

# HB5071



## 96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5071

Introduced 1/29/2010, by Rep. William B. Black

### SYNOPSIS AS INTRODUCED:

225 ILCS 454/1-10

Amends the Real Estate License Act of 2000. Deletes the definition of "regular employee". Effective immediately.

LRB096 19771 ASK 35208 b

A BILL FOR

1 AN ACT concerning professional regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

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

6 (225 ILCS 454/1-10)

7 (Section scheduled to be repealed on January 1, 2020)

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

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

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

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

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

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

4 "Blind advertisement" means any real estate advertisement  
5 that does not include the sponsoring broker's business name and  
6 that is used by any licensee regarding the sale or lease of  
7 real estate, including his or her own, licensed activities, or  
8 the hiring of any licensee under this Act. The broker's  
9 business name in the case of a franchise shall include the  
10 franchise affiliation as well as the name of the individual  
11 firm.

12 "Board" means the Real Estate Administration and  
13 Disciplinary Board of the Department as created by Section  
14 25-10 of this Act.

15 "Branch office" means a sponsoring broker's office other  
16 than the sponsoring broker's principal office.

17 "Broker" means an individual, partnership, limited  
18 liability company, corporation, or registered limited  
19 liability partnership other than a real estate salesperson or  
20 leasing agent who, whether in person or through any media or  
21 technology, for another and for compensation, or with the  
22 intention or expectation of receiving compensation, either  
23 directly or indirectly:

24 (1) Sells, exchanges, purchases, rents, or leases real  
25 estate.

26 (2) Offers to sell, exchange, purchase, rent, or lease

1 real estate.

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

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

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

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

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

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

17 (9) Assists or directs in the negotiation of any  
18 transaction intended to result in the sale, exchange,  
19 lease, or rental of real estate.

20 (10) Opens real estate to the public for marketing  
21 purposes.

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

24 "Brokerage agreement" means a written or oral agreement  
25 between a sponsoring broker and a consumer for licensed  
26 activities to be provided to a consumer in return for

1 compensation or the right to receive compensation from another.  
2 Brokerage agreements may constitute either a bilateral or a  
3 unilateral agreement between the broker and the broker's client  
4 depending upon the content of the brokerage agreement. All  
5 exclusive brokerage agreements shall be in writing.

6 "Client" means a person who is being represented by a  
7 licensee.

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

- 13 (1) commissions;
- 14 (2) referral fees;
- 15 (3) bonuses;
- 16 (4) prizes;
- 17 (5) merchandise;
- 18 (6) finder fees;
- 19 (7) performance of services;
- 20 (8) coupons or gift certificates;
- 21 (9) discounts;
- 22 (10) rebates;
- 23 (11) a chance to win a raffle, drawing, lottery, or  
24 similar game of chance not prohibited by any other law or  
25 statute;
- 26 (12) retainer fee; or

1 (13) salary.

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

9 (1) the client permits the disclosure of information  
10 given by that client by word or conduct;

11 (2) the disclosure is required by law; or

12 (3) the information becomes public from a source other  
13 than the licensee.

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

17 "Consumer" means a person or entity seeking or receiving  
18 licensed activities.

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

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

24 "Credit hour" means 50 minutes of classroom instruction in  
25 course work that meets the requirements set forth in rules  
26 adopted by the Department.

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

4 "Department" means the Department of Financial and  
5 Professional Regulation.

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

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

13 "Dual agency" means an agency relationship in which a  
14 licensee is representing both buyer and seller or both landlord  
15 and tenant in the same transaction. When the agency  
16 relationship is a designated agency, the question of whether  
17 there is a dual agency shall be determined by the agency  
18 relationships of the designated agent of the parties and not of  
19 the sponsoring broker.

20 "Employee" or other derivative of the word "employee", when  
21 used to refer to, describe, or delineate the relationship  
22 between a real estate broker and a real estate salesperson,  
23 another real estate broker, or a leasing agent, shall be  
24 construed to include an independent contractor relationship,  
25 provided that a written agreement exists that clearly  
26 establishes and states the relationship. All responsibilities

1 of a broker shall remain.

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

12 "Exclusive brokerage agreement" means a written brokerage  
13 agreement that provides that the sponsoring broker has the sole  
14 right, through one or more sponsored licensees, to act as the  
15 exclusive designated agent or representative of the client and  
16 that meets the requirements of Section 15-75 of this Act.

