



**ILLINOIS  
REALTORS®**

2021 Managing Broker CE

BMCE-1804 2020 Revision

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## RESPONSIBILITY

It is our duty to ensure that our agents are working in the best interest of their clients rather than themselves and are not committing fraud or other illegal activities. We have a responsibility to maintain an office environment that fosters professionalism which has an impact on more than just our buyers and sellers.

## ECONOMIC IMPACT

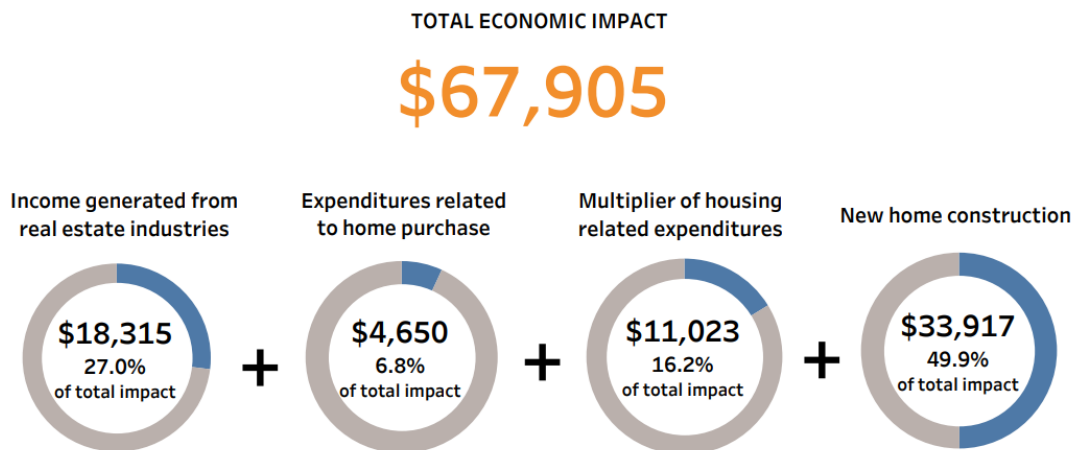
Each home sale results in additional expenditures for remodeling, appliances, services, and furnishings. The income generated by these expenditures results in additional expenditures from employees of these industries. The latter process is known as the economic multiplier.

Furthermore, rising home values have a strong wealth effect where consumers will spend more of their income if they feel confident that rising home prices are expanding their personal wealth. Not surprisingly, states with the highest home prices experienced the largest impact from existing home sales.

# THE ECONOMIC IMPACT OF A TYPICAL HOME SALE

in Illinois

The real estate industry accounted for \$144.7 billion or 16.1% of the gross state product in 2019.



**Real Estate Industries:** We assume that commissions, fees and moving expenses, or income to real estate industries, associated directly with the purchase are about 9% of the median home price.

**Expenditures related to home purchase:** Furniture and remodeling expenses are about \$4,650 based on the NAHB figure.

<http://www.nahbclassic.org/generic.aspx?sectionID=734&genericContentID=257993&channelID=311&ga=2.174727074.1093549992.1499375907.912917446.1499375907>

**Multiplier effect:** The multiplier effect accounts for the fact that income earned in other sectors of the economy as a result of a home sale is then re-circulated into the economy.

**New construction:** Additional home sales induce added home production. Typically, one new home is constructed for every six existing home sales. Thus, for every existing homes sale, 1/6 of a new home's value is added to the economy.

Sources: BEA, U.S. Census, NAHB, Macroeconomic Advisors, NAR



<https://www.nar.realtor/reports/state-by-state-economic-impact-of-real-estate-activity>

## IMPORTANCE




The purchase – and subsequent sale – of home is the largest single investment that most people make in their lives. It is not only a wealth issue, it is what forms their family structure. It's important that every licensee understands their responsibility to the consumer in the transaction. And it is imperative that the Designated Managing Broker instill this understanding in all their agents.

## WHY WE DO BMCE EVERY TWO YEARS

- Things change
  - Designated Managing Brokers as leaders need to be in the know
  - Office Policies need revision with industry and company changes
  - New skills required as market conditions change and technology expands
  - Only time all Managing Brokers are reminded of their statutory duties and for those that still “don't get it” .....can be educated again on the importance of practicing and supervising in the best interests of the consumers we serve
- Why should non-managing brokers care?
  - At any time they could open an office and/or sponsor others
  - They made a business decision to maintain the Managing Broker license and must be held accountable to the standards set for this license
  - They are, or should be, Leaders of the Industry and held to a higher standard of knowledge than other licensees.

## FORMAT

We are going to look at each of the mandatory duties sponsoring and designated managing brokers have as outlined in RELA.

- The Designated Managing Broker – DMB - is responsible for any and all duties given to them by the Sponsoring Broker.
- If there is no separate Sponsoring Broker, the DMB is responsible for everything in both
- We have put in boxes where office policy decisions need to be made. 
- Denotes item is part of IDFPR's Department of Real Estate (DRE) Compliance Examination Report. 
- Although your entire brokerage needs to be up to date with technology, we have noted areas where special attention to supervision through technology is needed with this symbol. 

## **SPONSORING BROKER #1: LEGAL AND LICENSED COMPANY STRUCTURE**

### **Changes to RELA – 2019-2020**

- Minimum age for obtaining Broker license: 18
- Minimum age for Managing Broker license: 20
- Pre-license: 75 hours; Post-license 45 hours
- New Designated Managing Broker definition
- Managing Broker licensees can now use Managing Broker on their marketing
- Increased Designated Managing Brokers duties with new agents
- Clarification on Teams (more on this later)
- Paperless – no pocket cards, licensing and changing offices done on-line
- Advertising/marketing requirement changes (more on this later)
- Created ability for Department to issue Citations
- Made ability for consumer to receive funds from recovery fund more streamlined
- Leasing Agent now Residential Leasing Agent

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### **Link to IDFPR Department of Real Estate 2020 Annual Report**

<https://www.idfpr.com/Forms/DRE/IDFPR%20DRE%20FY2020%20Annual%20Report.pdf>

### **Legal Status of Brokerage**

#### **Sole Proprietor**

- Fastest, easiest way to open an office
- Managing Broker License is the company license; renewed April 30 odd years
- Provides the least legal protection to the owner
- Even with additional sponsored licensees – referred to as sole proprietor
- If public company name to be different from license: must apply for a DBA (Doing Business As) in the counties of business and register said DBA with IDFPR/DRE



## Corporation, Limited Liability Company (LLC), Partnership, Limited Partnership, Limited Liability Partnership (LLP)

- Must submit a complete application on proper forms
- Must have a Federal Employer Identification Number (FEIN)
- Must submit proper fees and consent to examine and audit special accounts
- If an assumed name is used: must submit a certificate authorizing to do business as set forth in the Assumed Business Name Act
- Must be in good standing with the Secretary of State; renewed annually
  - Corporation: Articles of Incorporation and officer identification
  - LLC: Articles of Organization (member managed or manager managed)
  - Limited Partnership: Letter of Authority if foreign limited partnership
- Unlicensed officers, managers, partners must submit "Affidavit of Non-participation"
- Cannot be owned or controlled by more than 49% leasing agents
- Online renewal of licensed brokerage entities: October 31<sup>st</sup> even year
- See Section 1450.600 of the Rules for complete requirements

## Office Requirements

- Except as provided in RELA Section 5-45 e) out of state broker and f) virtual office, Sponsoring Broker shall maintain a definite office, or place of business within Illinois
- If located in a retail or financial business establishment... must be separated from other business by a separate and distinct area
- Broker licensed by examination that maintains an office and active broker license in another state of domicile, must file with the Department
- All licenses for all sponsored licensees must be available to the public.
- Signage must be:
  - Professional
  - Meet applicable zoning restrictions
  - Be outside, semi-permanent and easily readable by the public
  - Listings within a building directory fulfill the requirement



## Branch Offices

- Sponsoring Broker must notify the Department that a branch office exists.
- The name of the branch shall be the same name as the principal office or clearly delineate the branch office's affiliation
- The sponsoring broker shall name a managing broker for each branch office and the sponsoring broker is responsible for supervising all managing brokers as well as submit a consent to audit if branch has escrow account.

- Teams operating in a location other than their sponsored brokerage must be classified as a branch if performing licensed activities at that location (meeting clients there, lists address on business card....)

### Recordkeeping



Must maintain transaction records for 5 years

- Listings and sales
- Property management transactions
- Leases
- Buyer representation agreements
- Includes closed, cancelled, expired or withdrawn transactions
- Escrow records (reconciliation, and others for 2 years)
  - Can be held electronically
  - Must be backed up a least monthly
  - Escrow journal to hard copy monthly
- Employment agreements
- Records of payment of compensation

### Sponsoring Specifics

- New on-line procedures for the new applicant:
  - After passing the state exam, the applicant will receive an email from IDFPR/DRE with a form to complete for intended sponsorship
  - The applicant will identify on this form the name and contact information of the Designated Managing Broker of the brokerage he/she is going to affiliate with
  - When said Designated Managing Broker receives and acknowledges the intent to sponsor this individual – this communication will activate the issuance of a license.
  - Fees will be paid on-line
- On-line procedures are also to be followed for moving a licensee from one brokerage to another
- Registration of an intended “Diminutive of licensee’s name” must be done by written notice or emailed to [fpr.realestate@illinois.gov](mailto:fpr.realestate@illinois.gov)
- A printed copy of the new sponsored license must be obtained and be kept readily available.
- Association and MLS registration to be done immediately after being sponsored
- Office and Branch Office – Any opening, closing or change of address must be noticed to the Department within 24 hours
- Change of Escrow Bank - Any change of depository, method of doing business, or persons authorized to make withdrawals must be submitted within 10 days.



You must have policies in place for prompt transmission of all required documents from your agents on all transactions.

Need complete list of what should be in the file.

Appendix Page 79 has Rules for required documents. Consult legal counsel for risk management recommendations for document retention.

## Compensation

- Business Entity for Direct Payment
  - Said entity may be owned solely by licensee or by licensee with an unlicensed spouse or licensed spouse provided both sponsored by same sponsoring broker
  - Entity may NOT be licensed, may not perform licensed activities, may not sponsor others and may NOT advertise under the name of the corporation
  - An entity set up for tax purposes does not protect team members from liability since they cannot do licensed activity through the corporation.
  - A copy of the Secretary of State Certification, licensee name, license number and statement of intent for use of indirect payment must be sent to IDFPR/DRE at [FPR.realestate@illinois.gov](mailto:FPR.realestate@illinois.gov). No annual communication to IDFPR/DRE is required but must keep current with Secretary of State.
- Licensed Assistants
  - Must be paid by sponsoring broker
  - Independent Contractor status appropriate ONLY if meets the IRS guidelines:
    - Little control over licensee (time and method of job completion)
    - Is licensed and has executed an independent contractor agreement
    - Majority of compensation is from commissions
  - If classified as employee: withholding, social security, unemployment etc. must be in place..... Team Leader responsibility but sponsoring broker handles the payment... Company Policy directs how paperwork and withholding is handled
  - Cannot be treated as Independent Contractor AND Employee



## **SPONSORING BROKER #2: BUSINESS MODEL DECISIONS**

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- Property Management
  - Should the company offer?
  - What additional E&O would be required?
  - What contract forms would you use?
  - Do you need policies for or against individual agents offering property management services?
- Commercial
  - Will your company provide commercial brokerage?
  - Will you have any special requirements for agents who wish to handle commercial transactions?
  - What support will you provide commercial agents?
  - Who will supervise commercial activities?

- Residential
  - Special departments i.e. Leasing, Relocation, Lead Management?
  - Designated Agency? Dual Agency?
  - Transaction Platform technology?
  - Systems for supervision?
- Residential Leasing Agents
  - Limited license: may only lease residential (no referral opportunities for other activities)
  - Recent changes to License Law clearly outlines supervision requirements including training and holding agent accountable to starting class within 60 days of a 120 day permit

### Residential Leasing – All Agents



Brokerage  does  does not authorize its agents to do residential leasing.

When doing residential leasing, the following will apply:

Brokerage  will  will not run credit checks or do tenant screening on prospective tenants

Brokerage  will  will not hold security deposits

all landlords will be provided the Fannie Mae *Becoming a Landlord: Rewards, Risks, Responsibilities* <https://singlefamily.fanniemae.com/media/21801/display>

all landlords will be provided the Illinois REALTORS® *Guide to Property Management and Residential Rentals* <https://www.illinoisrealtors.org/wp-content/uploads/2018/07/Guide-to-Property-Management-and-Residential-Rentals.pdf>

Brokerage will require compensation from the owner in the form of certified funds

at the time the lease is executed

at the time of possession (listing agreement may need to be amended)

agents must verify and educate owners on all state and local rental ordinances including, but not limited to:

- Carbon Monoxide Detector Act
- Smoke Detector Act
- Lead Paint Disclosure
- Radon Disclosure
- Dwelling Unit Lock Compliance
- Landlord Licensing
- Municipal Inspections
- Crime Free Provisions
- Protected Classes, Occupancy Addendum Required, Other special Ordinances

Agents are reminded that they cannot act as the agent of the residential tenant if they own or have an interest in the property being rented.



## **SPONSORING BROKER #3: WRITTEN EMPLOYMENT AGREEMENTS**

### **Independent Contractor Agreements**



One of the DRE Top Findings from Examinations

- If using a sample agreement... MUST CUSTOMIZE to the brokerage specifics!
- Must have with all licensees – including licensed assistants of other agents
- Must be signed and dated by licensee and DMB.
- Minimum Requirements:
  - Duties
    - Must reflect the license permitted activities
    - Leasing Agent is a limited license: cannot sell and cannot refer for compensation
    - Licensed Assistant: Employee versus Independent contractor?
  - Supervision
  - Duration
  - Compensation
    - To be considered Independent Contractor: most of earnings are to be commission
  - Termination

#### Termination

- Can they take their listings with them?
- What procedures are required to legally cancel?
- Can they take buyer clients?
- If under exclusive agreement, what procedures are required to legally cancel?
- Will they get compensated on pending transactions?
- Will there be a fee deducted from compensation for pendings?
- Will they get a referral fee on listings that stay with company?



### **Be sure new agents are aware of ALL costs to do business**

- REALTOR® dues – startup and ongoing
- MLS fees – startup and ongoing
- Business cards and marketing material
- Signs
- Key boxes
- Website
- Insurance – E&O and auto
- Franchise fees
- Desk fees
- Transaction fees

## **SPONSORING BROKER #4: MUST NAME AND REMAIN RESPONSIBLE FOR DMB**

### **Change of Designated Managing Broker**

- Loss of a named managing broker must be reported within 15 days
- Sponsoring Broker may receive authorization to operate up to 60 days without a named managing broker if sponsoring broker assumes responsibilities

## **SPONSORING BROKER #5: MUST PROVIDE COMPANY OR OFFICE POLICY**

It is the Sponsoring Broker's responsibility to develop and provide the office policy. We will cover this section under Designated Managing Broker Duties #1: Implementation and Communication of Office Policy.

## **SPONSORING BROKER #6: ACCOUNTIBLE FOR COMPLIANCE WITH ALL LAWS AND REGULATIONS – NAR DOJ SETTLEMENT**

**[HTTPS://WWW.NAR.REALTOR/2020-NAR-DOJ-AGREEMENT-REGARDING-MLS-RULES](https://www.nar.realtor/2020-nar-doj-agreement-regarding-mls-rules)**

- Buyer brokerage compensation will be made publicly available
  - Probably on client copy of MLS sheet
  - Buyer agents will have affirmative obligation to disclose
- Provide consumers all properties regardless of compensation
  - Probably – no ability to search in MLS by compensation
  - Buyer agents already cannot refuse to show because of compensation
- Buyer agents cannot represent their services as free
- Non-MLS participants must have access to lockboxes (with seller's permission)



## **SPONSORING BROKER #6: ACCOUNTIBLE FOR COMPLIANCE WITH ALL LAWS AND REGULATIONS - ANTITRUST COMPLIANCE**

Antitrust Video: <https://youtu.be/lqXDeagckLw>

The main purpose of antitrust laws is to promote and protect competition. This is done by prohibiting monopolies and any contracts that unfairly restrain trade. The most frequent antitrust violations in real estate are price-fixing, group boycotting, allocation of customers or markets and often manifest themselves in association meetings or agreements.

According to federal and state law, companies must establish their fee structures and business relationships independent of competitors, acting in their own best business interests in an economically rational manner. Therefore, a statement such as "Our company charges x percent commission, which is standard for our area," is inherently problematic because it implies that competitors have agreed on what to charge.

To be found in violation of antitrust laws one does not have to have conspired to fix prices or terms. The violation, or allegations of a violation, can occur if the statements of the agent imply to the consumer that price fixing has occurred. For that reason, agents must be very careful how they explain their compensation policies to buyers and sellers.

**Price-fixing** is the practice of placing a set price for products and services rather than allowing competition to establish the price. This can occur if an agent gives any indication that everyone charges the same commission rate in that geographic area. Price-fixing also includes the time period in an employment agreement. This must be negotiated with the client.

**Group boycotting** occurs when one or more brokerage companies agree to withhold patronage of a service or business. A company can make an independent decision to not use a certain business or service, but it cannot be discussed outside of the company.

