



Sen. William R. Haine

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09700HB5359sam001

LRB097 19406 CEL 67768 a

1 AMENDMENT TO HOUSE BILL 5359

2 AMENDMENT NO. _____. Amend House Bill 5359 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Real Estate License Act of 2000 is amended
5 by changing Sections 5-70, 10-30, 20-20, 20-85, 20-90, 20-95,
6 and 20-115 and by adding Section 20-78 as follows:

7 (225 ILCS 454/5-70)

8 (Section scheduled to be repealed on January 1, 2020)

9 Sec. 5-70. Continuing education requirement; managing
10 broker, broker, or salesperson.

11 (a) The requirements of this Section apply to all managing
12 brokers, brokers, and salespersons.

13 (b) Except as otherwise provided in this Section, each
14 person who applies for renewal of his or her license as a
15 managing broker, real estate broker, or real estate salesperson
16 must successfully complete 6 hours of real estate continuing

1 education courses approved by the Advisory Council for each
2 year of the pre-renewal period. Broker licensees must
3 successfully complete a 6-hour broker management continuing
4 education course approved by the Department for the pre-renewal
5 period ending April 30, 2010. In addition, beginning with the
6 pre-renewal period for managing broker licensees that begins
7 after the effective date of this Act, those licensees renewing
8 or obtaining a managing broker's license must successfully
9 complete a 12-hour broker management continuing education
10 course approved by the Department each pre-renewal period. The
11 broker management continuing education course must be
12 completed in the classroom or by other interactive delivery
13 method presenting instruction and real time discussion between
14 the instructor and the students. Successful completion of the
15 course shall include achieving a passing score as provided by
16 rule on a test developed and administered in accordance with
17 rules adopted by the Department. No license may be renewed
18 except upon the successful completion of the required courses
19 or their equivalent or upon a waiver of those requirements for
20 good cause shown as determined by the Secretary with the
21 recommendation of the Advisory Council. The requirements of
22 this Article are applicable to all managing brokers, brokers,
23 and salespersons except those brokers and salespersons who,
24 during the pre-renewal period:

25 (1) serve in the armed services of the United States;

26 (2) serve as an elected State or federal official;

1 (3) serve as a full-time employee of the Department; or

2 (4) are admitted to practice law pursuant to Illinois
3 Supreme Court rule.

4 (c) A person licensed as a salesperson as of April 30, 2011
5 shall not be required to complete the 18 hours of continuing
6 education for the pre-renewal period ending April 30, 2012 if
7 that person takes the 30-hour post-licensing course to obtain a
8 broker's license. A person licensed as a broker as of April 30,
9 2011 shall not be required to complete the 12 hours of broker
10 management continuing education for the pre-renewal period
11 ending April 30, 2012, unless that person passes the
12 proficiency exam provided for in Section 5-47 of this Act to
13 qualify for a managing broker's license.

14 (d) A person receiving an initial license during the 90
15 days before the renewal date shall not be required to complete
16 the continuing education courses provided for in subsection (b)
17 of this Section as a condition of initial license renewal.

18 (e) The continuing education requirement for salespersons,
19 brokers and managing brokers shall consist of a core curriculum
20 and an elective curriculum, to be established by the Advisory
21 Council. In meeting the continuing education requirements of
22 this Act, at least 3 hours per year or their equivalent, 6
23 hours for each two-year pre-renewal period, shall be required
24 to be completed in the core curriculum. In establishing the
25 core curriculum, the Advisory Council shall consider subjects
26 that will educate licensees on recent changes in applicable

1 laws and new laws and refresh the licensee on areas of the
2 license law and the Department policy that the Advisory Council
3 deems appropriate, and any other areas that the Advisory
4 Council deems timely and applicable in order to prevent
5 violations of this Act and to protect the public. In
6 establishing the elective curriculum, the Advisory Council
7 shall consider subjects that cover the various aspects of the
8 practice of real estate that are covered under the scope of
9 this Act. However, the elective curriculum shall not include
10 any offerings referred to in Section 5-85 of this Act.

11 (f) The subject areas of continuing education courses
12 approved by the Advisory Council may include without limitation
13 the following:

- 14 (1) license law and escrow;
- 15 (2) antitrust;
- 16 (3) fair housing;
- 17 (4) agency;
- 18 (5) appraisal;
- 19 (6) property management;
- 20 (7) residential brokerage;
- 21 (8) farm property management;
- 22 (9) rights and duties of sellers, buyers, and brokers;
- 23 (10) commercial brokerage and leasing; and
- 24 (11) real estate financing.

25 (g) In lieu of credit for those courses listed in
26 subsection (f) of this Section, credit may be earned for

1 serving as a licensed instructor in an approved course of
2 continuing education. The amount of credit earned for teaching
3 a course shall be the amount of continuing education credit for
4 which the course is approved for licensees taking the course.

