

REAL ESTATE EXAMINATION PROGRAM Sponsoring Broker Responsibilities

In an effort to increase awareness of, and compliance with, the Illinois Real Estate License Act of 2000 ("Act") and Administrative Rules ("Rules"), the State of Illinois developed a Real Estate Examination Program. The purpose of this program is to ascertain compliance with the Act and Rules by Illinois real estate sponsoring brokers.

When selected to participate in the compliance program, you will receive a letter from IDFPR establishing a time for an on-site review or a request to complete a *Brokerage Verification Report* to assess your level of licensed real estate activity prior to scheduling an on-site examination. A Real Estate Professions Examiner will be assigned to conduct the review of your business records, identify any deficiencies and provide you with the applicable cites from the Act and Rules to assist you with correction of the issues. If deficiencies are found, a follow-up examination will be performed to review those findings in order to ensure compliance with the Act and Rules. It is in the best interest of each licensee to actively and aggressively take the corrective steps for compliance or be subject to future discipline.

The following is an overview of the sections that will be reviewed in the examination by IDFPR. Please note that each area includes a reference(s), in parentheses, to the Act or the Rules (reference to the Rules will begin with 1450.____). You may download a copy of the Act and Rules from IDFPR's website at www.idfpr.com/profs/REALEST.asp.

COMPANY LICENSURE

Corporation:

- A licensee conducting business as a corporation shall maintain an active Illinois charter with the Illinois Secretary of State. (1450.600(c)(2))
- Corporate officers actively participating in real estate activities shall be licensed as a real estate managing broker or broker. Unlicensed officers shall submit an affidavit of non-participation to IDFPR. (5-15(b) & 1450.600(c)(3))

Limited Liability Company:

- A licensee conducting business as a limited liability company shall file Articles of Organization with the Illinois Secretary of State. (1450.600(d)(1)(C))
- Managers (or members in a member managed LLC) shall be licensed as a real estate managing broker or broker. Unlicensed members shall submit an affidavit of non-participation to IDFPR. (5-15(d) & 1450.600(d)(2))

Limited Partnership:

- A licensee conducting business as a limited partnership shall receive a letter of authority issued by the Illinois Secretary of State. (1450.600(f)(1))
- General partners in the limited partnership shall be licensed as a real estate managing broker or broker. Unlicensed general partners shall submit an affidavit of non-participation to IDFPR. (5-15(c) & 1450.600(f)(3))

Partnership:

- A licensee conducting business as a partnership shall maintain an affidavit stating that the partnership has been legally formed. (1450.600(e)(2))
- All general partners in a partnership shall hold a license as a managing broker or broker. (5-15(c))

Company Ownership: An individual leasing agent or group of leasing agents may not own more than 49% share of stock or other ownership in any partnership, limited liability company or corporation. (5-15(e))

Assumed Name (d/b/a): If you are a sponsoring broker operating under any other name than the name that appears on the license, make sure you have filed the appropriate assumed name (d/b/a) documents as follows:

- *Sole proprietor.* Register the assumed business name in each county in which you have an office; submit a copy of the certification from the county to IDFPR. (1450.120)
- *Corporation/Limited Liability Company/Limited Partnership/Partnership.* Register the assumed business name with the Illinois Secretary of State; submit a file-stamped copy to IDFPR. (1450.120)

Change of Business Information:

Corporation/Limited Liability Company/Partnership/Limited Partnership: It is the responsibility of each sponsoring broker of a business licensed under the Act to immediately notify IDFPR of any change of business information. (1450.150(b))

OFFICE

- Identification sign shall be professional in appearance and appropriately displayed on the outside of your place of business. Listings within building directories fulfill the requirements of this section. (5-45(d) & 1450.725)
- Collective membership marks are only to be used by members of that organization, i.e. the term REALTOR® listed for a member of the National Association of REALTORS®. (20-20(a)(13))
- Real estate office shall be located in a separate area, apart from other businesses. (5-45(d) & 20-20(a)(4))
- Ensure licensees and real estate entity (e.g. corporation; limited liability company; limited partnership or partnership) are properly licensed. (5-15; 20-20(a)(6); & 20-22)
- All current licenses are to be readily available to the public at their place of business. (5-27(d) & 1450.730)
- Managing brokers assigned to manage more than one office shall have their original license readily available in their primary office and copies of the license readily available in those offices that they manage, but are not their primary office. (1450.730(c))
- Licensees shall notify IDFPR of the address (and every change of address) where the licensee practices. (5-41)

SUPERVISION

Every real estate entity, other than a sole proprietorship with no other sponsored licensees, shall adopt a company or office policy. The sponsoring broker shall name a managing broker for every office. That managing broker shall exercise reasonable supervision over the activities of licensees and unlicensed assistants working in those offices managed by the managing broker. Supervision includes, but is not limited to: implementing office policies and procedures established by the sponsoring broker; training of licensees or unlicensed assistants; supervising and assisting licensees in real estate transactions; supervising escrow accounts to ensure compliance with provisions of the Act and Rules; supervising all advertising of any service for which a license is required; and familiarizing sponsored licensees with the requirements of federal and state laws and local ordinances relating to the practice of real estate. (10-40 & 1450.705)

LICENSEES, AGENTS & ASSISTANTS

Employment Agreements: The sponsoring broker is required to have a written agreement with all sponsored licensees, including the managing broker, unless you are a sole proprietor.