**Allocation of customers or markets** restricts trade by limiting the choices that customers have for services or products. This is done by brokerage companies dividing markets and refraining from competing with one another. This does not give the consumer the opportunity to comparative shop.

### **Board/Association Agreements**

Standard-form listing contracts (and buyer agency agreements created by a local or state association) should not contain certain information preprinted on the form – making it look like it was part of the body of the document, including:

- Commission rates
- Predetermined listing periods
- Predetermined protection periods

If you are involved in any association meetings that infer any antitrust issues, and you cannot get the conversation to stop, you are advised to leave the meeting and if minutes are being taken ask that your departure be put in the record.

## **Commission Rate Do's and Don'ts**

### **Don't Say**

"This is the rate every firm charges"

"I'd like to lower the commission, but no one else in the MLS will show your house unless the commission is at least X"

"Commission rates are pretty standard"

"That's the going rate"

"We'd like to charge a lower commission, but the board (or MLS) has a rule"

"We've all agreed that any commission below "X" is unfair"

"We charge our buyers X because that is what's normally paid out to buyer brokers"

### **Do use statements like:**

"There is no standard commission. Each office sets their fees independently based on the services they provide. Our firm prides itself on giving top notch service to facilitate a quicker sale at closer to asking price"

"This is commission our office charges to put into place all the services we talked about. Let's go over those again"

"I am committed to getting you the most money, the quickest sale, with the least amount of inconvenience and I can't do that on a shoestring budget"

"Let's look at the statistics again. My listings are selling in \_\_\_\_\_ days compared with the MLS average of \_\_\_\_\_. I am also getting closer to list price for my sellers than the MLS average. With both a quicker and closer to asking price sale we should more than offset the difference in commission – and you don't pay a dime until you have a transaction you are satisfied with".

## **Additional Terms Do's and Don'ts**

### **Don't Say:**

"The MLS will not accept a listing for less than 120 days"

"No board member will take a listing for less than 90 days"

"90 days is the standard"

"We have to take an Exclusive Right to Sell listing – it's an MLS rule"

**Do Say:**

“Based on the average days on market, we are currently taking our listings for 120 days”

“Other firms may use Exclusive Agency agreements, but we do not. With the amount of effort, time and money we spend on our listings coupled with the fact that we do not get paid until we close on your home, it would not be a good business decision to do all that without some assurance that at least our expenses will be covered”

**Boycotting Don'ts - there are no Do's**

“Before you list with XYZ Realty, you should know that nobody works on their listings.”

“I bet they'd drop their „discount program if we told them they couldn't sell our listings”

“We don't worry about XYZ – we just don't show their listings”

“Something has to be done about them – they're ruining it for the rest of us”

“That price-cutter has no business being a member of the MLS”

“I don't know why the Board lets them be a member”

**Association Listing Agreements**

- Association agreements should not contain predetermined:
  - Commission rates
  - Listing periods
  - Protection periods
- No brokerage firm should have these printed into an association agreement that is used by their agents

**Policy Issues**

- What is your company policy on commission?
- Do you have a split that your agents must adhere to?
- What is the policy on length of the listing?
- Policy on the length of the protection period?
- Do you allow variable rate commissions?


If your company deducts from the offer of compensation any fees or expenses, it is important that you have explained to your agents understand they CANNOT say:

This is a processing fee that:

- Everyone charges
- MLS requires
- Board imposes



Slides from Illinois REALTORS® 45-Hour Post Licensing Course




The diagram features three circular nodes connected by mathematical symbols. On the left is a dark blue circle containing the text 'Listing Fee'. To its right is a plus sign '+'. Next is a light blue circle containing 'Co-Op Fee'. To its right is an equals sign '='. Finally, on the far right is a dark grey circle containing 'TOTAL FEE'. The background consists of several interlocking puzzle pieces in shades of grey and white, with some pieces having faint letters like 'E' and 'E' on them.

**There are 2 sides to a total fee – each side has a different set of responsibilities that contribute to the amount charged / received.**

### THE CO-OP SIDE

With your compensation addressed, you can now discuss the pros/cons of what fee, if any, should be offered to attract attention to the listing



**NEGOTIATE IT**

- Co-op Side of the commission
  - Disclosed and discussed with seller
  - Identifies amount offered to other brokerages
  - Disclosure and discussion of variable rate
- Seller makes final decision prior to signing the listing agreement
- Listing agent offers that amount into the MLS for the cooperating agent

## **General Member Message Points on Antitrust Lawsuits – from NAR**

REALTORS® are encouraged to have transparent conversations with current and prospective clients about the services they will provide and how they will get paid for those services. The National Association of REALTORS® developed the following message points to make sure members are up to date and knowledgeable about the litigation and help guide their conversations with current and prospective clients.

### **REALTORS® are champions of homeownership, property rights and the communities they serve.**

Every REALTOR® adheres to a strict code of ethics based on professionalism, consumer protection, and the golden rule. REALTORS® draw on their unmatched knowledge to help buyers and sellers navigate one of the most complicated financial transactions of their lives. And REALTORS® are engaged neighbors committed to building and enhancing the communities they serve.

### **The MLS system and the way commissions are paid create competitive, efficient markets that benefit home buyers, sellers and small business.**

The MLS system creates a highly efficient residential real estate market that fosters cooperation between brokers to the benefit of consumers. Commission structures (including how the listing broker pays the buyer broker) ensure greater access for a large community of home buyers who might otherwise be priced out of the market, which also would limit options for sellers.

### **Local, expert brokers play a crucial role in helping buyers and sellers achieve their goals.**

Given the volume of information buyers have to navigate and the complexity of this transaction, buyer brokers serve many essential, highly informed roles ranging from scheduling home tours and inspections to coordinating with lenders and appraisers to coordinating attorney reviews and closing documents. Consumers agree: 78 percent of homebuyers say their broker was an important information source, and almost 90 percent would recommend their broker to a family member or friend.

### **These lawsuits are wrong on the facts, wrong on the economics, and wrong on the law.**

Commissions are negotiable and, in fact, can be negotiated at any point during the transaction. The MLS and associated brokerage system create highly competitive markets with increased transaction volume and superior customer service. Consumers have many choices of different service and fee models among many brokers. Over 100 years, the courts have repeatedly validated this pro-competitive, pro-consumer MLS system, recognizing it increases the efficiency of the market and thus serves the best interests of sellers and buyers alike.



## **SPONSORING BROKER #6: ACCOUNTIBLE FOR COMPLIANCE WITH ALL LAWS AND REGULATIONS – DISCLOSURES**

### **CASE STUDY #1**

Bob is listing a property owned by an investor who has never lived in the property. Bob's seller checked the box on the disclosure form that he had not lived in the house in the last 12 months and did not answer any other items on the form.

Sue, the buyer's agent is asking that the seller complete the form by answering the rest of the questions.

**If Bob is your agent – what's your advice?**

**If Sue is your agent – advice for her?**

### **CASE STUDY #2**

This situation is one of your buyer agents who has a buyer who is buying a property being sold 'as-is' and the same thing is happening – no seller disclosure form.

**What should happen here?**

### **Residential Real Property Disclosure**

In Illinois, sellers of one-unit to four-unit residential properties are required by law to complete the Illinois Residential Real Property Disclosure form. This includes sellers selling by-owner. It is very important to remember that it is the seller that must fill out this form. It may seem logical that the person who is most familiar with the property should complete the form, but state law is very clear on this. If the seller refuses or is unable to complete the form, the agent should refer the seller to legal counsel.



There are situations where the form would not have to be filled out. They include:

- New construction not previously occupied
- Properties handled by a relocation company
- Properties from mortgagor to mortgagee
- Properties from one co-owner to another
- Any time the property comes from a court action
- Estates

When completing the form, a seller must always disclose a known physical defect. However, the seller is under no obligation to fix a problem. If a seller reasonably feels that a defect has been repaired then disclosure does not have to be made. If there is a question as to whether something should be disclosed or not, referring them to legal counsel is the best course of action. A property may be sold “as-is.” But disclosure must still be made of known physical and latent defects.

If, after the form is completed, a new defect is discovered the form must be amended to reflect the defect. A copy of the new amended disclosure form is given to the buyer. Under the Statute, revelation of a new defect does not allow a buyer to cancel the contract. The problem can be fixed by the seller or a monetary allowance to the buyer can be negotiated. The seller completed form must be given to the buyer prior to contract formation. It must include the front and back of all the pages. In the event that it was not available at the time of the contract acceptance, the buyers have a three day right of rescission from the time they receive the report if it shows any defects.

### **CASE STUDY #3**

Your agent Sam has just listed a property where there was a murder-suicide just three months ago. He wants to know if he needs to disclose this to buyers or buyers agents.

**Your response**

### **CASE STUDY #4**

Your agent Sue is going to show Sam’s listing. She was aware of the murder-suicide. She wants to know if she should disclose it to her buyers.

**Your response**

## **Material Defects**

Material defects are conditions that affect the structure or function of a property or that may jeopardize the life, safety, and health of a person. This type of information must be disclosed, if known, no matter who the agent represents in the transaction. The only time they would not be required to be disclosed by the seller is if the seller reasonably believed that the defect has been corrected. Latent defects are those that are not seen in an ordinary inspection of the property. An agent is not required to discover these defects and would not be held responsible if they did not know them and therefore did not disclose them. If they are found out after a property is listed or even under contract, the defects must be disclosed at the earliest opportunity.

Agents have the duty of disclosing any material defects whether they are asked or not.

Confidential information shall not be considered to include material information about the physical condition of the property. If a client demands that an agent not disclose a defect then the agent must explain that it would be a violation of license law. If the client still insists, the agent should either not take or have the managing broker cancel the listing.

### **Standard of Practice 2-1**

REALTORS® shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the REALTOR® the obligation of expertise in other professional or technical disciplines.

## **Stigmatized Properties**

Stigmatized properties are properties that the public may deem undesirable due to events that have taken place on or near the property. These properties are more psychologically affected than physically affected. Examples are having a registered sex offender nearby, a property where a murder, suicide, or any other heinous crime occurred, or ghosts.

Handling these types of properties differs depending on whom an agent is representing. When representing a seller this type of information should not be disclosed unless the seller has given the agent permission. This permission is best given in writing. When representing the buyer anything an agent knows should be disclosed to the buyer. When acting as a dual agent this situation could be a problem, unless the seller has given permission to disclose. If the seller hasn't given you, the listing agent, permission the best course of action is to not represent the buyer in this transaction. If an agent is unaware of the stigma, the agent will not be held accountable for making the disclosure.

Note: AIDS/HIV is covered under the protected class of disability under the Federal Fair Housing laws. The fact that a person with AIDS/HIV lives or has lived on a property should not be disclosed to potential buyers.

The following is from the National Association of REALTORS Code of Ethics and Arbitration Manual and speaks to the reference to 'pertinent facts' in Article 2 of the Code.

## Article 2

Realtors® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. Realtors® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law.

Although only REALTORS are required to abide by the Code, the Code has become the standard of care in many court cases and it is advised that all licensees adhere to the requirements.

## Radon

Radon is a naturally occurring odorless and colorless radioactive gas. It is produced by the natural decay of uranium and radium found in certain types of soils and rocks. The presence of radon is tested in units known as picocuries. The EPA does not have a safe limit for radon. As an alternative, they have recommendations for mitigation levels.

All sellers with residential real estate (SF, townhome, condos/co-ops below the 3<sup>rd</sup> floor) must provide a buyer with a radon disclosure form and available testing documentation, if there has been prior testing. Although there is no mandatory testing required, sellers must disclose known radon hazards in their property. They must also give purchasers a pamphlet available through the EPA titled, "A Citizen's Guide to Radon."

Lessors of dwelling units must provide disclosure to current or future tenants of residential dwelling units located below the 3<sup>rd</sup> floor of a building under certain circumstances:

If the lessee has provided in writing to the lessor results of a radon test that show a radon hazard exists, then the lessor must give written disclosure to anyone seeking to lease that dwelling unit that a radon hazard may exist there.

- The lessor does have an option to conduct a radon test in the dwelling unit and if the test shows no radon hazard, the lessor does not have to disclose a radon hazard in the unit.
- However, if the lessor's test does indicate a radon hazard, the lessor must disclose this to current and prospective lessees of the unit.
- No further disclosure would be required if the lessor mitigates and subsequent tests reveal no radon hazard present. Lessors who have been notified by previous tenants that high radon levels exist must disclose the information to future tenants unless mitigation occurs.

## Lead paint

At one time lead was used as a drying agent in paint. In 1978, the use of lead-based paint was banned. However, it is still a high concern in current real estate transactions due to the damage lead does to the human body (especially in children under the age of six) and the number of homes that were built prior to 1978 that used lead-based paint.

If a property was built before 1978 a seller/lessor must provide a disclosure form to a buyer or tenant informing them of any known lead-based paint hazards and any prior test results. Along

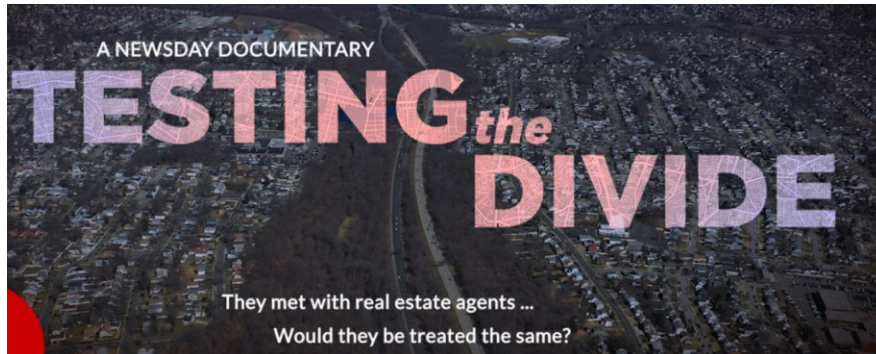
with the disclosure form, tenants and buyers must also receive a lead hazard pamphlet. Both the form and pamphlet are required whether an agent is used or not in the transaction. Buyers have a ten day right to test and may waive this right however, tenants do not have any right to test the property for lead based paint.

Exceptions to the *Residential Lead-Based Paint Hazard Reduction Act*:

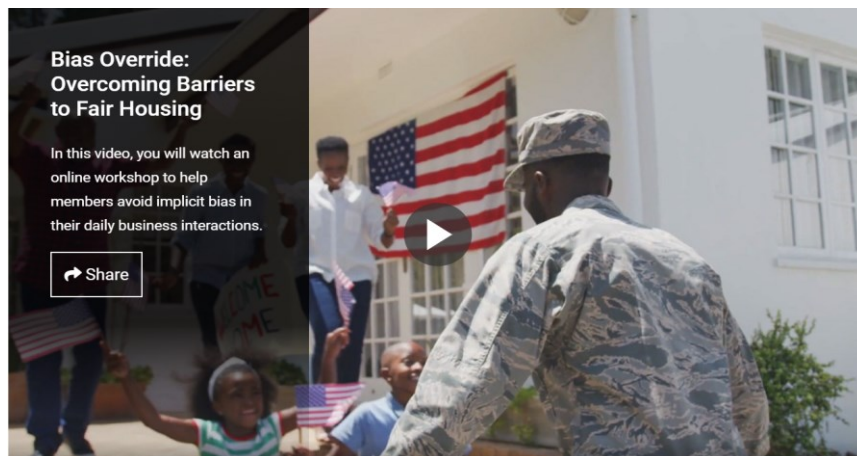
- Housing built after 1978
- Renewal of an existing lease when disclosure was made at the time of leasing
- Units with no bedrooms
- Housing for the elderly or disabled if children under six years of age are not expected to live there



## **SPONSORING BROKER #6: ACCOUNTIBLE FOR COMPLIANCE WITH ALL LAWS AND REGULATIONS – FAIR HOUSING**



- ▶ <https://projects.newsday.com/long-island/real-estate-investigation-videos/>
- ▶ Link to Newsday Report: <https://projects.newsday.com/long-island/real-estate-agents-investigation/>



- ▶ <https://www.nar.realtor/videos/bias-override-overcoming-barriers-to-fair-housing>

## The Protected Classes – Federal and Illinois Human Rights Act

Freedom from discrimination against any individual because of his or her

- race, color, religion, sex, national origin, familial status, religion, disability (Federal classes)
- ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, pregnancy, or unfavorable discharge from military service
- It is currently proposed in the RELA Rules that gender identity and arrest record be added to the License Act.

## Illinois License Law

**Sec. 20-50. Illegal discrimination.** When there has been an adjudication in a civil or criminal proceeding that a licensee has illegally discriminated while engaged in any activity for which a license is required under this Act, the Department, upon the recommendation of the Board as to the extent of the suspension or revocation, shall suspend or revoke the license of that licensee in a timely manner.