5 (h) Credit hours may be earned for self-study programs
6 approved by the Advisory Council.

7 (i) A broker or salesperson may earn credit for a specific
8 continuing education course only once during the prerenewal
9 period.

10 (j) No more than 6 hours of continuing education credit may
11 be taken or earned in one calendar day.

12 (k) To promote the offering of a uniform and consistent
13 course content, the Department may provide for the development
14 of a single broker management course to be offered by all
15 continuing education providers who choose to offer the broker
16 management continuing education course. The Department may
17 contract for the development of the 12-hour ~~6-hour~~ broker
18 management continuing education course with an outside vendor
19 or consultant and, if the course is developed in this manner,
20 the Department or the outside consultant shall license the use
21 of that course to all approved continuing education providers
22 who wish to provide the course.

23 (l) Except as specifically provided in this Act, continuing
24 education credit hours may not be earned for completion of pre
25 or post-license courses. The approved 30-hour post-license
26 course for broker licensees shall satisfy the continuing

1 education requirement for the pre-renewal period in which the
2 course is taken. The approved 45-hour brokerage administration
3 and management course shall satisfy the 12-hour broker
4 management continuing education requirement for the
5 pre-renewal period in which the course is taken.

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

7 (225 ILCS 454/10-30)

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

9 Sec. 10-30. Advertising.

10 (a) No advertising, whether in print, via the Internet, or
11 through any other media, shall be fraudulent, deceptive,
12 inherently misleading, or proven to be misleading in practice.
13 Advertising shall be considered misleading or untruthful if,
14 when taken as a whole, there is a distinct and reasonable
15 possibility that it will be misunderstood or will deceive the
16 ordinary purchaser, seller, lessee, lessor, or owner.
17 Advertising shall contain all information necessary to
18 communicate the information contained therein to the public in
19 an accurate, direct, and readily comprehensible manner.

20 (b) No blind advertisements may be used by any licensee, in
21 any media, except as provided for in this Section.

22 (c) A licensee shall disclose, in writing, to all parties
23 in a transaction his or her status as a licensee and any and
24 all interest the licensee has or may have in the real estate
25 constituting the subject matter thereof, directly or

1 indirectly, according to the following guidelines:

2 (1) On broker yard signs or in broker advertisements,
3 no disclosure of ownership is necessary. However, the
4 ownership shall be indicated on any property data form and
5 disclosed to persons responding to any advertisement or any
6 sign. The term "broker owned" or "agent owned" is
7 sufficient disclosure.

8 (2) A sponsored or inoperative licensee selling or
9 leasing property, owned solely by the sponsored or
10 inoperative licensee, without utilizing brokerage services
11 of their sponsoring broker or any other licensee, may
12 advertise "By Owner". For purposes of this Section,
13 property is "solely owned" by a sponsored or inoperative
14 licensee if he or she (i) has a 100% ownership interest
15 alone, (ii) has ownership as a joint tenant or tenant by
16 the entirety, or (iii) holds a 100% beneficial interest in
17 a land trust. Sponsored or inoperative licensees selling or
18 leasing "By Owner" shall comply with the following if
19 advertising by owner:

20 (A) On "By Owner" yard signs, the sponsored or
21 inoperative licensee shall indicate "broker owned" or
22 "agent owned." "By Owner" advertisements used in any
23 medium of advertising shall include the term "broker
24 owned" or "agent owned."

25 (B) If a sponsored or inoperative licensee runs
26 advertisements, for the purpose of purchasing or

1 leasing real estate, he or she shall disclose in the
2 advertisements his or her status as a licensee.

3 (C) A sponsored or inoperative licensee shall not
4 use the sponsoring broker's name or the sponsoring
5 broker's company name in connection with the sale,
6 lease, or advertisement of the property nor utilize the
7 sponsoring broker's or company's name in connection
8 with the sale, lease, or advertising of the property in
9 a manner likely to create confusion among the public as
10 to whether or not the services of a real estate company
11 are being utilized or whether or not a real estate
12 company has an ownership interest in the property.

13 (d) A sponsored licensee may not advertise under his or her
14 own name. Advertising in any media shall be under the direct
15 supervision of the sponsoring or managing broker and in the
16 sponsoring broker's business name, which in the case of a
17 franchise shall include the franchise affiliation as well as
18 the name of the individual firm. This provision does not apply
19 under the following circumstances:

20 (1) When a licensee enters into a brokerage agreement
21 relating to his or her own real estate, or real estate in
22 which he or she has an ownership interest, with another
23 licensed broker; or

24 (2) When a licensee is selling or leasing his or her
25 own real estate or buying or leasing real estate for
26 himself or herself, after providing the appropriate

1 written disclosure of his or her ownership interest as
2 required in paragraph (2) of subsection (c) of this
3 Section.

4 (e) No licensee shall list his or her name under the
5 heading or title "Real Estate" in the telephone directory or
6 otherwise advertise in his or her own name to the general
7 public through any medium of advertising as being in the real
8 estate business without listing his or her sponsoring broker's
9 business name.