17 "Inoperative" means a status of licensure where the  
18 licensee holds a current license under this Act, but the  
19 licensee is prohibited from engaging in licensed activities  
20 because the licensee is unsponsored or the license of the  
21 sponsoring broker with whom the licensee is associated or by  
22 whom he or she is employed is currently expired, revoked,  
23 suspended, or otherwise rendered invalid under this Act.

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

26 "Leasing Agent" means a person who is employed by a real



1 estate broker to engage in licensed activities limited to  
2 leasing residential real estate who has obtained a license as  
3 provided for in Section 5-5 of this Act.

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

7 "Licensed activities" means those activities listed in the  
8 definition of "broker" under this Section.

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

12 "Listing presentation" means a communication between a  
13 real estate broker or salesperson and a consumer in which the  
14 licensee is attempting to secure a brokerage agreement with the  
15 consumer to market the consumer's real estate for sale or  
16 lease.

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

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

24 "Ministerial acts" means those acts that a licensee may  
25 perform for a consumer that are informative or clerical in  
26 nature and do not rise to the level of active representation on

1 behalf of a consumer. Examples of these acts include without  
2 limitation (i) responding to phone inquiries by consumers as to  
3 the availability and pricing of brokerage services, (ii)  
4 responding to phone inquiries from a consumer concerning the  
5 price or location of property, (iii) attending an open house  
6 and responding to questions about the property from a consumer,  
7 (iv) setting an appointment to view property, (v) responding to  
8 questions of consumers walking into a licensee's office  
9 concerning brokerage services offered or particular  
10 properties, (vi) accompanying an appraiser, inspector,  
11 contractor, or similar third party on a visit to a property,  
12 (vii) describing a property or the property's condition in  
13 response to a consumer's inquiry, (viii) completing business or  
14 factual information for a consumer on an offer or contract to  
15 purchase on behalf of a client, (ix) showing a client through a  
16 property being sold by an owner on his or her own behalf, or  
17 (x) referral to another broker or service provider.

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

22 "Person" means and includes individuals, entities,  
23 corporations, limited liability companies, registered limited  
24 liability partnerships, and partnerships, foreign or domestic,  
25 except that when the context otherwise requires, the term may  
26 refer to a single individual or other described entity.

1 "Personal assistant" means a licensed or unlicensed person  
2 who has been hired for the purpose of aiding or assisting a  
3 sponsored licensee in the performance of the sponsored  
4 licensee's job.

5 "Pocket card" means the card issued by the Department to  
6 signify that the person named on the card is currently licensed  
7 under this Act.

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

12 "Pre-renewal period" means the period between the date of  
13 issue of a currently valid license and the license's expiration  
14 date.

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

19 "Real estate" means and includes leaseholds as well as any  
20 other interest or estate in land, whether corporeal,  
21 incorporeal, freehold, or non-freehold, including timeshare  
22 interests, and whether the real estate is situated in this  
23 State or elsewhere.

24 ~~"Regular employee" means a person working an average of 20~~  
25 ~~hours per week for a person or entity who would be considered~~  
26 ~~as an employee under the Internal Revenue Service eleven main~~

1 ~~tests in three categories being behavioral control, financial~~  
2 ~~control and the type of relationship of the parties, formerly~~  
3 ~~the twenty factor test.~~

4 "Salesperson" means any individual, other than a real  
5 estate broker or leasing agent, who is employed by a real  
6 estate broker or is associated by written agreement with a real  
7 estate broker as an independent contractor and participates in  
8 any activity described in the definition of "broker" under this  
9 Section.

10 "Secretary" means the Secretary of the Department of  
11 Financial and Professional Regulation, or a person authorized  
12 by the Secretary to act in the Secretary's stead.

13 "Sponsoring broker" means the broker who has issued a  
14 sponsor card to a licensed salesperson, another licensed  
15 broker, or a leasing agent.

16 "Sponsor card" means the temporary permit issued by the  
17 sponsoring real estate broker certifying that the real estate  
18 broker, real estate salesperson, or leasing agent named thereon  
19 is employed by or associated by written agreement with the  
20 sponsoring real estate broker, as provided for in Section 5-40  
21 of this Act.

22 (Source: P.A. 96-856, eff. 12-31-09.)

23 Section 99. Effective date. This Act takes effect upon  
24 becoming law.