## History of the Code of Ethics and Fair Housing

From 1924 to 1950, Article 34 of the [Realtor Code of Ethics](#) read:

- *“A Realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality, or any individuals whose presence will clearly be detrimental to property values in that neighborhood.”*

### Until 1950 Protective Covenants were legal – Example:

- *RACIAL RESTRICTIONS: No property in Green Acres shall at any time be sold, conveyed, rented or leased in whole or in part to any person or persons not of the White or Caucasian race. No person other than one of the White or Caucasian race shall be permitted to occupy any property in said subdivision or portion thereof or building thereon except a domestic servant actually employed by a person of the White or Caucasian race where the latter is an occupant of such property.”*

1950 Supreme Court struck down restrictive covenants

1950 Code of Ethics was amended as follows:

- *“A Realtor should never be instrumental in introducing into a neighborhood a character of property or use which will clearly be detrimental to property values in that neighborhood.”*

1968 Federal Fair Housing act was passed

1974 Removed Article 34 from Code

1974 Article 10 was adopted

### **Code of Ethics – Article 10**

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, or sexual orientation.

REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity.

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity.

- SOP 10-1 – shall not volunteer info regarding protected classes
- SOP 10-2 – when not involved in residential – info can be shared if pertinent
- SOP 10-3 - cannot market showing preference or limitations based on protected classes

### **Standard of Practice 3-11**

REALTORS® may not refuse to cooperate on the basis of a broker's race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (*Adopted 1/20*)

### **National Association of REALTORS® Fair Housing Initiatives**

In January 2020, the leadership of the NATIONAL ASSOCIATION OF REALTORS® passed a Fair Housing Action Plan to reaffirm and strengthen the association's fair housing commitment. The Fair Housing Action Plan, abbreviated 'ACT'. ACT stands for Accountability, Culture and Training. "ACT" specifically committed the NATIONAL ASSOCIATION OF REALTORS® to:

- Work closely with State Association Executives to ensure that state licensing laws include effective fair-housing training requirements and hold real estate agents accountable to their fair housing obligations;
- Launch a Public-Service Announcement Campaign that reaffirm NAR's commitment to fair housing, and how consumers can report problems;
- Integrate fair housing into all REALTOR® conferences and engagements;
- Explore the creation of a voluntary self-testing program, in partnership with a fair housing organization, as a resource for brokers and others who want confidential reports on agent practices so they can address problems;
- Create more robust fair housing education, including unconscious-bias training, and education on how the actions of REALTORS® shape communities.
- Conduct a national study to determine what factors motivate discrimination in sales market
- Profile leaders who exemplify the best fair housing practices and workplace diversity
- Develop materials to help REALTORS® provide consumers with information on schools that avoids fair housing pitfalls.

**Changes to the NAR Code of Ethics – effective 11/13/2020**

See additional information on application of these changes in Appendix

**Change to Policy Statement 29, of the Code of Ethics and Arbitration Manual**

A REALTOR® shall be subject to disciplinary action under the Code of Ethics with respect to all of their activities.

**Added Standard of Practice 10-5**

REALTORS® must not use harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.

**Conduct Prohibited by the Fair Housing Laws**

**Refusal to Sell or Rent**

Any refusal to sell or rent a dwelling because of race, color, sex, religion, national origin, handicap, or familial status violates Title VIII, the Civil Rights Act of 1968. A refusal to sell can include applying more stringent qualification criteria for minority prospects than for nonminority prospects. Title VIII only applies to discrimination in the sale or rental of dwellings. The 1866 Act applies to the sale or rental of any type of real estate, but only applies to discrimination based upon race.

**Mrs. Murphy's Exemption**

- The common description of the exemption that applies to an owner-occupied building with four or fewer units being sold or rented by the owner.
- If licensees are involved the exemption does not exist.
- The house must be sold or rented without the use of discriminatory advertising.

**Reasonable Modifications and Accommodations**

Title VIII prohibits property owners from refusing to permit handicapped occupants of a dwelling to make reasonable modifications to a unit, at the tenant's expense, in order to allow the handicapped tenant to fully enjoy the premises. The property owner may, where reasonable, condition modifications to the interior of a unit on the tenant's agreement to restore the unit to its original condition when the handicapped person's occupancy ends. The property owner may also require that all modifications be done in a safe and workmanlike manner.

Examples of reasonable modifications that must be permitted include:

- Installation of grab bars around bathtubs and toilet seats
- Widening of a door to permit passage of a wheelchair
- Building a ramp
- Installation of a flashing light in lieu of a doorbell
- Relocation of environmental controls

Title VIII also requires property owners, as well as homeowner associations where property is owned, to make reasonable accommodations in any rules or regulations governing the housing development that are necessary to permit the tenant or owner to fully enjoy the premises. In addition, homeowner associations must allow owners to make reasonable modifications to their units to fully enjoy the premises.

Examples of reasonable accommodations that must be permitted include:

- The allowance of an assistance animal, notwithstanding a no-pet rule
- Assignment of a parking space to a handicapped tenant near the tenant's building entrance, notwithstanding a first-come, first-served policy governing tenant parking
- Waiver of a rule banning vans in a building parking lot when a van is necessary to a handicapped person's transportation.

### **Steering**

Steering is conduct designed to influence a person's housing choice based upon one of the protected classes. The classic example of racial steering is a real estate agent directing minority prospects to integrated or all-minority neighborhoods, and white prospects to all white neighborhoods. It can also be showing homes based on the licensee's preferences or assumptions about the buyer. Evidence of steering is often gathered through the use of testers, and suits challenging steering may be brought by the testers themselves or the fair housing organizations that employ them.

### **Making Property Unavailable**

Title VIII forbids property owners or agents from refusing to sell or rent a dwelling to an otherwise qualified prospect simply because the prospect has children under the age of 18 in the household. Familial status protection encompasses a parent or guardian who has legal custody of children under the age of 18, as well as pregnant women.

#### **CASE STUDY #5**

Tracy Smith just signed up 5 properties for rent for a new investor client. These are her first listings. Two of the properties are in DuPage County, 2 are in Will County and 1 is in Cook County. The Investor has very specific tenant requirements he wants Sam to relay: credit score of 660 or more, no Section 8 housing vouchers, and occupancy limits of no more than 2 people per bedroom. These requirements are written on the marketing agreements.

You are the Managing Broker reviewing the new files. Besides congratulating Tracy on her new client, what should you do?

#### **ANALYSIS:**



### Other Rental Issues for Training and Supervising

- When listing a rental always check the municipality website
  - Fair Housing Ordinance
  - Landlord Tenant Ordinance
    - Requirements for Property Licensing? Registration?
    - Special Addendum?
    - Crime Free Education requirements
  
- Credit and Background Checks
  - Best Practice: have reports go directly to the Landlord
  - Landlords make decisions....NOT agents
  - Should have list of criteria – and stick to it! \*mandatory in Cook County
  - Educate Landlord on HUD's guidance for Criminal Background checks and the liabilities when a prospective tenant is denied housing because of a criminal background check

### **Illinois Assistance Animal Integrity Act (effective 1/1/2020)**

<https://www.idfpr.com/CCICO/PDFs/2020%2001%2028%20THE%20ILLINOIS%20ASSISTANCE%20ANIMAL%20INTEGRITY%20ACT.pdf> or <https://tinyurl.com/wbpufxt>

#### **Definitions.**

- **"Assistance animal"** means an emotional support or service animal that qualifies as a reasonable accommodation under the federal Fair Housing Act or the Illinois Human Rights Act.
- **"Disability"** means, with respect to a person, any physical or mental impairment, or record of such impairment, that satisfies the definition of handicap under the Fair Housing Act or the definition of disability under the Illinois Human Rights Act.
- **"Housing provider"** means any owner, housing provider, property management company, property manager, government entity, condominium board, condominium association, cooperative, or related entity, and any agent or employee thereof, engaged in the selling, leasing, management, control, or governance of residential housing.
- **"Reasonable accommodation"** has the meaning provided under the federal Fair Housing Act or the Illinois Human Rights Act.
- **"Therapeutic relationship"** means the provision of medical care, program care, or personal care services, in good faith, for and with actual knowledge of, an individual's disability and that individual's disability-related need for an assistance animal by:

- (1) a physician or other medical professional;
  - (2) a mental health service provider; or
  - (3) a non-medical service agency or reliable third party who is in a position to know about the individual's disability.
- "Therapeutic relationship" does not include an entity that issues a certificate, license, or similar document that purports to confirm, without conducting a meaningful assessment of a person's disability or a person's disability-related need for an assistance animal, that a person: (a) has a disability; or (b) needs an assistance animal.

**Sec. 10. Documentation of disability and disability-related need.**

- (a) A housing provider who receives a request from a person to make an exception to the housing provider's policy prohibiting or restricting animals on the housing provider's property because the person requires the use of an assistance animal may require the person to produce reliable documentation of the disability and disability-related need for the animal only if the disability or disability-related need is not readily apparent or known to the housing provider.
  - A housing provider may ask a person to make the request on a standardized form but cannot deny the request because the person did not use the form to submit documentation that meets the requirements of subsection (b).
  - A housing provider receiving a request for more than one assistance animal may request documentation under subsection (b) that establishes the disability-related need for each animal, unless the need for an animal is apparent.
- (b) Any documentation that a person has a disability and requires the use of an assistance animal as a reasonable accommodation in housing under the federal Fair Housing Act or the Illinois Human Rights Act shall:
  - 1) be in writing;
  - 2) be made by a person with whom the individual requesting an accommodation has a therapeutic relationship; and
  - 3) describe the individual's disability-related need for the assistance animal.
- (C) A housing provider may deny a documented request for an accommodation or rescind a granted request under this Act if:
  - (1) the accommodation imposes either:
    - (i) an undue financial and administrative burden; or
    - (ii) a fundamental alteration to the nature of the operations of the housing provider; or
  - (2) after conducting an individualized assessment, there is reliable objective evidence that the specific assistance animal:
    - (i) poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation;

- (ii) causes substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation; or
  - (iii) has engaged in a pattern of uncontrolled behavior that its handler has not taken effective action to correct.
- (d) A housing provider may require additional supporting documentation of a person's disability or need for the assistance animal only if the initial documentation provided does not satisfy subsection (b).
- If the initial documentation is insufficient to show the existence of the therapeutic relationship required under subsection (b), a housing provider may request additional information describing the professional relationship between the person and the individual with a disability.
- (e) A housing provider may consider the documented disability-related needs of other residents on the property when evaluating the reasonableness of the request for the assistance animal. However, a housing provider may not deny an assistance animal solely due to the disability-related needs of another resident; rather, a housing provider must attempt to balance the disability-related needs of all residents.
- (f) A housing provider may require a resident to cover the costs of repairs for damage the animal causes to the resident's dwelling unit or the common areas, reasonable wear and tear excepted, in the same manner it would for damage caused by any other resident; however, a housing provider may not require a resident to pay a pet-related deposit, pet fee, or related pet assessment, even if the housing provider allows pets and requires pet owners to pay such costs. A housing provider also may not require a resident with an assistance animal to procure special liability insurance or coverage for the assistance animal.
- (g) Nothing in this Act shall be construed as requiring documentation of a specific diagnosis regarding a disability or disability-related need.
- (h) Nothing in this Act prohibits a housing provider from verifying the authenticity the documentation submitted under subsection (b).

**Sec. 15. Immunity.** Notwithstanding any other provision of law to the contrary, a housing provider shall not be liable for injuries caused by a person's assistance animal permitted on the housing provider's property as a reasonable accommodation to assist the person with a disability under the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, the Illinois Human Rights Act, or any other federal, State, or local law.

**Sec. 20. Rights under other Acts. Nothing in this Act shall be construed to:**

- (1) limit individuals' rights under the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Illinois Human Rights Act, or any other federal, State, or local civil rights law; or
- (2) limit the liability of housing providers under such laws.

## **Disparate Treatment/Disparate Impact**

In 2016, the U.S. Department of Housing and Urban Development recognized that because African Americans, Latinx, and people with disabilities are disproportionately represented in the criminal justice system, housing providers who enforce blanket bans against individuals with criminal records risk violating the federal Fair Housing Act.

Individuals who feel they have been victims of housing discrimination can bring a lawsuit under two different theories of liability:

1. discriminatory intent (also called disparate treatment) or under
  2. discriminatory effects (usually called disparate impact).
- Disparate treatment liability arises when the housing provider has a policy or practice that, on its face and in practice, discriminates against a protected class. For example, if a housing provider had a policy against leasing to applicants with Afghani national origin or of Asian race, such a policy would violate the FHA under disparate treatment liability.
  - Because many policies and practices today do not openly discriminate against protected classes in that way, disparate impact liability is used to attack policies that might initially seem neutral but, have the underlying effect of discriminating against a protected class.
  - Under disparate impact liability, even if the housing provider did not intend to discriminate against a protected class, it could still be liable if the effect of the policy or practice does in fact disproportionately and adversely affect a protected class.
    - For example, a seemingly neutral policy of not leasing to applicants with a prior criminal conviction could lead to disparate impact liability because of how that policy could adversely and disproportionately affect members of a protected class who may have more arrests and convictions.
    - One of the issues specifically outlined in the HUD guidance is the difference between arrests and convictions and that landlords should not be denying housing based on arrests.

## Cook County Just Housing Amendment

Recently, the Cook County Board of Commissioners passed the Just Housing Amendment to the Cook County Human Rights Ordinance, which protects people with arrest records from being denied housing solely based on their past.

The law does not mandate arrest records be disregarded by landlords and property managers — just that these records cannot be the sole basis for denial of a tenant's application.

The amendment does three things.

- First, the law will require landlords to determine whether a person has met all other qualifications for the unit before considering that person's criminal history. This helps to minimize unfair prejudice against a person because of a criminal record.
- Second, the law would prohibit housing discrimination on the basis of arrest records, juvenile records, and sealed or expunged records.
- Third, the law would allow housing providers to deny housing on the basis of convictions, but only if the housing provider first conducts an individual assessment of the person's conviction history and considers factors such as the nature and severity of the offense, the time that has passed since then, and any evidence of rehabilitation.

The amendment does not prevent landlords and property managers from doing thorough credit and employment checks to determine if a client is qualified. Nor does it circumvent state law regarding registered sex offenders.

Landlords and property managers will be required to do an individualized assessment of each tenant. If there is criminal activity on the report, they will need to look at:

- Severity of offense
- Length since the crime was committed
- Rehabilitation that has taken place
- Number of convictions

Link to Cook County site on Just Housing: [www.cookcountyil.gov/justhousing](http://www.cookcountyil.gov/justhousing)

Links to guides and instructions:

- [Just Housing Amendment - FAQ for Landlords](#)
- [Just Housing Amendment - FAQ for Applicants](#)
- [Just Housing Amendment - Sample Notices](#)
- [Just Housing Amendment - Process and Individualized Assessment Tool](#)
- [Just Housing Amendment - Definitions](#)

Toni Preckwinkle, President  
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N. Keith Chambers, Director  
Kenneth A. Gunn, Chairperson



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## Cook County Commission on Human Rights

# Just Housing Amendment Screening Process

### Step One: Prequalification

This step includes checking the applicant's credit history, employment, income, payment delinquencies, bankruptcies, etc.

If the applicant passes pre-qualification, then the housing provider moves on to Step Two.



### Step Two: Criminal Background Check

This step screens **ONLY** the three (3) year criminal history of the applicant. Any convictions older than three (3) years **MAY NOT** be used to deny a housing application. If a conviction is found, the housing provider must conduct an individualized assessment.

Based upon the individualized assessment, the housing provider must notify the applicant of an approval or denial.



### Step Three: Approval or Denial and Right to Dispute

If the applicant passes both checks, they will receive notification of approval. If they did not pass Step One or Step Two, the housing provider may deny the application, and the applicant has the right to dispute the denial.

Toni Preckwinkle, President  
Cook County Board of Commissioners  
N. Keith Chambers, Director  
Kenneth A. Gunn, Chairperson



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## Cook County Commission on Human Rights

# Just Housing Amendment

## Sample Language for Notices

*The following is sample language provided by the Cook County Commission on Human Rights. A housing provider must use its own letterhead for notices sent to applicants. Such notices must be delivered in person or via certified mail or electronic communication (text or email).*

### Notice of Right to Dispute Accuracy or Relevance

Dear [Applicant]:

Enclosed please find a copy of the confidential results of your criminal background check. The records show that you:

- A. Are subject to a current sex offender registration requirement pursuant to the Sex Offender Registration Act (or similar law in another jurisdiction);
- B. Are subject to a current child sex offender residency restriction; and/or
- C. Have a criminal conviction from the last three years based on the date of our application.

Under CCHRC R. 740.110, you have five (5) business days from the delivery of this notice to produce evidence that disputes the accuracy or relevance of any 1) criminal convictions from the last three years; and/or 2) records showing that you are subject to a current sex offender registration requirement or a current child sex offender residency restriction.

Relevant information is information that suggests that you are less likely to pose a demonstrable risk to personal safety or property. Examples of such information may include, a recent diploma, current job references, etc.

If you would like to dispute the accuracy or relevance of the record(s) referenced above, please send any supporting evidence to:

[Housing Provider/Agent]  
[Address]  
[Email]

Sincerely,  
[Housing Provider]

# Just Housing Amendment

## Sample Language for Notices

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### Notice of Denial after Pre-Qualification

Dear [Applicant]:

You are hereby advised that although you received a pre-qualification notice for the property located at [Address], your housing application has been denied.