10 (f) The sponsoring broker's business name and the name of
11 the licensee must appear in all advertisements, including
12 business cards. Nothing in this Act shall be construed to
13 require specific print size as between the broker's business
14 name and the name of the licensee.

15 (g) Those individuals licensed as a managing broker and
16 designated with the Department as a managing broker by their
17 sponsoring broker shall identify themselves to the public in
18 advertising, except on "For Sale" or similar signs, as a
19 managing broker. No other individuals holding a managing
20 broker's license may hold themselves out to the public or other
21 licensees as a managing broker.

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

23 (225 ILCS 454/20-20)

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

25 Sec. 20-20. Grounds for discipline.

1 (a) The Department may refuse to issue or renew a license,
2 may place on probation, suspend, or revoke any license,
3 reprimand, or take any other disciplinary or non-disciplinary
4 action as the Department may deem proper and ~~or~~ impose a fine
5 not to exceed \$25,000 upon any licensee or applicant under this
6 Act or any person who holds himself or herself out as an
7 applicant or licensee or against a licensee in handling his or
8 her own property, whether held by deed, option, or otherwise,
9 for any one or any combination of the following causes:

10 (1) Fraud or misrepresentation in applying for, or
11 procuring, a license under this Act or in connection with
12 applying for renewal of a license under this Act.

13 (2) The conviction of or plea of guilty or plea of nolo
14 contendere to conviction of, plea of guilty or plea of nolo
15 contendere to a felony or misdemeanor in this State or any
16 other jurisdiction; or the entry of an administrative
17 sanction by a government agency in this State or any other
18 jurisdiction. Action taken under this paragraph (2) for a
19 misdemeanor or an administrative sanction is limited to a
20 misdemeanor or administrative sanction that has as ~~an~~
21 essential element ~~of which is~~ dishonesty or fraud or
22 involves larceny, embezzlement, or obtaining money,
23 property, or credit by false pretenses or by means of a
24 confidence game, ~~in this State, or any other jurisdiction.~~

25 (3) Inability to practice the profession with
26 reasonable judgment, skill, or safety as a result of a

1 physical illness, including, but not limited to,
2 deterioration through the aging process or loss of motor
3 skill, or a mental illness or disability.

4 (4) Practice under this Act as a licensee in a retail
5 sales establishment from an office, desk, or space that is
6 not separated from the main retail business by a separate
7 and distinct area within the establishment.

8 (5) Having been disciplined by another state, the
9 District of Columbia, a territory, a foreign nation, or a
10 governmental agency authorized to impose discipline
11 ~~Disciplinary action of another state or jurisdiction~~
12 ~~against the license or other authorization to practice as a~~
13 ~~managing broker, broker, salesperson, or leasing agent~~ if
14 at least one of the grounds for that discipline is the same
15 as or the equivalent of one of the grounds for which a
16 licensee may be disciplined under ~~discipline set forth in~~
17 this Act. A certified copy of the record of the action by
18 the other state or jurisdiction shall be prima facie
19 evidence thereof.

20 (6) Engaging in the practice of real estate brokerage
21 without a license or after the licensee's license was
22 expired or while the license was inoperative.

23 (7) Cheating on or attempting to subvert the Real
24 Estate License Exam or continuing education exam.

25 (8) Aiding or abetting an applicant to subvert or cheat
26 on the Real Estate License Exam or continuing education

1 exam administered pursuant to this Act.

2 (9) Advertising that is inaccurate, misleading, or
3 contrary to the provisions of the Act.

4 (10) Making any substantial misrepresentation or
5 untruthful advertising.

6 (11) Making any false promises of a character likely to
7 influence, persuade, or induce.

8 (12) Pursuing a continued and flagrant course of
9 misrepresentation or the making of false promises through
10 licensees, employees, agents, advertising, or otherwise.

11 (13) Any misleading or untruthful advertising, or
12 using any trade name or insignia of membership in any real
13 estate organization of which the licensee is not a member.

14 (14) Acting for more than one party in a transaction
15 without providing written notice to all parties for whom
16 the licensee acts.

17 (15) Representing or attempting to represent a broker
18 other than the sponsoring broker.

19 (16) Failure to account for or to remit any moneys or
20 documents coming into his or her possession that belong to
21 others.

