few disciplinary actions taken by the DFPR against a sales agent for improper handling of escrow money.
- T F 2. Personal check, money orders, cashier checks and cash are all forms of escrow money.
- T F 3. Escrow accounts are required only when a sponsoring broker is holding money that belongs to others.
- T F 4. Escrow accounts are required to be placed in an interest bearing account.
- T F 5. To place escrow money into an interest bearing account, written direction of all parties is required, plus the recipient of the interest must be specified.
- T F 6. Escrow money cannot be deposited until all parties have signed the contract.
- T F 7. The DFPR can hire outside licensed certified public accountants to audit a sponsoring broker's escrow accounts.
- T F 8. A sponsoring broker is required to submit all pertinent records for an outside audit within 30 days after receiving notice.
- T F 9. The sponsoring broker is not liable for the cost of an audit when it is ordered by the Commissioner.
- T F 10. A licensed salesperson may open a real estate escrow account to hold their client's escrow money.
- T F 11. A broker has 5 business days to make available all escrow records after a request is made by the DFPR.
- T F 12. Escrow money can be released upon direction of the buyer and seller's duly authorized agents.
- T F 13. A sponsoring broker serving as an escrow agent is required to notify all principals to the transaction, in writing, if the escrow funds were not received.
- T F 14. A sponsoring broker must deposit escrow funds 72 hours after written acceptance of a contract.
- T F 15. Escrow money that has been abandoned for at least five years, may be turned over to the State Treasurer.
- T F 16. A client's real estate agent can be the "Duly Authorized Agent" and sign the escrow release.
- T F 17. A sponsoring broker can withhold an amount from the escrow funds because of a claim for a commission due to a licensee.
- T F 18. Escrow accounts must be closed when an office is closing.
- T F 19. The escrow agent is not allowed to release escrow money prior to closing, even with written direction of all parties.
- T F 20. A sponsoring broker is required to disburse escrow money upon receipt of a court order.
- T F 21. A sponsoring broker that is unable to locate the buyers in a transaction may release the funds to the sellers, after the required period of time.
- T F 22. A sponsoring broker may withdraw an amount to cover the cost of an interpleader action from the escrow account, when authorized by the signed real estate contract.
- T F 23. A sponsoring broker that accepts earnest money must maintain the bookkeeping system at their place of business.
- T F 24. A sponsoring broker that maintains escrow records must keep all records for the past 5 years at the office location.
- T F 25. A sponsoring Broker is not required to keep copies of promissory notes received from a buyer in a transaction.

- T F 26. The DFPR may temporarily suspend a license, prior to a hearing, if they believe the public's interest, safety, or welfare requires such action.
- T F 27. A journal is not required to state the name of the party that delivered the escrow money.
- T F 28. A sponsoring broker may delegate the bookkeeping duties of the escrow accounts to a salesperson or secretary.
- T F 29. Signed contracts, Dual Agency Agreements, Rental Finding Agreements and Letters of Intent are not required to be kept by the broker at the office location.
- T F 30. Electronically kept escrow records must be backed up once every three months.
- T F 31. If escrow records are lost, stolen, or destroyed by fire or flood the broker must report such loss to the DFPR enforcement division within 30 days by signature restricted delivery.
- T F 32. A broker is not required to obtain copies of lost or destroyed escrow records.
- T F 33. A security deposit collected prior to the tenant signing the lease must be deposited in the escrow account no later than the next business day.
- T F 34. Employment Agreements must be kept for 5 years after the licensee is no longer affiliated with the sponsoring broker.

ANSWERS

True = 2,3,5,6,7,8,12, 13,15,20,22,23,26,27,28,31,34

False = 1,4,9,10,11,14,16,17,18,19,21,24,25,29,30,32,33