#### Section 1: Basis for Denial

Your denial is based upon on the following:

- A. A current sex offender registration requirement pursuant to the Sex Offender Registration Act (or similar law in another jurisdiction);
- B. A current child sex offender residency restriction.
- C. A criminal conviction from the last three years (based on the date of your application) that represents a demonstrable risk to personal safety and/or property.

*(For denials based on C., please continue to Section 2.)*

#### Section 2: Convictions

The denial of your application was based upon the following conviction(s):

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#### Section 3: Criminal Background Check and Dispute Process

On [DATE], you were sent a copy of your criminal background check and informed of your right to dispute the accuracy and/or relevance of the information contained therein.

- You did not dispute the accuracy or relevance of the information contained in the criminal background check.
- You disputed the accuracy of the criminal conviction(s) in the criminal background check, but did not provide sufficient evidence (e.g., public records) in support of your claim(s).
- You disputed the relevancy of the conviction based on the following:

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# Just Housing Amendment

## Sample Language for Notices

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### Section 4: Individualized Assessment

An Individualized Assessment was conducted pursuant to CCHRC R. 750.100 using the following factors:

- The nature and severity of the criminal offense and how recently it occurred;
- The nature of the sentencing;
- The number of the applicant's criminal convictions;
- The length of time that has passed since the applicant's most recent conviction;
- The age of the individual at the time the criminal offense occurred;
- Evidence of rehabilitation;
- The individual history as a tenant before and/or after the conviction;
- Whether the criminal conviction(s) was related to or a product of the applicant's disability; If the applicant is a person with a disability, whether any reasonable accommodation could be provided to ameliorate any purported demonstrable risk; and
- Additional Relevant Factor(s), if any:

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Based on the Individualized Assessment, it has been determined that your conviction(s) represents a demonstrable risk to personal safety and/or property because:

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If you believe that you have been unlawfully discriminated against based on your criminal history, you have the right to file a complaint with the Cook County Human Rights Commission within 180 days after the unlawful discriminatory act. The Commission is located at 69 W. Washington, Suite 3040, Chicago, IL 60602. You can contact the Commission at (312) 603-1100 or [human.rights@cookcountyil.gov](mailto:human.rights@cookcountyil.gov).

## **Fair Housing Act - Limited English Proficiency**

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The Fair Housing Act also prohibits housing providers from using LEP in a way that causes an unjustified discriminatory effect. *(from HUD September 15, 2016 Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency)*

Limited English Proficiency refers to a person's limited ability to read, write, speak, or understand English. Individuals who are not proficient in English are not a protected class under the Act. The Act nonetheless prohibits housing providers from using LEP selectively based on a protected class or as a pretext for discrimination because of a protected class.

### **Do**

- Proactively position clients early with copies of contracts
- Provide time for LEP clients to receive translations
- Allow family members or friends to assist
- Encourage use of attorney who speaks their language
- Provide multiple translation resources with experience in legal documents
- Obtain translators' certification that foreign language version is identical
- Provide No-Agency disclosure if translating for another agent's clients

### **Don't**

- Deny housing due solely on LEP
- Rely on internet translation services for accuracy
- Rely on non-lawyer to translate
- Use dual language contracts

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### **Possible penalties for non-compliance to all fair housing violations:**

- Civil penalties – range from \$20,000 to \$150,000
- Actual damages and injunctive relief – have been as high as \$500,000
- Punitive damages – often not covered by E&O
- Loss of license
- Loss of reputation
- Violation of Article 10
- Attorney fees – yours and those awarded to prevailing party

## Proactive Fair Housing Compliance

One of the biggest problems for an agent is that a complaint to HUD could be about something that happened twelve months prior, and if it is brought to civil court it could be as much as two years prior. Therefore, having documentation about the conversations you have had with clients, a customer or people you casually worked with is important. More complaints come from first contacts and call-ins than from the clients you have a working relationship with.

If you are like most agents, unless a call seems like it will end in a client relationship, documentation about that contact is minimal. If any notes were taken, most likely it was on a piece of scratch paper that will either be lost or tossed. Creation of a paper trail is a key element in defending yourself in a discrimination suite. One suggestion is to keep a spiral notebook handy. They come in all sizes and fit almost anywhere. Carrying a notebook in a pocket or purse will soon become a habit.

What should be documented?

- The date
- The purpose of the call
- Name and contact information
- Your course of action
- The results – if none - what was the reason

Example: Criteria for showing property:

- Must have prequalification
- Must have proof of funds
- Must meet before showing
- Won't show after dark

Must be consistent – same for all!

Having this information in chronological order for every person that calls in, would show the court that you take your job seriously and document your actions. If you did not show the property you had a valid reason that has nothing to do with discrimination. It may also show that the person had you confused with someone else and you never talked to them that day. Keep the spirals for two years until the statute of limitations has run out. Errors and omissions insurance may not pay for fair housing issues. Remember: The complainant only has to show that discrimination is suspected. It will be the agent's obligation to prove they did not do it.

### Policy Considerations

- How will you ensure your agents are treating all parties equally?
  - Will you mandate the use of a specific qualifying form or list of questions?
  - Will you require agents to show you the process they are using?
- Have you trained on the proper use of Forewarn or other apps?
- Do you have affirmative statement regarding fair housing in your office policy?
- Are you training on the initial contact issues that could be fair housing issues
  - Meeting some people at the house on first appointment – not others
  - Using Forewarn on some and not others
  - Requirement that buyers be preapproved prior to showing – not all





## **DMB #1: IMPLEMENTATION AND COMMUNICATION OF THE COMPANY POLICY**

### **What a Policy Manual Should Do**

- Provide a clear understanding of the relationship between broker and sales associates, management and employees, while performing administrative functions and sales functions.
- Address the anticipation of and resolution of controversies before they arise.
- Stabilize both management and sales by building confidence that both management and sales associates know the rules by which the game is to be played.
- Eliminates favoritism, since all must operate within the framework of the manual's predetermined business practices and policies
- Provide stability of organization and permits agents and staff to function effectively in the absence of management

**Reminder:** Creation of the policy is the responsibility of the Sponsoring Broker. If the Sponsoring Broker and the Designated Managing Broker are the same – it's all up to you!

### **What a Policy Manual Should Cover**

#### **General Policies for All Workers**

- |                                |   |
|--------------------------------|---|
| • Equal employment opportunity | • Public relations                      |
| • Sexual harassment prevention | • Actions on behalf of the organization |
| • Substance abuse              | • Solicitation                          |
| • Smoking                      | • Office hours                          |
| • Personal safety and security | • Holidays                              |
| • Standards of conduct         | • Dress policy                          |
| • Worker relations             | • Confidentiality                       |

#### **Minimum sexual harassment prevention training standards for all employers**

See bulletin with links on Page 97

Illinois Public Act 101-0221 amended the Illinois Human Rights Act ("IHRA") requiring: Illinois employers to provide **annual sexual harassment prevention training** by December 31, 2020 and annually thereafter; restaurants and bars to establish and disseminate a written policy on sexual harassment prevention training and provide "supplemental" sexual harassment prevention training; and the Illinois Department of Human Rights ("IDHR") to develop a model sexual harassment prevention training program for use by employers. Employers may develop their own sexual harassment prevention training program that equals or exceeds the minimum standards for sexual harassment prevention training outlined in Section 2-109(B) and/or Section 2-110(C) of IHRA.

- ▶ Independent contractors are considered employees for this ordinance

### **Policies for Independent Contractors\***

- Personal assistants; their role – licensed and unlicensed activities
- Sales teams; awards – structures – reporting – agency issues
- Referrals; distributing in-house leads – referrals between agents and with other companies
- Best practices for servicing customers and clients
- Unauthorized practice of law; only allowed to fill in blanks on contract – not create addendums
- Open house procedures
- Transaction management
- Commission programs
- Insurance; co-insurance on autos - errors and omissions
- Dues and fees
- Education and designations
- Advertising and marketing policies
- Internet policy; copyright and trademark infringement – license law requirements
- Keys and key boxes
- Signs
- Floor time and lead distribution policies
- Company communication protocols
- On-boarding new agents and ongoing training
- Licensees selling and purchasing for themselves
- Handling disputes
- Safety policies and procedures
- Acknowledgement of policy and any amendment changes by agents and employees – see Acknowledgement Form, Page 49

\* includes licensees who are hired as employees



- If your policy is electronic, agents must have access to the most current policy through your office intranet system.
- Any acknowledgement of amendments must be retained

## Dispute Resolution

- Policies and procedures on procuring cause hearings
  - Decision to proceed – Arbitration Worksheet – Page 103
  - Who pays filing fee?
  - Who pays attorney fees?
  - Who ultimately pays award?
- Processes for inter-office disputes
  - Will you make the decision?
  - Will you have a ‘tribunal’ of agents hear the dispute?
- Non-REALTORS® showing your listings
  - Will you have them sign agreement to arbitrate?

## Office Policy - Safety

---

Do you have policies and procedures on:

- Procedures when meeting buyers for first time.
- How to contact and let office know if they are in danger.
- Procedures for listing presentations
- Procedures for open houses
- Checklists for agents to use
- Ongoing training on safety issues

## Office Safety Action Plan – Customize

Item/Policy	Suggestions
First-time meeting with clients	All agents must arrange to meet prospects and clients whom they have never met in the office rather than at properties, out of doors, or at home.
Client IDs	All first-time clients must provide a driver’s license, state ID or other official photo ID. The office will make and retain a copy of this ID for security purposes
Distress code system	All employees, including officer personnel, will be educated on a single “distress code” to be used by agents calling in if they feel threatened
Buddy system	Agents who are uncomfortable meeting with clients alone or hosting open houses alone can request a “buddy” agent or employee to go with them.

The following checklists are from the NAR *Real Estate Safety Matters: Safe Business = Smart Business*

## SAFETY SELF-ASSESSMENT

1. Do I avoid wearing a valuable wristwatch or jewelry on the job?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. When showing property or sitting an open house, do I park my car at the curb where it cannot be blocked in?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3. Am I physically fit enough to run for a city block or fight off an assault?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4. Do I keep separate Facebook pages (or other social media) for personal and business?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
5. Does most of my business come from referrals from people I know?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6. Do I show properties only during daylight hours?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
7. Do I take a colleague or buddy along when entering a vacant property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
8. Do I have a code word or distress signal set up with my office or family?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
9. Do I inform sellers about steps to take to keep their property safe during showings and open houses?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
10. Do I ask prospects to meet at the office or a public location for the first time before showing them properties?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
11. Do I ask prospects to fill out an identification form and photocopy their driver's licenses or IDs?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
12. Do I have a safety app loaded on my smartphone?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

**HOW MANY "YES" BOXES DID YOU CHECK? \_\_\_\_\_**

**10-12:** Congratulations! You are safety conscious.

**7-9:** You are usually safety conscious, but not all the time

**4-6:** There's room for improvement

**5 OR FEWER:** You are taking some major risks.

## AGENT'S PROPERTY-SHOWING SAFETY CHECKLIST

BEFORE A PROPERTY SHOWING	AT THE PROPERTY
<ul style="list-style-type: none"> <li><input type="checkbox"/> Check out prospects on Google, social media or a background checking site.</li> <li><input type="checkbox"/> Ask prospect to meet at your office or in a public place.</li> <li><input type="checkbox"/> Ask all prospects to fill out a customer identification form and provide ID.</li> <li><input type="checkbox"/> Photocopy a prospect's driver's licenses.</li> <li><input type="checkbox"/> Ask for a prequalification letter from lender, verify the letter's authenticity.</li> <li><input type="checkbox"/> Introduce prospects to the office manager or a coworker.</li> <li><input type="checkbox"/> Sign out on the office tracking board.</li> <li><input type="checkbox"/> Leave a copy of your property-showing itinerary at the office.</li> <li><input type="checkbox"/> Wear a company identification badge and display your company name on your car.</li> <li><input type="checkbox"/> Dress professionally in business outfits, wear shoes that you can run in.</li> <li><input type="checkbox"/> Take a partner—another agent, friend, or family member—with you.</li> <li><input type="checkbox"/> Set up a distress code with the office, friends, or family.</li> <li><input type="checkbox"/> Make sure that co-workers, friends, or family who receive an alert know what to do.</li> <li><input type="checkbox"/> Lock your purse or briefcase in your car trunk before arriving at an appointment.</li> <li><input type="checkbox"/> Remind your clients to remove or lock away keys, credit cards, mail, bills, family photos, firearms, drugs, jewelry, fine crystal, furs, and other valuables and secure pets.</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Learn the house before your show it, look for escape routes and obstacles like fenced yards.</li> <li><input type="checkbox"/> Show the property in daylight.</li> <li><input type="checkbox"/> Park your car at the curb in front of the property, not the driveway.</li> <li><input type="checkbox"/> Take a photo of the prospect's license plate and send it to the office.</li> <li><input type="checkbox"/> Call or text the office to let them know you have arrived, where you are, and who you are with.</li> <li><input type="checkbox"/> Set the alarm app on your phone for the time you think it will take to show the home.</li> <li><input type="checkbox"/> Set the alert app on your phone for quick emergency notifications.</li> <li><input type="checkbox"/> Keep at least one hand free.</li> <li><input type="checkbox"/> Before entering a vacant property, walk the perimeter to check for signs of squatters, break-ins, or other illegal activity.</li> <li><input type="checkbox"/> Follow lockbox procedures.</li> <li><input type="checkbox"/> Leave the front door unlocked for a quick exit.</li> <li><input type="checkbox"/> Walk behind the prospect as you view the property, don't turn your back.</li> <li><input type="checkbox"/> Keep prospects together.</li> <li><input type="checkbox"/> Stay close to the entrances of rooms and avoid going into cellars, attics, walk-in closets, and other "dead-end" rooms.</li> <li><input type="checkbox"/> What else could you add to the list?</li> </ul>



## OPEN HOUSE AND MODEL HOME SAFETY CHECKLIST

BEFORE	DURING
<ul style="list-style-type: none"> <li><input type="checkbox"/> State in advertisements that identification will be required and surveillance will be in use.</li> <li><input type="checkbox"/> Ask a friend or colleague to sit the open house or model home with you.</li> <li><input type="checkbox"/> Be cautious when placing open house directional signs. Turn off the car and take the keys and mobile phone with you for each sign.</li> <li><input type="checkbox"/> Lock your purse in your car trunk before arriving at the open house location.</li> <li><input type="checkbox"/> Park at the curb so your car cannot be blocked.</li> <li><input type="checkbox"/> Keep a hand free--carry only non-valuable business items.</li> <li><input type="checkbox"/> Keep your phone and car keys with you at all times.</li> <li><input type="checkbox"/> Check mobile phone's signal strength prior to the open house.</li> <li><input type="checkbox"/> Inform neighbors of the open-house event and ask them to alert you of suspicious activity.</li> <li><input type="checkbox"/> Check the rooms for dead ends and small spaces.</li> <li><input type="checkbox"/> Position webcams, start up surveillance app.</li> <li><input type="checkbox"/> Determine at least two escape routes from the property.</li> <li><input type="checkbox"/> Check the outside for escape route obstacles—fences, shrubbery, ponds.</li> <li><input type="checkbox"/> Unlock all deadbolt locks for easy access to the outside.</li> <li><input type="checkbox"/> Lock other entrances so there is only one entry point.</li> <li><input type="checkbox"/> Do not allow visitors to enter before you have completed your safety checks</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Sit in a room with a strong phone signal.</li> <li><input type="checkbox"/> Start up the alert and alarm apps on your smartphone.</li> <li><input type="checkbox"/> Establish a schedule for calls or alerts so that if you don't check in, your contact will call you.</li> <li><input type="checkbox"/> Ask visitors to complete a guest register with full name, address, phone number, email, and vehicle information.</li> <li><input type="checkbox"/> Throughout open house and model home hours, be alert to visitors' comings and goings.</li> <li><input type="checkbox"/> Consider hiring a security officer for the open-house event.</li> <li><input type="checkbox"/> If the home has a security system, know how to trigger a remote notification of distress.</li> </ul>
	<div style="text-align: center; background-color: #f4a460; padding: 2px;"><b>AFTER</b></div> <ul style="list-style-type: none"> <li><input type="checkbox"/> Inform the office, friend, or family when you begin closing; set an alert countdown or check-in time.</li> <li><input type="checkbox"/> Lock front door before you do the security check of all doors and windows.</li> <li><input type="checkbox"/> At close-up time, check the interior of the house prior to locking deadbolts.</li> <li><input type="checkbox"/> Work from the top floor to the bottom, back of the house to the front, locking the deadbolts behind you.</li> <li><input type="checkbox"/> Check the backyard and garage.</li> <li><input type="checkbox"/> What else could you add to this list?</li> </ul>

## **LISTING APPOINTMENT SAFETY CHECKLIST**

- Ask how the seller found your company and you
- Verify the address and location of the property.
- Verify if the caller is the owner of the property.
- Subscribe to a background check website.
- Do a background check on the caller.
- Check out the history of the property ( foreclosed? vacant? previously listed? FSBO?).
- Check out the location and neighborhood (is it in an isolated place? a dangerous neighborhood?).
- Take a colleague with you.
- Let your office, family, or a friend know where you are going and who you are meeting.
- Set your smartphone to send an alert or alarm.
- When touring the property, always let the owner walk in front of you.
- Avoid going into attics, basements, walk-in closets, or small dead-end spaces.
- What else could you add to this list?**

**Office Policy Considerations**

**Agency Considerations**



- Will you allow dual agency?  Yes  No
- on short sales  Yes  No
  - on REO's  Yes  No
  - on builders properties  Yes  No
  - with agent's relatives  Yes  No

What is the procedure for ensuring written, signed permission was given by seller and buyer prior to agent acting as a dual agent?