22 (17) Failure to maintain and deposit in a special
23 account, separate and apart from personal and other
24 business accounts, all escrow moneys belonging to others
25 entrusted to a licensee while acting as a real estate
26 broker, escrow agent, or temporary custodian of the funds

1 of others or failure to maintain all escrow moneys on
2 deposit in the account until the transactions are
3 consummated or terminated, except to the extent that the
4 moneys, or any part thereof, shall be:

5 (A) disbursed prior to the consummation or
6 termination (i) in accordance with the written
7 direction of the principals to the transaction or their
8 duly authorized agents, (ii) in accordance with
9 directions providing for the release, payment, or
10 distribution of escrow moneys contained in any written
11 contract signed by the principals to the transaction or
12 their duly authorized agents, or (iii) pursuant to an
13 order of a court of competent jurisdiction; or

14 (B) deemed abandoned and transferred to the Office
15 of the State Treasurer to be handled as unclaimed
16 property pursuant to the Uniform Disposition of
17 Unclaimed Property Act. Escrow moneys may be deemed
18 abandoned under this subparagraph (B) only: (i) in the
19 absence of disbursement under subparagraph (A); (ii)
20 in the absence of notice of the filing of any claim in
21 a court of competent jurisdiction; and (iii) if 6
22 months have elapsed after the receipt of a written
23 demand for the escrow moneys from one of the principals
24 to the transaction or the principal's duly authorized
25 agent.

26 The account shall be noninterest bearing, unless the

1 character of the deposit is such that payment of interest
2 thereon is otherwise required by law or unless the
3 principals to the transaction specifically require, in
4 writing, that the deposit be placed in an interest bearing
5 account.

6 (18) Failure to make available to the Department all
7 escrow records and related documents maintained in
8 connection with the practice of real estate within 24 hours
9 of a request for those documents by Department personnel.

10 (19) Failing to furnish copies upon request of
11 documents relating to a real estate transaction to a party
12 who has executed that document.

13 (20) Failure of a sponsoring broker to timely provide
14 information, sponsor cards, or termination of licenses to
15 the Department.

16 (21) Engaging in dishonorable, unethical, or
17 unprofessional conduct of a character likely to deceive,
18 defraud, or harm the public.

19 (22) Commingling the money or property of others with
20 his or her own money or property.

21 (23) Employing any person on a purely temporary or
22 single deal basis as a means of evading the law regarding
23 payment of commission to nonlicensees on some contemplated
24 transactions.

25 (24) Permitting the use of his or her license as a
26 broker to enable a salesperson or unlicensed person to

1 operate a real estate business without actual
2 participation therein and control thereof by the broker.

3 (25) Any other conduct, whether of the same or a
4 different character from that specified in this Section,
5 that constitutes dishonest dealing.

6 (26) Displaying a "for rent" or "for sale" sign on any
7 property without the written consent of an owner or his or
8 her duly authorized agent or advertising by any means that
9 any property is for sale or for rent without the written
10 consent of the owner or his or her authorized agent.

11 (27) Failing to provide information requested by the
12 Department, or otherwise respond to that request, within 30
13 days of the request.

14 (28) Advertising by means of a blind advertisement,
15 except as otherwise permitted in Section 10-30 of this Act.

16 (29) Offering guaranteed sales plans, as defined in
17 clause (A) of this subdivision (29), except to the extent
18 hereinafter set forth:

19 (A) A "guaranteed sales plan" is any real estate
20 purchase or sales plan whereby a licensee enters into a
21 conditional or unconditional written contract with a
22 seller, prior to entering into a brokerage agreement
23 with the seller, by the terms of which a licensee
24 agrees to purchase a property of the seller within a
25 specified period of time at a specific price in the
26 event the property is not sold in accordance with the

1 terms of a brokerage agreement to be entered into
2 between the sponsoring broker and the seller.

3 (B) A licensee offering a guaranteed sales plan
4 shall provide the details and conditions of the plan in
5 writing to the party to whom the plan is offered.

6 (C) A licensee offering a guaranteed sales plan
7 shall provide to the party to whom the plan is offered
8 evidence of sufficient financial resources to satisfy
9 the commitment to purchase undertaken by the broker in
10 the plan.

11 (D) Any licensee offering a guaranteed sales plan
12 shall undertake to market the property of the seller
13 subject to the plan in the same manner in which the
14 broker would market any other property, unless the
15 agreement with the seller provides otherwise.

16 (E) The licensee cannot purchase seller's property
17 until the brokerage agreement has ended according to
18 its terms or is otherwise terminated.

19 (F) Any licensee who fails to perform on a
20 guaranteed sales plan in strict accordance with its
21 terms shall be subject to all the penalties provided in
22 this Act for violations thereof and, in addition, shall
23 be subject to a civil fine payable to the party injured
24 by the default in an amount of up to \$25,000.

25 (30) Influencing or attempting to influence, by any
26 words or acts, a prospective seller, purchaser, occupant,

1 landlord, or tenant of real estate, in connection with
2 viewing, buying, or leasing real estate, so as to promote
3 or tend to promote the continuance or maintenance of
4 racially and religiously segregated housing or so as to
5 retard, obstruct, or discourage racially integrated
6 housing on or in any street, block, neighborhood, or
7 community.

8 (31) Engaging in any act that constitutes a violation
9 of any provision of Article 3 of the Illinois Human Rights
10 Act, whether or not a complaint has been filed with or
11 adjudicated by the Human Rights Commission.