The written agreement shall include: supervision guidelines; duties of the licensee; compensation; and a process for termination. (10-20 & 1450.735)

Unlicensed Assistants: Ensure unlicensed assistants are not performing activities for which a license under the Act is required. Licensees are prohibited from acting as an unlicensed assistant for any licensee other than his or her sponsoring broker or a licensee sponsored by his or her sponsoring broker. (1450.740)

Corporation for Indirect Payment: Sponsored licensees may form a corporation for indirect payment for which the licensee is the sole owner/shareholder. A copy of the Articles of Incorporation is to be filed with IDFPR, but the corporation cannot be licensed under the Act. (10-20(e) & 1450.745)

Use of Diminutives: If a licensee regularly practices under a diminutive of his or her first name (e.g. Meg for Margaret), last name or a middle name instead of the licensee's full legal name, the licensee shall notify IDFPR of the alternate name. (1450.150(a))

BROKERAGE AGREEMENTS & CONTRACTS

- All exclusive brokerage agreements shall be in writing and indicate the minimum services that must be provided. (1-10; 15-75; & 1450.770(a))
- All written listing agreements shall contain: list price; agreed amount of compensation; defined date of termination with no condition for automatic extension; name of sponsoring broker and seller; identification of property; signature of owners (or authorized signatory) and sponsoring broker; duties of listing broker; and anti-discrimination clause. (1450.770(c))
- All written buyer brokerage agreements shall contain: agreed amount of compensation; duration of the agreement; name of sponsoring broker and buyer (or authorized signatory); and duties of buyer's broker. (1450.770 (b))
- A licensee acting as a dual agent must obtain: 1) prior informed written consent from the seller/landlord; 2) prior informed written consent from the buyer/tenant; and 3) informed written confirmation of the prior written consent from the seller/landlord and buyer/tenant. Under no circumstances may a licensee serve as a dual agent in any transaction in which he or she, or an entity in which he or she has an ownership interest, is a party to the transaction. (15-45 & 1450.820)
- A licensee providing rental finding services shall, prior to accepting a fee for the services, enter into a written contract with the person for whom services are to be performed. Contracts shall include: term; detailed statement of services; payment of services; statement of refunds; type of unit desired; geographical area requested; and rent the tenant is willing to pay. It should also provide required disclosure for each rental unit and statements regarding accuracy of information. A rental finding service shall not list or advertise any rental unit without the express written authority of the owner or agent of each unit. (1450.785)
- Forms used by the licensee intended to become binding real estate contracts are to clearly state this in the heading in large bold type. (1450.775(d))
- All changes to agreements or contracts must be signed or initialed by all signatories to the agreement. (1450.775(b))
- If a licensee has an interest, direct or indirect, in the property that is the subject of the transaction, the licensee shall provide written disclosure to all parties in the transaction. (10-27 & 1450.765)

ADVERTISING

- No advertising, whether in print, via the Internet, or through any other media, shall be fraudulent, deceptive, inherently misleading, or proven to be misleading in practice.

Advertising shall contain all information necessary to communicate the information contained therein to the public in an accurate, direct, and readily comprehensible manner. (10-30; 20-20(a)(9)&(10); & 1450.715)

- Internet and Related Advertising (10-35 & 1450.720)

ESCROW

A sponsoring broker is not required to maintain an escrow account if not accepting escrow funds. If escrow funds are accepted, an account at a federally insured financial institution shall be established. A *Consent to Examine and Audit Special Accounts* form (available on the IDFPR website at www.idfpr.com/Forms/DRE/EscrowRequirements-1005.pdf) for each financial institution shall be completed by the sponsoring broker then filed with IDFPR. (1450.750(b) & 1450.750(m))

Escrow moneys shall be maintained separate and apart from any personal, business or operating accounts. The sponsoring broker may deposit from his or her own personal funds the minimum amount necessary to avoid incurring bank service charges or to cover service fees charged to that account. (1450.750(b))

Should the escrow account be interest bearing, sponsoring broker needs to have a W-9 for each account and a written agreement between the principals providing the interest bearing account. (1450.750(b)(2))

All escrow funds received by the sponsoring broker shall be deposited into the escrow account no later than the next business day following the transaction. A transaction exists once an accepted real estate contract has been signed by the parties. (1450.750(d))

Ensure that your bookkeeping system includes:

- Master escrow account log which identifies all escrow bank account numbers and the name and address of the bank where the escrow account(s) are held (1450.750(i)(5))
- Chronological journal (1450.750(i)(1))
- Property ledger cards (1450.750(i)(2))
- Sponsoring broker's fund ledger card (if applicable) (1450.750(b)(6))
- Monthly reconciliation worksheet which compares the reconciled bank statement, journal balance, and sum of all open ledger cards. When done correctly, these three balances will compare equally. (1450.750(i)(3))

Note that the *Escrow Account and Record Keeping Requirements* booklet is available on the IDFPR website at www.idfpr.com/Forms/DRE/EscrowRequirements-1005.pdf. This booklet provides a sample format of the master escrow account log; journal; ledger cards; and reconciliation worksheet.

RECORD KEEPING

- The sponsoring broker is to maintain real estate office records for five years. This includes transaction records of listings, sales, property management, leases, buyer representation (including but not limited to closed, cancelled, expired or withdrawn); escrow records; employment agreements and records reflecting payment of compensation. (1450.755)
- Escrow records may be maintained manually or electronically. If kept electronically, the records are to be backed up at least monthly and the escrow journal is to be reduced to hard copy at least monthly. The journal is to be kept at the office of the sponsoring broker for 60 days. (1450.755(b))
- Escrow records shall be retained for five years. The escrow records for the immediate prior two year period are to be maintained in the office location. (1450.750(i)(10) & 1450.755(a)(2))
- Transaction records involving any active or pending transaction or representation, or any transaction in which escrow funds or monies belonging to others have been received and not yet disbursed shall be maintained in the office location. (1450.755(a)(3)(C))