- If dual agency is not allowed -
- will you allow same-agent transactions  Yes  No
  - must the buyer be referred to another agent?  Yes  No

Selling For-Sale-By-Owners

What will seller sign to ensure payment of compensation?



**Agency Disclosure Forms** (see appendix for list of forms)



With Sellers

- Designated Agent of seller - Disclosure of D/A 349S
- Notice of No Agency 350

With Buyers

- Disclosure of Buyers Designated Agent\* w/signature 349
  - Disclosure of Buyers Designated Agent\* w/out signature 349
- OR
- Terms of Non-Exclusive Buyer Representation\* 341
  - Consumers Guide to Agency\* 334
  - Non-Exclusive Buyer Representation Agreement 339
  - Exclusive Buyer Representation Agreement 338

With Residential Tenants

- Disclosure of Tenant's Designated Agent\* 349T
- Consumers Guide to Agency\* 334
- Exclusive or Non-Exclusive Tenant Agreement Broker to provide

With Landlords

- Designated Agent of seller - Disclosure of D/A 349S modified
- Notice of No Agency 350 modified





### Designated Agency Disclosure

Illinois License Law requires that Designated Agency Disclosure be retained by the brokerage company. Brokerage requires all agency disclosure forms to be retained.

- electronically
- in paper copy

How often are disclosures collected?  weekly  monthly  \_\_\_\_\_ basis

- Under no circumstances will commission checks be issued without all proper documentation in the file.



### CASE STUDY #6

Role Play: You are the Managing Broker training a new agent on why, how and what procedures are best practices to define and disclose designated agency, your business model.

How do you explain the what-why-how to your agent?



### Notice of No Agency Form shall be used when:

- Seller says 'no' to dual agency
- Buyer says 'no' to dual agency
- Tenant when landlord says 'no' to dual agency
- Selling a FSBO
- Agent interest - including spousal interest
- Presenting offer to another brokerage's listed seller (with co-op permission)



### Agent Transactions

- Agents can sell their own property by-owner
- Agents must list their property with the brokerage company
- Agents can rent their own property by-owner
- Agents must list their rental properties with the brokerage company

## Commission Policies



Whatever commission policies a company has should be specified here or in an attachment or addenda to the Policy. A company should consider covering the following areas:

Rates and prices charged for services to the public. Examples of areas to consider, depending on the company's selection of agency policy and business practice, are:

- Charges to sellers for listings
- Charges to buyers for representation
- Charges to owners for leasing
- Charges to clients for consulting
- Variable rate commissions
- Compensation offered to co-op brokerages
- Authorization to change compensation
- How bonuses are handled
- Process for inter-company disputes
- Referral fees – internal and to other brokerages
- Process for offer of compensation to non-MLS agents
- Process for receiving compensation from non-MLS listing



The Company (**CHOOSE ONE**) (**authorizes**) or (**does not authorize**) its licensees to enter into written agency agreements on behalf of the Company.

Agents who have not completed the 45-Hour Broker Post Licensing Course cannot enter into brokerage agreements and bind the brokerage company to any contracts.

If the brokerage is allowing licensees to sign listing and buyer representation agreements and bind the company to those agreements without review and co-signing by the DMB, that direction should be in the policy manual – giving them the authorization to do so.

## Other Listing Terms

Specify any policies as to other terms in a listing contract such as

- Length of listing
- Length of protection period, i.e. time after end of listing term in which a commission is owed if a buyer procured by broker purchases property, if any,
- Whether and for what length of time exclusions from the listing contract will be accepted
- Will company mandate use of electronic key boxes



- **MLS Issues**

- Who inputs the listings in the MLS
- Who is responsible for accuracy of information
- Will you require seller verify accuracy
- Syndication policies – where do the listings go on the Internet
- What paperwork is required for price change or extension
- Policy on cancelling and re-listing
- Who pays MLS fines created by agent and how are they paid
- What type of listing agreements are authorized
- Exempt listing requirements; PLN if applicable
- Recommend properties stay 'continue to show' for specific period after contract
- Procedure for disclosing existing contracts – to MLS and prior



### **Buyer Side Issues**

- Will company require – recommend – prohibit – use of buyer agency agreements
  - Exclusive
  - Non-Exclusive
- Length of the agreement
- Cancellation of the agreement
- Submission of agreement to office
- Timing of disclosure of bonus to buyer

### **Agency and the Sales Contract**

- If an agent is selling their own listing and not representing the buyer and your contact says “buyers designated agent” or “buyer’s agent” – then nothing should be filled in on that side of the signature page – or could cross out ‘designated agent’ and write in “see No-Agency Disclosure”.
- If an agent is selling a FSBO and not representing the seller – then nothing should be filled in on the ‘sellers agent’ side of the contract – or write in “see No-Agency disclosure”

### **Contemporaneous Offers**

- Will you allow your agents to do Contemporaneous Offers?
- Are your agents clear that they cannot be one of the buyers in a Contemporaneous Offer situation?



- What is your procedure on disclosure when the agent is showing the same property to more than one buyer?
  - Option A: “Mr. and Mrs. Buyer. I will be showing the same properties to both you and other buyers. When one of you decides to make an offer on a property, I will not be notifying the rest of the buyers since this could put the first buyer in a multiple offer situation”
  - Option B: “Mr. and Mrs. Buyer. I will be showing the same properties to both you and other buyers. When one of you decides to make an offer, I will let all of you know that an offer has been written to give everyone a shot at it. I will never disclose confidential information about the offers – just the existence of the offers”.

### **Policy Issues - Teams**

---

#### **RELA Section 1-10 now defines teams**

- "Team" means any 2 or more licensees who work together to provide real estate brokerage services
- represent themselves to the public as being part of a team or group
- are identified by a team name that is different than their sponsoring broker's name
- and together are supervised by the same managing broker and sponsored by the same sponsoring broker
- "Team" does not mean a separately organized, incorporated, or legal entity.

The License Act applies to all licensees licensed to a sponsoring broker, whether they are part of a team or not.

- The sponsoring broker will remain ultimately responsible for the oversight of the team and all of its licensed members.
- A licensee must work for only one sponsoring broker. Thus, if a licensee is a team member, he/she will be sponsored by the same sponsoring broker as that of the "team captain" and not by the "team captain."
- The sponsoring broker and not the "team captain" must pay every licensee on a team.
- Each licensee on a team must have a written independent contractor or employment contract with the sponsoring broker.
- The team must not be a separate corporation or entity within the sponsoring broker's corporation. This would require another sponsoring broker, and licensees may only work for one.

- Team names must be approved by SSS, REALTORS®.

RELA Section 10-30 prohibits misleading advertising and states:

Team names may not contain inherently misleading terms, such as "company", "realty", "real estate", "agency", "associates", "brokers", "properties", or "property".



- It is the policy of SSS, REALTORS® that all teams  will  will not be doing dual agency on all team transactions.
- Team leaders will show business plan to Designated Managing Broker and decision on whether the team must do dual agency on team transactions will be determined from that

### Unlicensed Assistants



Specific lists of what unlicensed assistants can and cannot do are in Rules Section 1450.740 – See Appendix Page 80

From RELA Rules: An unlicensed assistant of a licensee may not perform licensed activities, including but not limited to:

- 1) host open houses, kiosks, or home show booths or fairs;
  - 2) show property;
  - 3) interpret information regarding listings, titles, financing, contracts, closings or other information relating to a transaction;
  - 4) explain or interpret a contract, listing, lease agreement or other real estate document for or with anyone outside the unlicensed assistant's real estate entity;
  - 5) negotiate or agree to any commission, commission split, management fee or referral fee on behalf of a licensee; or
  - 6) perform any other licensed activities.
- How will you monitor the activities of unlicensed assistants?
  - It is recommended that DMB have written agreement with unlicensed assistants, signed by DMB, unlicensed assistant and agent assistant is working for acknowledging duties and restrictions.



### ACKNOWLEDGMENT AND AGREEMENT

The undersigned licensee or employee of Top Notch, REALTORS® acknowledges receipt of a copy of Top Notch, REALTORS® Office Policy Manual.

This Office Policy Manual is not a contract of employment. The Company reserves the right to modify, amend, or change this policy manual in any manner at any time.

As a condition of his/her association or employment with Top Notch, REALTORS®, the licensee or employee agrees to abide by the policies of Top Notch as presently adopted and as amended in the future by publication from management of any changes.

Failure to abide by Top Notch's policies as adopted and amended may be grounds for disciplinary action of the employee, including termination of employment or disassociation of independent contract from the firm.

\_\_\_\_\_  
Licensee or Employee

\_\_\_\_\_  
Date

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- It is inevitable that you will need to modify your policy periodically.
- You should have a formalized process of notifying every licensee of the changes and have them sign an acknowledgement similar to the one above that shows they have read and will abide by the new policy.
- The acknowledgement should be kept in their file.

### DMB #2: TRAINING OF LICENSEES AND UNLICENSED ASSISTANTS



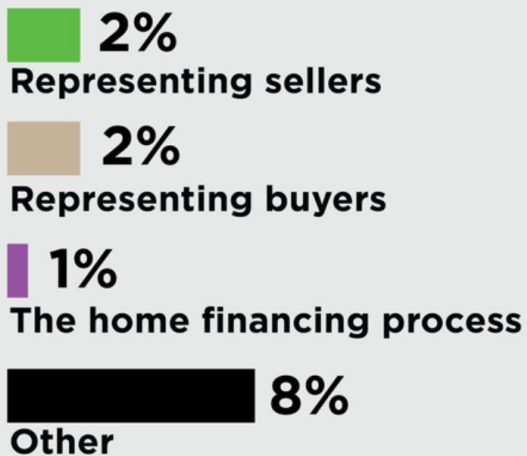
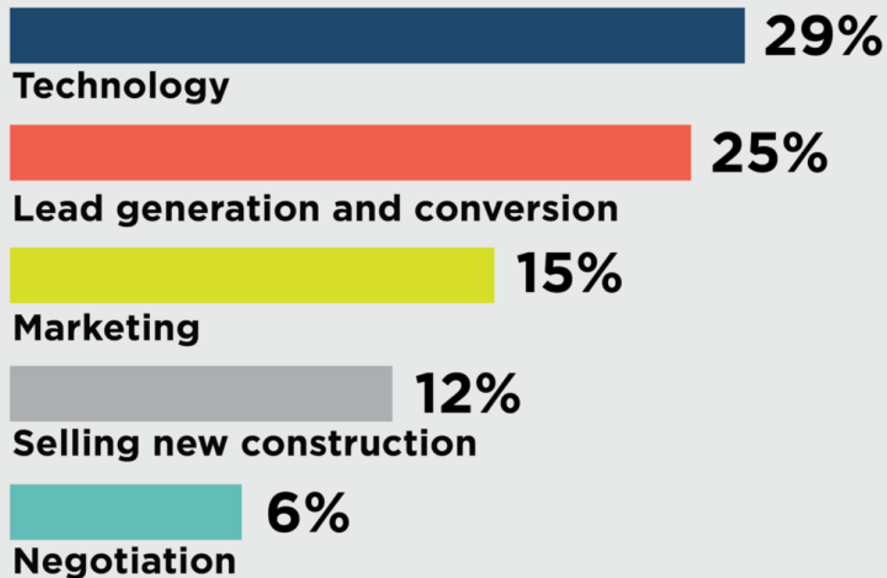
License law requires the brokerage to have office policies and procedures, training programs and provide supervision over all licensees they sponsor. Many brokerages have nothing in place, many brokerages have extensive training and supervision. This is a quick look at a survey done by Chicago Agent Magazine in April of 2020 that gives some insight into what the agents are looking for in the area of training.



Used with permission from Chicago Agent Magazine – April, 2020

Gives us insight into what the agents are looking for in the area of training.

## IF YOU COULD GET MORE TRAINING IN ANY AREA, WHAT WOULD IT BE?

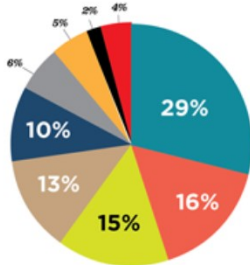


### More info, please

When we asked agents what they'd like to receive more training on, the most popular category was technology. However, others added some course ideas we hadn't thought of, such as hiring, zoning laws, commercial real estate, time management and more.

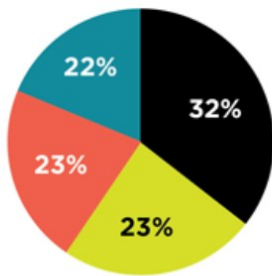
## Marketing

### MY TOP MARKETING CHALLENGE IN 2020 WILL BE:



- Generating enough high-quality leads
- Improving on my lead conversion rate
- Analyzing my marketing performance
- Being more consistent
- Better managing my existing contacts
- Finding the right marketing tools
- Evaluating/implementing new technology products
- Building better brand awareness
- Other

### I PLAN TO SPEND \$\_\_ ON MY MARKETING IN 2020.



- \$0-\$75/month
- \$76-\$150/month
- \$151-\$400/month
- \$401+/month

I PLAN TO SPEND MORE ON MARKETING THAN I DID LAST YEAR.

**YES** 79%

**NO** 21%

### TO HELP GENERATE LEADS, I CURRENTLY USE

*Check all that apply.*

- 83% Referrals
- 71% Social media (unpaid)
- 54% Email system
- 46% My website
- 46% Direct mail
- 45% CRM
- 38% Social media (paid)
- 37% Branded signage
- 16% Print ads
- 11% PR marketing
- 11% Syndication sites
- 2% Surveys

## Onboarding Checklist

Agent: \_\_\_\_\_ Start Date: \_\_\_\_\_

### Date

- \_\_\_\_\_ Verify standing with IDFPR/DRE – If Experienced
- \_\_\_\_\_ On Line application process for license
- \_\_\_\_\_ Diminutive of licensee name registered
- \_\_\_\_\_ Obtain copy of issued license
- \_\_\_\_\_ Independent Contractor Agreement Signed
- \_\_\_\_\_ Independent Contractor Agreement Addendum - If Applicable
- \_\_\_\_\_ Join Association and MLS
- \_\_\_\_\_ Attend Association New-Agent Orientation Program – first 60 days
- \_\_\_\_\_ Attend Association 45-Hour New-Agent Program – first 6 months
- \_\_\_\_\_ Business Card/Email Form
- \_\_\_\_\_ Policy Manual Delivery Receipt
- \_\_\_\_\_ Errors and Omissions Insurance – evidence of insurance or enrollment
- \_\_\_\_\_ Automobile Insurance verified
- \_\_\_\_\_ Transaction Management Agreement – evidence of enrollment
- \_\_\_\_\_ Sign up on company training site
- \_\_\_\_\_ Mentor Agreement - If Applicable
  - \_\_\_\_\_ Mentor Assigned – or
  - \_\_\_\_\_ DMB solely responsible for training
- \_\_\_\_\_ Training Program Acknowledgement
  - \_\_\_\_\_ MLS Training
  - \_\_\_\_\_ Contracts Training
  - \_\_\_\_\_ Lead Generation
  - \_\_\_\_\_ Time Management
  - \_\_\_\_\_ Listing Conversion
  - \_\_\_\_\_ Buyer Conversion
  - \_\_\_\_\_ Successful Pricing
  - \_\_\_\_\_ Listing Presentation Skills
  - \_\_\_\_\_ Dialogues for Success

## **DMB's responsibility for new agents prior to taking 45-hour post**

Illinois License Law gives the basic minimum requirements for Designated Managing Broker as we are discussing in this course.

In addition, the changes to RELA for 2019/2020 have further requirements of the DMB with new licensees prior to their taking the 45-hour Post Licensing course.

### **New to RELA in 2019**

A DMB's responsibilities shall further include ***directly handling***

- All earnest money, escrows and contract negotiations for all transactions where the designated agent for the transaction has not completed his or her 45-hour post license education.
- Approval of all advertising efforts done by licensees
- Additionally, licensees that have not completed their 45-hour post licensing education shall have no authority to bind the sponsoring broker.

**Directly handling all earnest money and escrows:** Means making sure the new agent understands, correctly advises clients and verifies all monies are handled properly and in the timely manner as identified in any contract.

**Contract Negotiations:** DMB is to be directly involved when a new agent is writing a contract or completing any brokerage agreements (including sales contracts, listing and buyer representation agreements) for any clients. This includes full education and supervision on how to handle or anticipate multiple offers.

**Approval all advertising efforts of the new agent:** Includes all media, Facebook, Instagram, Linked-In, blogs, ads, business cards, post cards, branding designs. Etc.