12 (32) Inducing any party to a contract of sale or lease
13 or brokerage agreement to break the contract of sale or
14 lease or brokerage agreement for the purpose of
15 substituting, in lieu thereof, a new contract for sale or
16 lease or brokerage agreement with a third party.

17 (33) Negotiating a sale, exchange, or lease of real
18 estate directly with any person if the licensee knows that
19 the person has an exclusive brokerage agreement with
20 another broker, unless specifically authorized by that
21 broker.

22 (34) When a licensee is also an attorney, acting as the
23 attorney for either the buyer or the seller in the same
24 transaction in which the licensee is acting or has acted as
25 a broker or salesperson.

26 (35) Advertising or offering merchandise or services

1 as free if any conditions or obligations necessary for
2 receiving the merchandise or services are not disclosed in
3 the same advertisement or offer. These conditions or
4 obligations include without limitation the requirement
5 that the recipient attend a promotional activity or visit a
6 real estate site. As used in this subdivision (35), "free"
7 includes terms such as "award", "prize", "no charge", "free
8 of charge", "without charge", and similar words or phrases
9 that reasonably lead a person to believe that he or she may
10 receive or has been selected to receive something of value,
11 without any conditions or obligations on the part of the
12 recipient.

13 (36) Disregarding or violating any provision of the
14 Land Sales Registration Act of 1989, the Illinois Real
15 Estate Time-Share Act, or the published rules promulgated
16 by the Department to enforce those Acts.

17 (37) Violating the terms of a disciplinary order issued
18 by the Department.

19 (38) Paying or failing to disclose compensation in
20 violation of Article 10 of this Act.

21 (39) Requiring a party to a transaction who is not a
22 client of the licensee to allow the licensee to retain a
23 portion of the escrow moneys for payment of the licensee's
24 commission or expenses as a condition for release of the
25 escrow moneys to that party.

26 (40) Disregarding or violating any provision of this

1 Act or the published rules promulgated by the Department to
2 enforce this Act or aiding or abetting any individual,
3 partnership, registered limited liability partnership,
4 limited liability company, or corporation in disregarding
5 any provision of this Act or the published rules
6 promulgated by the Department to enforce this Act.

7 (41) Failing to provide the minimum services required
8 by Section 15-75 of this Act when acting under an exclusive
9 brokerage agreement.

10 (42) Habitual or excessive use or addiction to alcohol,
11 narcotics, stimulants, or any other chemical agent or drug
12 that results in a managing broker, broker, salesperson, or
13 leasing agent's inability to practice with reasonable
14 skill or safety.

15 (b) The Department may refuse to issue or renew or may
16 suspend the license of any person who fails to file a return,
17 pay the tax, penalty or interest shown in a filed return, or
18 pay any final assessment of tax, penalty, or interest, as
19 required by any tax Act administered by the Department of
20 Revenue, until such time as the requirements of that tax Act
21 are satisfied in accordance with subsection (g) of Section
22 2105-15 of the Civil Administrative Code of Illinois.

23 (c) The Department shall deny a license or renewal
24 authorized by this Act to a person who has defaulted on an
25 educational loan or scholarship provided or guaranteed by the
26 Illinois Student Assistance Commission or any governmental

1 agency of this State in accordance with item (5) of subsection
2 (g) of Section 2105-15 of the Civil Administrative Code of
3 Illinois.

4 (d) In cases where the Department of Healthcare and Family
5 Services (formerly Department of Public Aid) has previously
6 determined that a licensee or a potential licensee is more than
7 30 days delinquent in the payment of child support and has
8 subsequently certified the delinquency to the Department may
9 refuse to issue or renew or may revoke or suspend that person's
10 license or may take other disciplinary action against that
11 person based solely upon the certification of delinquency made
12 by the Department of Healthcare and Family Services in
13 accordance with item (5) of subsection (g) of Section 2105-15
14 of the Civil Administrative Code of Illinois.

15 (e) In enforcing this Section, the Department or Board upon
16 a showing of a possible violation may compel an individual
17 licensed to practice under this Act, or who has applied for
18 licensure under this Act, to submit to a mental or physical
19 examination, or both, as required by and at the expense of the
20 Department. The Department or Board may order the examining
21 physician to present testimony concerning the mental or
22 physical examination of the licensee or applicant. No
23 information shall be excluded by reason of any common law or
24 statutory privilege relating to communications between the
25 licensee or applicant and the examining physician. The
26 examining physicians shall be specifically designated by the

1 Board or Department. The individual to be examined may have, at
2 his or her own expense, another physician of his or her choice
3 present during all aspects of this examination. Failure of an
4 individual to submit to a mental or physical examination, when
5 directed, shall be grounds for suspension of his or her license
6 until the individual submits to the examination if the
7 Department finds, after notice and hearing, that the refusal to
8 submit to the examination was without reasonable cause.

9 If the Department or Board finds an individual unable to
10 practice because of the reasons set forth in this Section, the
11 Department or Board may require that individual to submit to
12 care, counseling, or treatment by physicians approved or
13 designated by the Department or Board, as a condition, term, or
14 restriction for continued, reinstated, or renewed licensure to
15 practice; or, in lieu of care, counseling, or treatment, the
16 Department may file, or the Board may recommend to the
17 Department to file, a complaint to immediately suspend, revoke,
18 or otherwise discipline the license of the individual. An
19 individual whose license was granted, continued, reinstated,
20 renewed, disciplined or supervised subject to such terms,
21 conditions, or restrictions, and who fails to comply with such
22 terms, conditions, or restrictions, shall be referred to the
23 Secretary for a determination as to whether the individual
24 shall have his or her license suspended immediately, pending a
25 hearing by the Department.

26 In instances in which the Secretary immediately suspends a

1 person's license under this Section, a hearing on that person's
2 license must be convened by the Department within 30 days after
3 the suspension and completed without appreciable delay. The
4 Department and Board shall have the authority to review the
5 subject individual's record of treatment and counseling
6 regarding the impairment to the extent permitted by applicable
7 federal statutes and regulations safeguarding the
8 confidentiality of medical records.

9 An individual licensed under this Act and affected under
10 this Section shall be afforded an opportunity to demonstrate to
11 the Department or Board that he or she can resume practice in
12 compliance with acceptable and prevailing standards under the
13 provisions of his or her license.

14 (Source: P.A. 95-851, eff. 1-1-09; 96-856, eff. 12-31-09;
15 revised 11-18-11.)

16 (225 ILCS 454/20-78 new)

17 Sec. 20-78. Confidentiality. All information collected by
18 the Department in the course of an examination or investigation
19 of a licensee or applicant, including, but not limited to, any
20 complaint against a licensee or applicant or any person who
21 holds himself or herself out as a licensee or applicant filed
22 with the Department and information collected to investigate
23 any such complaint, shall be maintained for the confidential
24 use of the Department and shall not be disclosed. The
25 Department may not disclose the information to anyone other

1 than law enforcement officials, regulatory agencies that have
2 an appropriate regulatory interest as determined by the
3 Secretary, or a party presenting a lawful subpoena to the
4 Department. Information and documents disclosed to a federal,
5 State, county, or local law enforcement agency shall not be
6 disclosed by the agency for any purpose to any other agency or
7 person. A formal complaint filed against a licensee by the
8 Department or any order issued by the Department against a
9 licensee or applicant shall be a public record, except as
10 otherwise prohibited by law.

11 (225 ILCS 454/20-85)

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

13 Sec. 20-85. Recovery from Real Estate Recovery Fund. The
14 Department shall maintain a Real Estate Recovery Fund from
15 which any person aggrieved by an act, representation,
16 transaction, or conduct of a licensee or unlicensed employee of
17 a licensee that is in violation of this Act or the rules
18 promulgated pursuant thereto, constitutes embezzlement of
19 money or property, or results in money or property being
20 unlawfully obtained from any person by false pretenses,
21 artifice, trickery, or forgery or by reason of any fraud,
22 misrepresentation, discrimination, or deceit by or on the part
23 of any such licensee or the unlicensed employee of a licensee
24 and that results in a loss of actual cash money, as opposed to
25 losses in market value, may recover. The aggrieved person may

1 recover, by a post-judgment order of the circuit court of the
2 county where the violation occurred in a proceeding described
3 in Section 20-90 of this Act, an amount of not more than
4 \$25,000 from the Fund for damages sustained by the act,
5 representation, transaction, or conduct, together with costs
6 of suit and attorney's fees incurred in connection therewith of
7 not to exceed 15% of the amount of the recovery ordered paid
8 from the Fund. However, no licensee may recover from the Fund
9 unless the court finds that the person suffered a loss
10 resulting from intentional misconduct. The post-judgment ~~court~~
11 order shall not include interest on the judgment. The maximum
12 liability against the Fund arising out of any one act shall be
13 as provided in this Section, and the post-judgment ~~judgment~~
14 order shall spread the award equitably among all co-owners or
15 otherwise aggrieved persons, if any. The maximum liability
16 against the Fund arising out of the activities of any one
17 licensee or one unlicensed employee of a licensee, since
18 January 1, 1974, shall be \$100,000. Nothing in this Section
19 shall be construed to authorize recovery from the Fund unless
20 the loss of the aggrieved person results from an act or
21 omission of a licensee under this Act who was at the time of
22 the act or omission acting in such capacity or was apparently
23 acting in such capacity or their unlicensed employee and unless
24 the aggrieved person has obtained a valid judgment and
25 post-judgment order of the court as provided for in Section
26 20-90 of this Act. No person aggrieved by an act,

1 representation, or transaction that is in violation of the
2 Illinois Real Estate Time-Share Act or the Land Sales
3 Registration Act of 1989 may recover from the Fund.