**The following is not license law, these are suggested best practices for implementing the license law.**

### **Additional Best Practices for Supervision prior to 45-hour post**

- Oversee agent's buyer appointments:
  - Safety measures prior to meeting a new client
  - Buyer counseling
  - Selection of properties
  - Appointment procedures
  - Showing styles
  - Common courtesies to public and other agents

- **Oversee agent's seller appointments:**
  - Research prior to meeting
  - Materials to review with seller
  - Overseeing the CMA start to finish
  - Supervise data collection for market condition analysis
  - Reviewing the Net Sheet
  
- **Contract education**
  - Role play and supervise agent's explanation of a marketing agreement to a seller
  - Role play and supervise agent's explanation of buyer rep agreement to buyer
  - Oversee agent's contract writing skills for completion, accuracy and understanding of all terms and blanks
  
- **Monitor transaction to closing – see Transaction Checklist – Appendix Page 83**
  - Monitor and verify all terms of the contract are complied with in a timely manner
    - Client's choice of attorney and delivery of contract to attorney
    - Delivery of earnest money
    - Buyer's mortgage application
    - Buyer's verification of insurance
    - Home inspection issues



A system for monitoring new agent activities should be created to show evidence that you are monitoring their transactions. It is recommended that you have scheduled training and monitoring with new agents as well.

What might the oversight and monitoring consist of?

- File for each agent
- Calendar of dates of scheduled meetings
- Evidence of availability outside of meetings
- Log of conversations and training
- Procedures for keeping you informed of client activity
- Requirement that they meet with you to monitor
- Preparation prior to working with buyers
- Procedures prior to doing CMA and listing presentation
- Procedures writing offers and negotiating contracts
- Delivery or acceptance of earnest money
- Policy and procedure for DMB signing all brokerage agreements

### **On-Boarding Experienced Agents**

- Be sure they have an active license
- Verify if it has been disciplined
- Evaluate what they know
- Determine what they may have mis-information about
- Have a program for on-boarding the new-experienced
- Indoctrination to company policies and procedures

### **Why are you training?**

1. License law says you must!
2. Risk management
3. Responsibility for your agents – take them to the next level
4. Reinforce company culture
5. Recruiting – one of the major reasons agents join you
6. Retention – one of the major reasons they stay!
7. Bottom line – productivity = income

### **Information Literacy**

- There are now college courses on information literacy – defined as:
  - The ability to identify what information is needed
  - Understand how the information is organized
  - Identify the best sources of information for a given need
  - How to locate those sources
  - How to evaluate the sources critically
- Information literacy is important.
  - We are surrounded by a growing ocean of information in all forms
  - Not all information is created equal
    - Some is authoritative, current, reliable
    - Some is biased, out of date, misleading or just plain false
  - The amount of information is going to keep increasing
  - The types of technology used to access, manipulate and create information will expand
- In real estate we need to determine where to get credible information and know how to present it to our clients.

- It is critical that the clients know the difference between
  - Data
  - Information
  - Knowledge
  - Wisdom
- It is the DMB's responsibility to train their agents on the importance and steps needed to educate the clients on the largest single purchase or sale of their lives.

Further discussion of Information Literacy can be found in Appendix, Page 86

### Resources

- There are numerous resources for developing the information literacy your agents need
- Each resource has different credible information that can assist your agents in offsetting the mis-information the consumers are getting on line.

The image shows the cover of the '2020 Profile of Home Buyers and Sellers' report. On the left, there is a photograph of a diverse family of four (a man, a woman, and two children) smiling and hugging each other in a bright room. The text '2020 Profile of Home Buyers and Sellers' is in the top left corner. A dark blue button with the text 'Currently free' is positioned in the upper right. Below this, a list of key findings is provided. At the bottom left, the number '57' is visible. At the bottom right, the logos for the National Association of Realtors and the Illinois Realtors are present.

**2020**  
Profile of Home  
Buyers and Sellers

**Currently free**

- Median age of buyers and sellers
- Median seller tenure in their home
- Method buyers and sellers used to find agents
- Sales price compared with list price by time on market
- What buyers compromised on when buying
- What buyers and sellers want from agents

57

NATIONAL ASSOCIATION OF REALTORS®

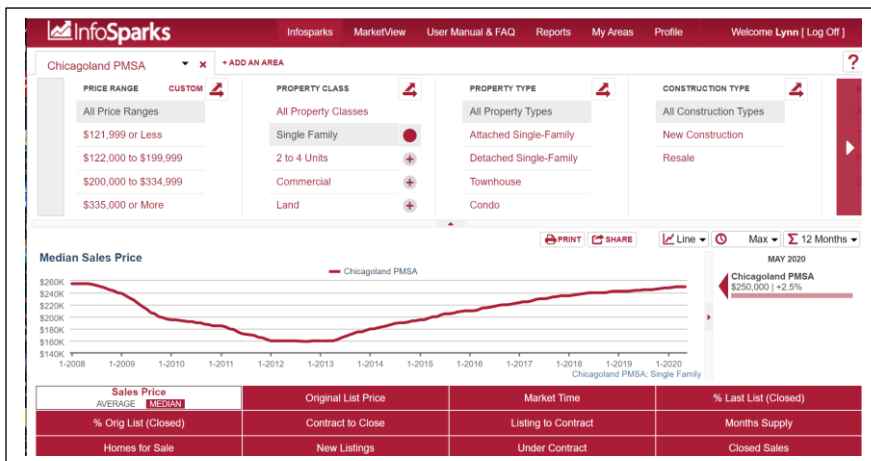
ILLINOIS REALTORS

Link to download the report - [186-45-20 \(1\).pdf](#) or go to [www.realtor.org](http://www.realtor.org)



**Zillow.com/zestimate –**

METROPOLITAN AREA	MEDIAN ERROR	HOMES WITH ZESTIMATES	WITHIN 5% OF SALE PRICE	WITHIN 10% OF SALE PRICE
Atlanta, GA	7.2%	1.8M	38.3%	61.4%
Baltimore, MD	6.7%	833.2K	40.2%	63.6%
Boston, MA	7.4%	1.5M	35.9%	61.6%
Charlotte, NC	6.7%	778.0K	40.6%	63.7%
Chicago, IL	8.1%	2.8M	34.3%	58.1%
Cincinnati, OH	8.7%	662.7K	32.3%	54.9%
Cleveland, OH	10.0%	651.1K	29.0%	50.0%
Dallas-Fort Worth, TX	--	2.1M	--	--



Your MLS data analysis function – this is an example – every MLS has different system.

What will you find there?

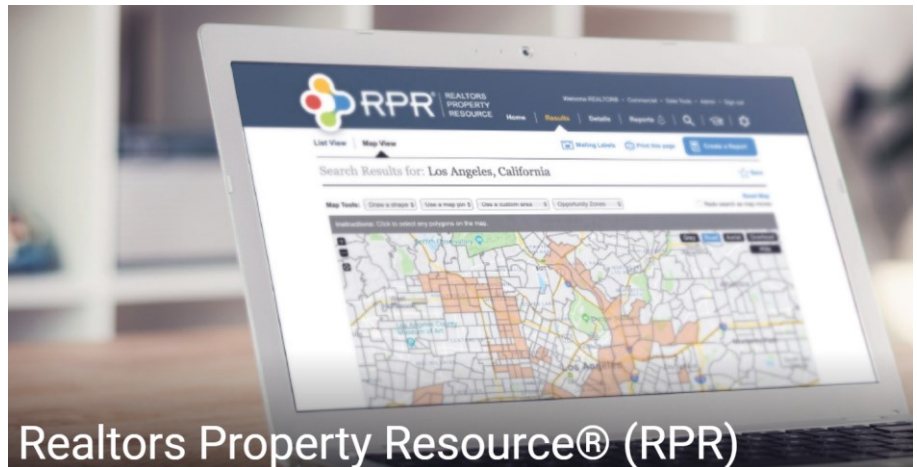
- Median sales price
- Market time
- Absorption rate
- Percent of list price
- Homes for sale

Exclusively for REALTORS®

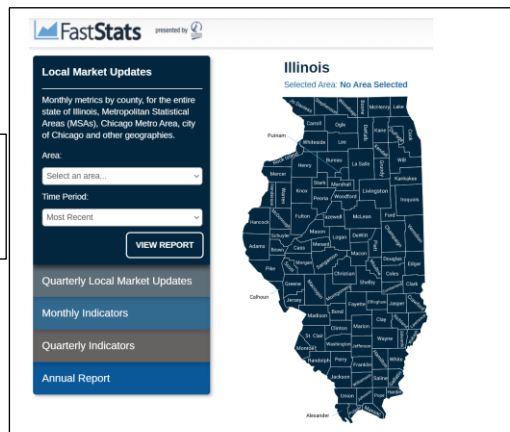
Residential & Commercial

- Property information
- Historic data
- Commercial data
- Do CMA's
- Create listing presentation
- Create buyer presentation

Parcel centric data base of every property in the US



Realtors Property Resource® (RPR)



Illinois REALTORS®

- Market statistics for every county
- DR News
- Forms – See Appendix Page 89
- Advocacy
- Ethics
- Publications

### Training Methods

- Role play with your agents
  - Listing presentations
  - Buyer counseling sessions
- Assignments
  - Filling out listing agreements
  - Writing contracts
- Association websites
  - Contract tutorials
  - Videos on topical issues, i.e., pandemic updates
- Mentoring
  - Formal mentoring program with experienced agents
  - Informal program with agents who recruit others
- Shadowing
  - Newer agents 'shadow' or follow experienced agents

## **Training - Listing Issues**

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### **CASE STUDY #7**

Listing agent Terry was pleased when the Sellers executed the final contract to sell their property for \$262,000, a price that was within the range of Terry's CMA.

Four days prior to the closing, the Sellers were advised they needed to bring \$5000 to closing to provide clear title and pay all expenses.

Your brokerage was asked to reduce your commission - the seller did not have funds to pay the expenses.

**Issues – problems – concerns?**

### **CASE STUDY #8**

When Mr. and Mrs. Anderson listed their home with Terry Jones they agreed to a 10% brokerage commission with the understanding that the co-op brokerage would receive half of the commission.

In reviewing the closing documents they realized the buyer brokerage received 4% - \$275. They called Terry Jones immediately and demanded an explanation.

**Issues:**

### **CASE STUDY #9**

Tracy Smith was one of four agents to do a listing presentation. Discussions with the Seller led her to realize both the sellers lost their jobs during the COVID Pandemic. They had applied for mortgage forbearance, were moving out of state to live with family, had a desperate cash flow crisis, but did have sufficient equity in their home to help them start over.

Tracy did not get the listing but did have the perfect buyer for the property so showed it as soon as it was listed. Tracy encouraged the buyer to make a low offer with a quick close.


**Managing Broker – how would you coach Terry?**

## Duties to Sellers

- Exercise reasonable skill and care
  - Article 11: Competency when doing pricing
    - Geographic competence
    - Familiar with type of property
    - Access to information to do analysis
  - Due diligence required to ensure you are not misrepresenting the property
    - Examples: garage included, legal two-flat, zoning issues
- Has the seller completed all required disclosure forms?
- Perform all terms of the brokerage agreements
  - Are listings being submitted to the MLS per the agreements and per the MLS Rules and Regulations?
  - Are signs being installed in a timely fashion?
  - Is advertising and marketing being done to sellers' expectations?
- Making the property available
  - Are the agents' methods for scheduling appointments reliable, timely, efficient, and in the best interest of the sellers?
  - Are the sellers being cooperative in setting appointments?
- Are all price changes and extensions in writing and part of the brokerage file?
- Statutory Duty of Confidentiality:
  - Are there policies in place to maintain files in a confidential manner?
  - Is the office environment conscientious about safeguarding confidential information such as motive and discussions around pricing?
  - How are teams handling confidential information within the team?
- Duty to present all offers until closing




From Illinois REALTORS® 45-Hour Post Licensing Course



**UNSEEN REALITY**  
IT'S WHAT'S UNDERNEATH...

- It's a seller's market
- You cannot focus on finding a buyer
- You must focus on what we do once the buyer makes an offer

What Your Listing Agent Does AFTER Offer is Made



**Offer is Made**

- Negotiate offers
- Work with attorneys
- Negotiate repair requests
- Coordinate repairs if needed
- Meet appraiser – with comps
- Verify buyer is meeting all dates
- Work with lender and appraiser if needed
- Assist you to stay on track
- Coordinate walk-thru – closing - keys

## Training - Buyer Issues

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### **CASE STUDY #10**

Bill and Sally Brown are listing their home with Tracy Smith. They heard many showings during the COVID Pandemic took place without agents going into the home with buyers. They also heard agents and buyers would freely take videos and photographs of homes. The Browns wanted Tracy to know they would not be comfortable with such activities and would be watching via their own video equipment on every showing.

**Designated Managing Broker: what issues do you see?**

### **CASE STUDY #11**

DMB Molly happened to be walking by two of her agents and overheard Bob telling Broker Sally about a great home at 123 Main Street but how he decided not to show it to his buyers because the cooperating fee was way below what he wanted to be paid.

**What should DMB Molly do?**

### **CASE STUDY #12**

Broker Bob wrote an offer that was accepted contingent upon the buyer getting a 90% conventional mortgage. Two days into the transaction Bob notified the listing agent that they needed to change it to FHA financing with minimum down. The listing agent accused Broker Bob of concealing the true Buyer intentions and the seller is threatening to file a complaint with IDFPR/DRE because he lost two other buyers when he chose Bob's buyer's offer in a multiple offer situation.

**What went wrong? What should have happened?**



**DMB #3: SUPERVISE AND ASSIST LICENSEES IN TRANSACTIONS**

**POLICY ISSUES**

- All transactions will be submitted to the office within \_\_\_\_\_hours of contract being signed.
- Contracts will reviewed by administrative staff or DMB
- Earnest money must be tendered per contract
- Property being under contract must be disclosed to MLS per rules – earnest money delivery notwithstanding



SPONSORING BROKER TRANSACTION CHECKLIST				
AGENT		Listing Broker		
PROPERTY		Buyer		
Contract		Brokerage		
Date		Earnest Money		
		Satisfactory	Action Required	Training Required
	Date Submitted to Brokerage			
	Fully Executed w/Signatures & Dated			
	All changes on contract initialed			
	Required names and addresses			
	No Contract Blanks			
	Financing Terms Acceptable			
	Earnest Money Terms			
	Optional Paragraph Terms Acceptable			
	Other Terms			
	Illinois Property Disclosure			
	Radon Disclosure			
	Lead-Based Paint Disclosure			
	Designated Agency Disclosure			
	Dual Agency Informed Consent			
	Dual Agency Confirmation			
	Exclusive Brokerage Agreement			
	Earnest Money Tendered per contract			
	Additional Earnest Money due			



### Optional Case Study

Buyer Agent Alice called Listing Agent Bob and wanted to talk about two of the home inspection issues. Bob refused to talk to Alice advising her it was not his job – that she should let the attorneys handle the negotiations.

**What advice would you give Alice?**

**What advice would you give Bob?**

## Writing and Negotiating Contracts

### Contract Knowledge

- Everything in the contract is negotiable
- Contract supersedes what is in the MLS
- No contract without delivery
- Any changes made after signing must be initialed
- Train agents on contract writing
- Utilize association tools – if available
- Market knowledge
- Disclosure of agent interest must be on contract



### Prepare the Clients

- Current – accurate – CMA for both
- Updated net sheet for seller
- Explain supply and demand
- Educate them on the market
  - Use MLS analytics
  - Realities of the market
  - Days on market
  - Absorption rate – MSI
  - Current % of list price
  - Utilize listing history



It is recommended that you have an electronic system for monitoring your agents – especially new agents – negotiations.

- When will they notify you they have written an offer?
- will you assist them in writing it?
- will you assist them in negotiating?
- will you review the contract prior to submission to listing agent?
- will you review prior to presentation to seller?



## **Presenting and Negotiating**

### **Illinois License Law references to negotiating:**

Sec. 15-15. Duties of licensees representing clients. (a) A licensee representing a client shall (2) promote the best interest of the client by (B) Timely presenting all offers to and from the client, unless the client has waived this duty.

Sec. 20-20. Grounds for discipline. The Department may discipline any license for: (33) Negotiating a sale, exchange, or lease of real estate directly with any person if the licensee knows that the person has an exclusive brokerage agreement with another broker, unless specifically authorized by that broker.

Although these are the only two specific references to presenting and negotiating contracts, there would definitely be license law violations if your agents are not protecting their clients in the process.

**The Realtor Code of Ethics**, however, has numerous guidelines and requirements when it comes to negotiating.

### **Submitting Offers**

#### **Standard of Practice 1-6**

Realtors shall submit offers and counter-offers objectively and as quickly as possible.

- What are the guidelines if there is no time-limit in the contract?
- What are the implications if there is a time limit?
- What if you are the buyer agent and you are getting no response from listing agent.
- Buyer agents must do more than simply email the contract to the listing agent
- Listing agent cannot 'hold' offers – but sellers can

#### **Standard of Practice 1-7**

Realtors shall continue to submit all offers and counter-offers until closing unless seller has waived this obligation in writing.