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

5 (225 ILCS 454/20-90)

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

7 Sec. 20-90. Collection from Real Estate Recovery Fund;
8 procedure.

9 (a) No action for a judgment that subsequently results in a
10 post-judgment ~~an~~ order for collection from the Real Estate
11 Recovery Fund shall be started later than 2 years after the
12 date on which the aggrieved person knew, or through the use of
13 reasonable diligence should have known, of the acts or
14 omissions giving rise to a right of recovery from the Real
15 Estate Recovery Fund.

16 (b) When any aggrieved person commences action for a
17 judgment that may result in collection from the Real Estate
18 Recovery Fund, the aggrieved person must name as parties
19 defendant to that action any and all ~~individual~~ licensees, or
20 their employees, or independent contractors who allegedly
21 committed or are responsible for acts or omissions giving rise
22 to a right of recovery from the Real Estate Recovery Fund.
23 Failure to name as parties defendant such licensees, or their
24 employees, or independent contractors shall preclude recovery
25 from the Real Estate Recovery Fund of any portion of any

1 judgment received in such an action. These ~~The aggrieved party~~
2 ~~may also name as additional~~ parties defendant shall also
3 include any corporations, limited liability companies,
4 partnerships, registered limited liability partnership, or
5 other business associations licensed under this Act that may be
6 responsible for acts giving rise to a right of recovery from
7 the Real Estate Recovery Fund.

8 (c) (Blank). ~~When any aggrieved person commences action for~~
9 ~~a judgment that may result in collection from the Real Estate~~
10 ~~Recovery Fund, the aggrieved person must notify the Department~~
11 ~~in writing to this effect within 7 days of the commencement of~~
12 ~~the action. Failure to so notify the Department shall preclude~~
13 ~~recovery from the Real Estate Recovery Fund of any portion of~~
14 ~~any judgment received in such an action. After receiving notice~~
15 ~~of the commencement of such an action, the Department upon~~
16 ~~timely application shall be permitted to intervene as a party~~
17 ~~defendant to that action.~~

18 (d) When any aggrieved person commences action for a
19 judgment that may result in collection from the Real Estate
20 Recovery Fund, and the aggrieved person is unable to obtain
21 legal and proper service upon the parties defendant licensed
22 under this Act under the provisions of Illinois law concerning
23 service of process in civil actions, the aggrieved person may
24 petition the court where the action to obtain judgment was
25 begun for an order to allow service of legal process on the
26 Secretary. Service of process on the Secretary shall be taken

1 and held in that court to be as valid and binding as if due
2 service had been made upon the parties defendant licensed under
3 this Act. In case any process mentioned in this Section is
4 served upon the Secretary, the Secretary shall forward a copy
5 of the process by certified mail to the licensee's last address
6 on record with the Department. Any judgment obtained after
7 service of process on the Secretary under this Act shall apply
8 to and be enforceable against the Real Estate Recovery Fund
9 only. The Department ~~OBRE~~ may intervene in and defend any such
10 action.

11 (e) (Blank). ~~When an aggrieved party commences action for a~~
12 ~~judgment that may result in collection from the Real Estate~~
13 ~~Recovery Fund, and the court before which that action is~~
14 ~~commenced enters judgment by default against the defendant and~~
15 ~~in favor of the aggrieved party, the court shall upon motion of~~
16 ~~the Department set aside that judgment by default. After such a~~
17 ~~judgment by default has been set aside, the Department shall~~
18 ~~appear as party defendant to that action, and thereafter the~~
19 ~~court shall require proof of the allegations in the pleadings~~
20 ~~upon which relief is sought.~~

21 (f) The aggrieved person shall give written notice to the
22 Department within 30 days of the entry of any judgment that may
23 result in collection from the Real Estate Recovery Fund. The
24 aggrieved person shall provide the Department with ~~OBRE within~~
25 20 days prior written notice of all supplementary proceedings
26 so as to allow the Department to intervene and participate in

1 all efforts to collect on the judgment in the same manner as
2 any party.

3 (g) When any aggrieved person recovers a valid judgment in
4 any court of competent jurisdiction against any licensee or an
5 unlicensed employee of any licensee broker, upon the grounds of
6 fraud, misrepresentation, discrimination, or deceit, the
7 aggrieved person may, upon the termination of all proceedings,
8 including review and appeals in connection with the judgment,
9 file a verified claim in the court in which the judgment was
10 entered and, upon 30 days' written notice to the Department,
11 and to the person against whom the judgment was obtained, may
12 apply to the court for a post-judgment ~~an~~ order directing
13 payment out of the Real Estate Recovery Fund of the amount
14 unpaid upon the judgment, not including interest on the
15 judgment, and subject to the limitations stated in Section
16 20-85 of this Act. The aggrieved person must set out in that
17 verified claim and prove at an evidentiary hearing to be held
18 by the court upon the application that the claim meets all
19 requirements of Section 20-85 and this Section to be eligible
20 for payment from the Real Estate Recovery Fund and the
21 aggrieved party shall be required to show that the aggrieved
22 person:

23 (1) Is not a spouse of the debtor or debtors or the
24 personal representative of such spouse.