- Back-up contract does not give seller right to kill first contract unless there is a kick out in the first one
- Must be written 'subject to release of prior contract' or seller needs to consult attorney
- Not a back-up unless signed by all parties and delivered
- First buyer needs to ensure he meets contingencies or seller could terminate contract
- If buyer agent questions whether the offer was presented to the seller, he can ask for written affirmation the offer was presented

## **Confidentiality of Offers**

### **Standard of Practice 1-13**

Reads (in part) that buyers must be told:

. . . the possibility that sellers or sellers' representatives may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties.

- Buyer agent must inform buyers prior to offer being delivered to the listing agent
- Could be an Exclusive Agency Listing – seller could disclose themselves
- Listing agent must have seller's permission to disclose – get it in writing
- Do not have to disclose to all
- Buyers could ask sellers to sign confidentiality agreement – before offer is submitted

## **Multiple Offers**

### **Standard of Practice 1—15**

Realtors, in response to inquiries from buyers or cooperating brokers shall, with the sellers' approval, disclose the existence of offers on the property.

Where disclosure is authorized, Realtors shall also disclose, if asked, whether offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating broker.

- Sellers decide whether to disclose multiple offers
- Agents could, or should, discuss at time of listing
- Decision on whether to disclose should be done at time of multiple offers
- Listing agent should have sellers' direction in writing
- Seller does not have to disclose to all potential buyers that they are in a multiple offer
- Listing agent must disclose 'who' if asked
- If sellers do not choose your buyers' offer – they can change something and get back in or possibly be a back-up if they choose to

What are the sellers' options in a multiple offer situation?

- Counter to one buyer
- Send all back for reconsideration of offers
- Send some back for reconsideration
- Cannot counter to more than one buyer

## **Variable Rate Commission**

### **Standard of Practice 3-4**

REALTORS®, acting as listing brokers, have an affirmative obligation to disclose the existence of dual or variable rate commission arrangements (i.e., listings where one amount of commission is payable if the listing broker's firm is the procuring cause of sale/lease and a different amount of commission is payable if the sale/lease results through the efforts of the seller/ landlord or a cooperating broker). The listing broker shall, as soon as practical, disclose the existence of such arrangements to potential cooperating brokers and shall, in response to inquiries from cooperating brokers, disclose the differential that would result in a cooperative transaction or in a sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease.

- Disclosure in MLS is sufficient
- Buyer agents must ask about differential
- Buyer agent should also ask who has other offer (SOP 1-15)
- The buyer agent must disclose the variable to their buyer
- If variable rate is in effect – disclosure of multiple offers is no longer a decision made by the seller – multiple offers must be disclosed if a variable rate is in effect

## **Disclose Accepted Contracts**

### **Standard of Practice 3-6**

Realtors shall disclose the existence of accepted offers, including offers with unresolved contingencies, to any broker seeking cooperation.

- This includes home-sale and home-closing contingencies
- Must report to MLS according to rules
- Delivery of earnest money has nothing to do with requirement to disclose contract
- Must disclose during interim to anyone wanting to show
- Does not include the listing agent having an obligation to disclose if there is a backup contract in place

## **Questions Listing Agent Should Ask Buyer's Lender**

- What was your protocol or process when you did the approval?
  - Did you run their credit?
  - Did you verify employment?
  - Did you verify self-employed taxable income?
- If approval letter does not mention type of financing, are they approved conventional, FHA?

## **From Contract to Close**

- The job is not done when the contract is signed. It is our job to get the transaction to the closing table
- Keeping the buyers informed of what is happening and what we are doing is part of what today's buyers are looking for from us.
- Although there are many steps involved, we will be focusing on the ones that cause transactions to fall through most often.

## **Working with The Appraisers**

It is the listing agent's responsibility to meet the appraiser at the property. You will help the transaction move forward if you are prepared for the meeting by either sending prior to the appointment or bring to the appointment an appraisal package.

Note: Please see Appendix Page 94 for information from The Appraisal Foundation on the broker and lenders responsibilities in the appraisal process.

### **Appraisal Package**

- Floor plan
  - Preferably from an old appraisal
- Plat of survey
  - Shows accurate square footage
- Multiple offers?
  - Provide copies – remove personal information
- Neighborhood information
  - Clearly defined neighborhood and school boundaries
  - Relevant area information
  - Trends and changes for area – use MLS stats
- Subject property information
  - List of recent improvements – date – amount if available
  - Improvements that are not visible
- Comparable Sales
  - Provide solds, pendings and listings that are best
  - Why you used – and didn't use certain comps
    - Explain why you didn't use comps that might be obvious
  - Provide details about each one

### **Code of Ethics Article 11**

Requires that all REALTORS® - agents doing CMA's and appraisers doing appraisals to:

- Be knowledgeable about the type of property
- Be familiar with the area
- Have access to resources to formulate opinion

- Verify information in the MLS is correct
  - Square footage on subject, comps and pendings
  - Schools
  - Pictures

### **Process for Inaccurate Appraisals**

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- Buyer agent cannot begin process unless buyer gives permission – in writing
- Must be submitted in writing to the lender
- Review the appraisal – are there errors?
  - Comps used were 12 and 15 months old
  - Comps were from another school
  - No adjustment was made for location – busy street, backing to commercial
  - Challenge any 'outliers' that were used
- Give the appraiser a reason to change his opinion
  - Submit new information
  - Submit new comps – if available
    - Properties that were pending and are now closed
    - Properties that were not used by appraiser
    - Properties that should not have been used by appraiser
- Appeal an appraiser who does not know the area
  - May not be aware of the nuances of your market
- Reminder on FHA – appraisals stay on property for 4 months
  - This only affects next buyer if he is FHA – not conventional
- Conventional – buyer can make up difference
- Might be able to negotiate the difference
- Try another lender and get a new appraisal



Fannie Mae®

## Appraisal Waivers Fact Sheet

September 4, 2018

Does every loan delivered to Fannie Mae require an appraisal? What if we have a recent appraisal on file? In some cases, we may be willing to waive the appraisal for certain transactions.

Appraisal waivers are Fannie Mae's offer to waive the appraisal requirement for eligible transactions. Appraisal waiver offers are issued through Desktop Underwriter® (DU®) using Fannie Mae's database of more than 31 million appraisal reports in combination with proprietary analytics from Collateral Underwriter® (CU®).

### How it works



**Appraisal waivers are available to all lenders through DU. There are no prerequisites and no registration process.**

When a DU loan casefile receives an appraisal waiver offer and it is exercised by the lender, Fannie Mae accepts the value estimate submitted by the lender as the market value for the subject property and provides relief from enforcement of representations and warranties on the value, condition, and marketability of the property. The lender is required to represent and warrant that the data (other than the value estimate) submitted to DU is complete and accurate, and lenders must order an appraisal if they have reason to believe that an appraisal is warranted based on additional information the lender has about the property or subsequent events.

The majority of transactions will *not* receive an appraisal waiver offer, which means they require an appraisal by a qualified residential appraiser to establish the market value.

This summary is intended for reference only. All criteria are subject to the formal terms and conditions of the Fannie Mae *Selling Guide*. In the event of any conflict with this document, the *Selling Guide* will govern.

**NOTE:** Effective with DU Version 10.1, Desktop Originator® (DO®) loan casefiles underwritten with Preliminary Findings are eligible for the appraisal waiver offer.

## VA Tidewater Process

- Appraiser gives Tidewater Notice to lender
- Lender notifies REALTORS® of Tidewater being initiated
- REALTORS® - both agents – provide additional information
- Lender forwards info to appraiser within in two business days
- Appraiser cannot discuss with anyone
- Appraiser reviews information and completes appraisal

**Remind the buyer not to change anything! DO NOT. . .**

1. Change jobs, become self-employed or quit your job.
2. Buy a car, truck or van (or you may be living in it!)
3. Use charge cards excessively or let them fall behind
4. Close credit card accounts
5. Spend money you have set aside for closing
6. Buy furniture on credit
7. Originate any inquiries into your credit
8. Make large deposits in your bank
9. Change bank accounts
10. Co-sign for a loan for anyone

**Be sure the buyers meet all the deadline dates in the contract.**


- Delivery of earnest money
- Loan application time frame
- Home inspection issues done on time

## **DMB #4: SUPERVISE ESCROW ACCOUNTS**

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### **Earnest Money and Escrow**

#### **Quiz – True or False**

- 
- \_\_\_\_\_ 1. If earnest money is not delivered according to the contract, the contract is null and void and the seller can sell to another buyer.
- \_\_\_\_\_ 2. If a licensed brokerage company is escrowee, earnest money must be deposited the next business day following the acceptance of the contract unless the contract specifies a different time for the delivery of the earnest money to the escrowee.
- \_\_\_\_\_ 3. If the listing brokerage is not holding the earnest money, they have an obligation to their seller to verify the money has been deposited.
- \_\_\_\_\_ 4. Should either party request the earnest money because of a default, the signatures of the buyers and sellers are needed.
- \_\_\_\_\_ 5. The managing brokers are required to sign off on the release of earnest money form.
- \_\_\_\_\_ 6. Once joint written direction has been received the escrowee must return the earnest money the next business day after receipt of the form, provided the check has cleared.
- \_\_\_\_\_ 7. There is no specific form that is required for the release of earnest money and all signatures do not need to be on the same document.
- \_\_\_\_\_ 8. If the seller does not authorize the release of earnest money, they cannot put their house back on the market and sell it to another buyer.

#### **Section 1450.750**

If one of the parties does not agree to the release of earnest money, the escrowee can use Section 1450.750, G3 which states: (portions not affecting concept removed)

An example of when a sponsoring broker may release escrow moneys without all signatures would be: the parties to the transaction signing a contract to purchase that includes language allowing the earnest money to be disbursed by the sponsoring broker if a transaction does not close as provided for in the contract so long as the sponsoring broker:

- provides written notice to the parties as required by the contract at least 14 days prior to the intended disbursement of the earnest moneys;
- and indicates the date by which any written objection from a party to the proposed disbursement must be received by the sponsoring broker.



In any such case, the actual terms of the contract concerning the release of the escrow moneys shall be adhered to by the sponsoring broker holding these escrow moneys.

Note: These rules and regulations regarding earnest money are applicable ONLY to real estate licensees. These rules DO NOT apply to attorneys, title companies or other escrow companies.

A brokerage firm should always check the rules of how their clients' earnest money will be handled if it is being held by someone other than a real estate licensee.



### **Earnest Money – Company Policy**

- Does your office hold earnest money on seller-side transactions?
- If no – what is your policy on who will hold if buyer's brokerage does not hold?
- If yes – do you require certified funds? Must be stated in MLS
- What is your procedure to ensure earnest money was delivered/deposited?
- Does your office hold earnest money on buyer-side transactions?
- If you are a branch office that does not do branch banking is there procedures for timely transmittal of earnest money to main office?



### **Earnest Money and the Closing**

- When being held by listing office, will the earnest money be brought to the closing?
- If being held by buyers' brokerage, will they bring it to closing?
- The listing brokerage – it is 'their' compensation per the listing agreement and they are responsible for notifying the title company of who has it and what is happening to it at the closing.

## Escrow Rules

- Earnest money is not a legal requirement. Rather it is used to discourage a buyer from defaulting. It also gives a seller some security in case the buyer does default, especially if the seller is going to take the property off the market during the processing of the sale.
- note. If the seller is willing, it could be stocks, bonds, or material things like an antique car. It is very important to understand how earnest money and trust accounts should be handled. More violations occur from the mishandling of funds than any other single violation of license law.



- When handling earnest money the clock starts ticking as soon as a contract or lease has been accepted. Earnest money must be deposited the next business day unless the contract stipulates it will be tendered at a later date.



- Earnest money accounts are separate from all other business accounts and are non-interest bearing, unless there is an agreement between the buyer and seller. Their agreement must state who will receive the interest.
- Should either party require the earnest money because of a default, the signatures of the buyers and sellers are needed. It is not a requirement of license law for the brokers to sign the release form.
- If one of the parties will not agree, then the earnest money cannot be released unless there is language in the sales contract that stipulates what will happen if someone does not agree to the release.
- At that point an interpleader could be filed by the escrowee and the money will be given to the court. If no court action has been filed, after five years it becomes unclaimed property.
- Unclaimed funds are sent to the state.
- Earnest money is to be returned to whomever the parties designate the next business day after all parties have signed the release form – provided the check has cleared.
- Requirements pertaining to the Journal, Ledgers, and Reconciliation can be found at: *IDFPR Escrow Account and Record Keeping Requirements* can be found at: <https://www.idfpr.com/RealEstate/EscrowRequirements-1005.pdf>



Unclaimed Property Act Information can be found at <https://icash.illinoistreasurer.gov/#>

## **DMB #5: SUPERVISE ADVERTISING**



The Designated Managing Broker is responsible for supervision of all advertising of any service for which a license is required.

### **Section 10-30 Advertising**



- No advertising can be fraudulent, deceptive, inherently misleading or proven to be misleading
- Advertising is considered misleading or untruthful if there is a possibility that it will be misunderstood or deceive the ordinary consumer.
- Advertising shall contain all information necessary to communicate the information in it to the public in an accurate, direct and readily comprehensible manner.
- Team names may not contain inherently misleading terms, such as company, realty, real estate, agency, associates, brokers, properties or property.



- No blind advertisements may be used.
  - Blind ads are ads that do not include sponsoring brokers complete business name,
  - In electronic ads can have direct link to a display with all required disclosures
  - Must include franchise affiliation, if appropriate



- Brokerage company name must be in all ads
  - Must include name of franchise (if applicable, and name of brokerage)
- Brokerage business name must be the same size or larger than the team or agent name.
- On brokerage yard signs – no disclosure of agent ownership is needed
- On FSBO yard signs – must have ‘agent’ or ‘broker’ owned
- All advertising must be done under direct supervision of managing broker
  - Exceptions:
    - Licensee lists with another brokerage company
    - Licensee is selling or renting ‘by-owner’
- Designated Managing Brokers must disclose they are the DMB
  - If holding a Managing Broker’s license and NOT MANAGING – no disclosure is required but may be used
  - Does not apply to yard signs

### **Section 1450.715 Advertising, prohibits:**

- Advertising a property that is listed by another brokerage without the permission of and identifying that listing broker.
- Failing to remove advertising of a listed property within a reasonable time upon the closing, expiration or termination of the listing agreement.

- Advertising a property that creates a reasonable likelihood of confusion regarding the permitted use of the property.
- Use of URL, domain name, metatag, keyword or other device or method intended to deceptively direct, drive or divert internet traffic or mislead consumers.
- Unsolicited marketing of a licensee's real estate brokerage services and prospecting shall be considered advertising.

### Section 1450.720 Internet Advertising



- Email and other electronic communications used for marketing or transactional purposes must include on the first or last page of all communications:
  - Licensees name
  - Name of brokerage company
  - City and state in which office is located



#### Company Policy Issues

- Brokerage company will be made aware of all social media being used by licensees.
- DMB will be periodically viewing all social media for adherence to RELA, the Code of Ethics and Company Policy.
- At no time will agents use other brokerage company listings on their social media unless they have received written permission from the listing DMB and give attribution as to who has the property listed.
- Brokerage Company  will  will not allow other brokerage companies to use our listings in their marketing.
- Use of brokerage company listings within the company must be approved by the DMB. The Designated Agent of the seller must get permission of the seller as well.
- Due to copyright and ownership issues of the photos, all contracts and agreements entered into by licensees with photographers must be reviewed by the DMB.
- The following guidelines will be adhered to when doing virtual staging of listed properties:
  - All virtually staged photos will be labeled
  - Placing of furniture is recommended/permitted when virtually staging
  - Changing wall colors, removing wallpaper, changing flooring, updating cabinets and other 'renovations' not actually done to the property are not allowed.

# ILLINOIS REALTORS® ADVERTISING CHECKLIST

Let Illinois REALTORS® help! Our experts can assist you with advertising.



## Name of Licensee

Does the advertisement include the full name of the real estate licensee?

*\*NOTE: Not always needed if general company ad.*

YES  NO



## Managing Broker

If you are the designated managing broker on record with the Illinois Department of Financial and Professional Regulation, and your name is in the ad, does the advertisement identify you as designated managing broker?

YES  NO



## Brokerage Name

Is the complete brokerage name disclosed in a reasonable and readily apparent manner (not solely a company logo or abbreviation of the company name) and is it as large or larger than the agent's or team's name?

YES  NO



## Authority to Advertise

Does the licensee have the written authority of the owner to advertise the property?

YES  NO



## Honest and Truthful

Is the advertising content honest and truthful? Does the advertisement avoid any misleading statements or exaggeration of fact?

YES  NO



## Teams

Does the advertising contain the full non-misleading name of the team and avoid the use of the following terms: Company, Realty, Real Estate, Agency, Associates, Brokers, Properties or Property?

YES  NO



## Referral Fees

Does the advertisement avoid offering anything of value to an unlicensed person solely for the referral of a prospective client or customer?

YES  NO



## Property Owned

If the advertisement is a "by-owner" ad for the sale, purchase or lease of real property that a licensee owns or in which he has an interest, does the advertisement state that the owner is a real estate licensee?

YES  NO



## Inducements

If the advertisement includes an offer for goods or services that are free, are all the terms governing this offer included? If a premium, prize or discount is offered, is there language disclosing all terms and conditions?