25 (2) Has complied with all the requirements of this
26 Section.

1 (3) Has obtained a judgment stating the amount thereof
2 and the amount owing thereon, not including interest
3 thereon, at the date of the application.

4 (4) Has made all reasonable searches and inquiries to
5 ascertain whether the judgment debtor or debtors is
6 possessed of real or personal property or other assets,
7 liable to be sold or applied in satisfaction of the
8 judgment.

9 (5) By such search has discovered no personal or real
10 property or other assets liable to be sold or applied, or
11 has discovered certain of them, describing them as owned by
12 the judgment debtor or debtors and liable to be so applied
13 and has taken all necessary action and proceedings for the
14 realization thereof, and the amount thereby realized was
15 insufficient to satisfy the judgment, stating the amount so
16 realized and the balance remaining due on the judgment
17 after application of the amount realized.

18 (6) Has diligently pursued all remedies against all the
19 judgment debtors and all other persons liable to the
20 aggrieved person in the transaction for which recovery is
21 sought from the Real Estate Recovery Fund, including the
22 filing of an adversary action to have the debts declared
23 non-dischargeable in any bankruptcy petition matter filed
24 by any judgment debtor or person liable to the aggrieved
25 person.

26 The aggrieved person shall also be required to prove the

1 amount of attorney's fees sought to be recovered and the
2 reasonableness of those fees up to the maximum allowed pursuant
3 to Section 20-85 of this Act.

4 (h) After conducting the evidentiary hearing required
5 under this Section, the ~~The~~ court, in a post-judgment shall
6 ~~make an~~ order directed to the Department, shall indicate
7 whether requiring payment from the Real Estate Recovery Fund is
8 appropriate and, if so, the amount of whatever sum it finds to
9 be payable upon the claim, pursuant to and in accordance with
10 the limitations contained in Section 20-85 of this Act, if the
11 court is satisfied, based upon the hearing, of the truth of all
12 matters required to be shown by the aggrieved person under
13 subsection (g) of this Section and that the aggrieved person
14 has fully pursued and exhausted all remedies available for
15 recovering the amount awarded by the judgment of the court.

16 (i) Should the Department pay from the Real Estate Recovery
17 Fund any amount in settlement of a claim or toward satisfaction
18 of a judgment against any licensee ~~a licensed broker or~~
19 ~~salesperson~~ or an unlicensed employee of a licensee broker, the
20 licensee's license shall be automatically revoked ~~terminated~~
21 upon the issuance of a post-judgment ~~court~~ order authorizing
22 payment from the Real Estate Recovery Fund. No petition for
23 restoration of a license shall be heard until repayment has
24 been made in full, plus interest at the rate prescribed in
25 Section 12-109 of the Code of Civil Procedure of the amount
26 paid from the Real Estate Recovery Fund on their account, l

1 notwithstanding any provision to the contrary in Section
2 2105-15 of the Department of Professional Regulation Law of the
3 Civil Administrative Code of Illinois. A discharge in
4 bankruptcy shall not relieve a person from the penalties and
5 disabilities provided in this subsection (i).

6 (j) If, at any time, the money deposited in the Real Estate
7 Recovery Fund is insufficient to satisfy any duly authorized
8 claim or portion thereof, the Department shall, when sufficient
9 money has been deposited in the Real Estate Recovery Fund,
10 satisfy such unpaid claims or portions thereof, in the order
11 that such claims or portions thereof were originally filed,
12 plus accumulated interest at the rate prescribed in Section
13 12-109 of the Code of Civil Procedure.

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

15 (225 ILCS 454/20-95)

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

17 Sec. 20-95. Power of the Department to defend. When the
18 Department receives any process, notice, order, or other
19 document provided for or required under Section 20-90 of this
20 Act, it may enter an appearance, file an answer, appear at the
21 court hearing, defend the action, or take whatever other action
22 it deems appropriate on behalf and in the name of the parties
23 defendant licensed under this Act or the Department and take
24 recourse through any appropriate method of review on behalf of
25 and in the name of the parties defendant licensed under this

1 Act or the Department.

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

3 (225 ILCS 454/20-115)

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

5 Sec. 20-115. Time limit on action. No action may be taken
6 by the Department against any person for violation of the terms
7 of this Act or its rules unless the action is commenced within
8 5 years after the occurrence of the alleged violation. This
9 limitation shall not apply where it is alleged that an initial
10 application for licensure under this Act contains false or
11 misleading information.

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

13 Section 99. Effective date. This Act takes effect upon
14 becoming law."