YES  NO



## Sold Property

If advertising sold properties, did the licensee participate in the sale of the property as the listing broker or cooperating broker?

YES  NO



## Designations

Is the licensee entitled to use any and all designations contained in the advertising?

YES  NO

*\*NOTE: These are sample questions and do not contain every possible advertising requirement or scenario. 217-529-2600 • rcarraher@illinoisrealtors.org*

**DMB #6: FAMILIARIZE LICENSEES WITH LAWS AND REGULATIONS**

Previously covered throughout the course.

**DMB #7: COMPLIANCE WITH RELS AND RULES FOR SUPERVISED LICENSEES**

Previously covered throughout the course.

## APPENDIX

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### RELA Rules Section 1450.755

Link to Rules <https://www.ilga.gov/commission/jcar/admincode/068/06801450sections.html>

Records relating to transactions shall be retained by the sponsoring broker in hard copy or electronically.

- A) These records might include copies of the following:
  - i) Residential Property Transactions: Signed contracts, including offers and counteroffers, written release of escrow funds, Dual Agency Authorization, notices of designated agency or no agency, written direction for deposit into interest bearing special account, power of attorney, disclosures (e.g., lead paint, radon, seller disclosure), closing statements and other transaction records required to be retained by the Act.
  - ii) Property Management/Leasing: Any rental finding agreement, property management agreements, leases, periodic accounting or statement to the owner regarding the receipts and disbursements, and any other documents set forth in subsection (a)(3)(A)(i) that are relevant to the transaction.
  - iii) Commercial Representation: Tenant or owner representation agreement, letters of intent, leases, any written modifications to an executed lease and any other documents set forth in subsection (a)(3)(A)(i) that are relevant to the transaction.
- B) The documents set forth in subsection (a)(3) are not all inclusive and are examples of relevant documents to be retained. Any similar documents pertinent to a particular transaction shall also be retained. Any information contained on the outside of a transaction file shall be considered part of that file.
- C) Transaction records shall be maintained for 5 years. The sponsoring broker shall ensure that any transaction records involving any active or pending transaction or representation, or any transaction in which escrow funds or moneys belonging to others were received and have not yet been disbursed for the immediate prior 2 years shall be maintained in the office. All transaction records maintained at the office shall be made available for inspection and audit during normal business hours by the Division 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 in hard copy or electronically shall be made available for inspection during normal business hours as soon as available within 30 days after the request.
- D) Sponsoring brokers may allow their sponsored licensees to maintain duplicate transaction records.

## Section 1450.740 Unlicensed Assistants

- a) Licensees under the Act may utilize the services of unlicensed assistants to assist them with administrative, clerical or personal activities for which a license under the Act is not required. Compensation for unlicensed assistants cannot be transaction based.
- b) An unlicensed assistant, under the supervision of a licensee, may engage in the following activities. This list is not intended to increase or decrease the scope of licensed activities.
  - 1) answer the telephone, take messages and forward calls to a licensee;
  - 2) submit listings and changes to a multiple listing service;
  - 3) follow up on a transaction after a contract has been signed;
  - 4) assemble documents for a closing;
  - 5) secure public information from a courthouse, sewer district, water district or other repository of public information;
  - 6) have keys made for a listing;
  - 7) draft advertising copy and promotional materials for approval by a licensee;
  - 8) place advertising;
  - 9) record and deposit earnest money, security deposits and rents at the direction of, and with approval by, a licensee;
  - 10) complete contract forms with business and factual information at the direction of and with approval by a licensee;
  - 11) monitor licenses and personnel files;
  - 12) compute commission checks and perform bookkeeping activities;
  - 13) place signs on property;
  - 14) order items of routine repair as directed by a licensee;
  - 15) prepare and distribute flyers and promotional information under the direction of and with approval by a licensee;
  - 16) act as a courier to deliver documents, pick up keys, etc.;
  - 17) place routine telephone calls on late rent payments;
  - 18) 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);



- 19) respond to questions by quoting directly from published information;
  - 20) sit at a property for a broker tour that is not open to the public;
  - 21) gather feedback on showings;
  - 22) perform, manage or supervise maintenance, engineering, operations, security or other building trades work and answer questions about that work;
  - 23) provide concierge services and other similar amenities to existing tenants; and
  - 24) perform other administrative, clerical or personal activities for which a license under the Act is not required.
- c) An unlicensed assistant of a licensee may not perform licensed activities, including but not limited to:
- 1) host open houses, kiosks, or home show booths or fairs;
  - 2) show property;
  - 3) interpret information regarding listings, titles, financing, contracts, closings or other information relating to a transaction;
  - 4) explain or interpret a contract, listing, lease agreement or other real estate document for or with anyone outside the unlicensed assistant's real estate entity;
  - 5) negotiate or agree to any commission, commission split, management fee or referral fee on behalf of a licensee; or
  - 6) perform any other licensed activities.
- d) Any licensee who supervises an unlicensed assistant shall be responsible for the unlicensed assistant's actions. Any licensee who permits, aids, assists or allows an unlicensed assistant to perform any licensed activities shall be in violation of the Act.
- e) Stenographic, clerical, maintenance, engineering, operations, building trades, security or office personnel not directly engaging in licensed activities are not required to be licensed.
- f) A licensee is prohibited from acting as an assistant, as provided for in this Section, for any licensee other than the licensee's sponsoring broker or a licensee sponsored by the sponsoring broker.

(Source: Amended at 40 Ill. Reg. 12588, effective September 2, 2016)

## Appendix II to Part Four

### Appropriate Interpretation of “Pertinent Facts” as Used in Article 2 of the Code of Ethics

Article 2 of the National Association’s Code of Ethics obligates REALTORS® to refrain from exaggerating, misrepresenting, or concealing pertinent facts related to a property or to a transaction. Faced with an increasing volume of inquiries concerning the appropriate interpretation and application of Article 2 of the Code of Ethics, the Professional Standards Committee of the National Association provides the following for consideration by Hearing Panels when asked to determine whether a violation of Article 2 has occurred.

A number of states have chosen, either through legislation or by regulation, to specify that real estate licensees have no obligation to discover or disclose certain facts regarding a property or its former or current occupants. In some instances, the disclosure of such information is expressly prohibited. In still other instances, states have chosen not to provide such guidance, and REALTORS® and others have looked to a variety of sources for guidance.

The Code of Ethics, which frequently establishes duties and obligations higher than those required by the law, must give way when those obligations conflict with the law. If the law prohibits disclosure of certain types of information to, for example, potential purchasers, then the Code of Ethics must not, under any circumstances, be read as requiring such disclosures.

At the same time, where the law simply provides that there is no express or implied duty to discover or disclose pertinent factors, the duties imposed by Article 2 come into play. Absent a legal prohibition, any material fact that could affect a reasonable purchaser’s decision to purchase, or the price that a purchaser might pay, should be disclosed as required by Standard of Practice 2-1 if known by the REALTOR® unless, again, otherwise prohibited by law or regulation. Such factors include, but are not limited to, those factors that might affect the habitability of the property. Other factors that do not affect the habitability of the property may nonetheless have an effect on the desirability of the property, the price a reasonable purchaser might pay for it, or the potential purchaser’s ability to resell the property at a future date.

Hearing Panels should also consider that a once-pertinent factor can, in some instances, diminish in relevancy over a period of years. For example, a traumatic death that occurred recently in a home could have a greater influence on a reasonable purchaser’s decision than a similar occurrence twenty (20), fifty (50), or one hundred (100) years earlier. By way of further example, the fact that a former occupant had died of scarlet fever fifty (50) years earlier would likely have less of an effect on a potential purchaser’s decision than the fact that there had been a murder on the premises within the past year.

It is no more possible to establish a black-letter definition of “pertinent facts,” as related to Article 2, than it would be to establish a “procuring cause” template or rule that would define with precision, in every instance, entitlement to compensation in an otherwise arbitrable situation. Rather, reasonableness and common sense must be relied on in making such determinations. The question that Hearing Panels should consider in determining whether a REALTOR® has exaggerated, misrepresented, or concealed a pertinent fact is whether disclosure of the fact in question could have had an effect on a reasonable purchaser’s decision. If the Hearing Panel concludes that the fact was material and was adverse but not necessarily subject to Standard of Practice 2-1’s discovery requirement, but was known by the REALTOR® and could have influenced a reasonable purchaser’s decision, then exaggeration, misrepresentation, or concealment of that fact could be the basis for finding that Article 2 had been violated. *(Approved 4/91)*

**CLOSING THE TRANSACTION**

<b>IMMEDIATELY AFTER A SALE</b>			
<b>List Ag</b>	<b>Buyer Ag</b>		<b>Date</b>
X	X	Contract and Disclosures Fully Initialed, Signed, Dated	
X	X	Contract and Disclosures Delivered to Clients	
X	X	Email Contract to Attorney	
X	X	Communicate with Atty Office - ask to be copied	
X	X	Turn in Transaction Data, Contract, Disclosures to Company	
	X	Earnest Money delivered to Escrowee per contract	
X		Report contingent to MS within 48 hours	
	X	Set up Home Inspection- give buyer list- verify their choice	
X		Verify Home Inspection and who will be there	
	X	Attend Home Inspection	
	X	Review Home Inspection Report with Buyer	
	X	Coordinate communication with Attorney on Inspection requests	
X		Review Home Inspection Issues with Seller	
X		Obtain estimates for repairs	
X	X	Stay involved with negotiations on Inspection issues	
X	X	Stay involved with negotiations on Attorney Modification issues	
	X	Coordinate Buyer's formal application with Lender	
X		Verify Buyer's Application with Lender	
X		Ask Lender to contact you for Appraisal of property	
X		Pending Sign On	
	X	Arrange for buyer to tender additional earnest money	
X		Verify additional earnest money tendered and communicate to all parties	
	X	Remind Buyer to obtain Homeowner's Insurance purchase	
X		Offer or verify to order Well and Septic test	
X	X	Communicate with your client regularly	
X		Verify Order of Association Docs	
X	X	Verify Appraisal ordered	
X		Set up Municipal inspection if required	
	X	Verify affordable homeowner's insurance	
	X	Verify affordable flood plain insurance if applicable	
	X	Remind buyer to not hange credit circumstances prior to closing	
		CR Strategies	2020

AFTER A/I		
List Ag	Buyer Ag	
X	X	Follow Loan Progress
	X	Ask for copy of LE (Loan Estimate)
X	X	Keep track of all Contingency dates
X		Meet Appraiser at home with comps/appraisal package
X	X	Determine if Buyer will meet loan approval per contract
X		Coordinate any repairs needed
X	X	Communicate Mortgage Approval
X	X	Play active part in setting closing time if in client's best interest
X	X	Verify moving plans for client
	X	Offer to pick up city stamps if appropriate
X	X	Communicate with your Client regularly
WEEK BEFORE CLOSING		
List Ag	Buyer Ag	
X	X	Determine Seller's plan to vacate
X		Remind Seller definition of broom clean condition
X		Determine Seller's plans to clean home
	X	Verify requested repairs completed
	X	Arrange for Walk Thru
X	X	Coordinate Utilities to be changed
X		Communicate earnest money location and status for closing
X		Verify commission and pay out instructions with attorney
X	X	Advise client of closing time and place
	X	Help Buyer with fund figures needed for closing
	X	Remind Buyer of cautions against wire fraud
	X	Remind buyer to bring Ins proof, Driver's License, Cashier Check
X		Determine Seller's availability during closing if needed
X		Get Seller's forwarding address
X	X	Communicate with your client regularly

<b>DAY BEFORE/OF CLOSING</b>		
<b>List Ag</b>	<b>Buyer Ag</b>	
X		Get garage code and openers
X		Go through home after vacant
	X	Pick up key for Walk thru
	X	Verify if List Agent will have Garage code, openers, keys at closing
	X	Be at Walk Thru WITH client (never for the client)
X		Deliver key(s) to closing for Buyer
X		Earnest Money check for closing if appropriate
X		Pick up Sign
<b>AT THE CLOSING</b>		
<b>List Ag</b>	<b>Buyer Ag</b>	
X	X	Be There
X	X	Offer to be a gopher for any missing items
X	X	Work with attorneys and clients on issues
X	X	Facilitate a smooth closing for all
X	X	Make sure the transaction closes
X	X	Review figures and quietly advise attorney of conflicting numbers
X		Give garage code, openers, keys to new homeowner
X	X	Obtain a copy of the CD (unless cash closing)
X	X	Obtain a copy of the Seller's Closing Statement
X		Obtain the balance of commission and verify \$
	X	Obtain coop check or determine when available
X	X	Congratulate the new Homeowner
<b>AFTER THE CLOSING</b>		
<b>List Ag</b>	<b>Buyer Ag</b>	
X		Communicate with and Congratulate the absent Seller
X	X	Complete Company's closed file requirements
X		Report closed in MLS with 48 hours
X	X	Enter all info into your data base for client follow up
X	X	Send out Appreciation letter
	X	Follow up visit with Buyer
X	X	Closing gift (optional)
X	X	Communicate 6 times per year (more if you are looking for referrals)
X	X	Congratulate yourself on a job well done

## **Information Literacy**

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### **Data**

- A collection of facts from which conclusions can be drawn
- Collection or representation of facts in raw or unorganized form (such as alphabets, numbers, or symbols) that refer to, or represent, conditions, ideas, or objects.
- Data is limitless and present everywhere in the universe. In fact, as Dr. Norbert Wiener (co-founder of the science of cybernetics) once suggested, this world "... may be viewed as a myriad of 'To Whom It May Concern' messages."

### **Information**

- Data that
  - (1) has been verified to be accurate and timely
  - (2) is specific and organized for a purpose
  - (3) is presented within a context that gives it meaning and relevance
  - (4) can lead to an increase in understanding and decrease in uncertainty
- The value of information lies solely in its ability to affect a behavior, decision, or outcome. A piece of information is considered valueless if, after receiving it, things remain unchanged

### **Knowledge**

- Human faculty resulting from interpreted information
- Understanding that comes from combination of data, information, experience, and individual interpretation
- Knowledge is not determined by information – it is the process that decides which information is relevant and how it is to be used

### **Wisdom**

- Knowledge and experience needed to make sensible decisions and judgments
- Accumulated knowledge
- Not just what you know – but how you use what you know

### **Insight**

- The application of knowledge that looks toward the future
- Intelligent forecasting based on experience

How do we impart our knowledge and insight to them so they can make intelligent knowledgeable decisions?



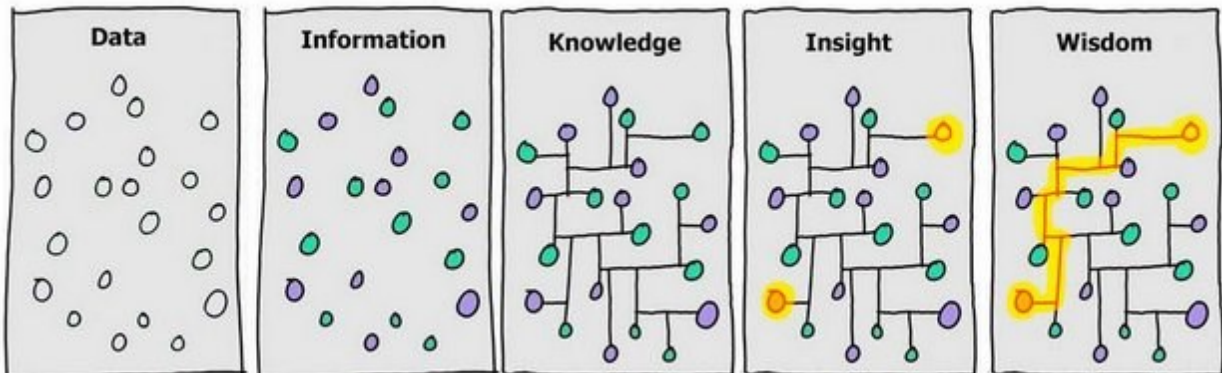
We must process large amounts of market data and collate it into meaningful information that is readily comprehensible  
Then present it in a visually compelling manner so it is hard to refute from any logical or factual basis



We need to show them the realities of the local market not what the media has said or what information aggregators show  
What is on-line is data and information only



Clients are looking for:  
•Relevant information, supplied by a trusted source with appropriate and accurate analysis  
•Perception of us will change to professional consultants rather than just 'sales people'.



**How Do We Show The Clients What the Market Is Really Doing?**

## What do we need to know?

### Supply and Demand

One of the biggest influences on a home's price is the supply and demand in the local real estate market.

- Supply and demand is a basic economic principal in which a product's price is either positively or negatively affected by the availability of the product.
- If there is a **high demand for a product that is in low supply**, the price of this product will escalate due to market conditions that will support a higher price.
- If there is **low demand for a product that is in high supply**, the price of this product will decrease due to market conditions that are influenced by the high availability of this product.

### Days on Market

- This is a measure of market sales activity for any given month, i.e. how long (on average) must properties "expect" to be on the market before they sell?
- When the days on market are going down, it indicates the market is trending to a sellers' market with probable increase in prices. Conversely, when days on market are going up the market is trending to a buyers' market with probably price decreases.

### Absorption Rate - Months' Supply of Inventory

- This is a figure that represents how long (in months) it would take to sell the remaining inventory at the present (monthly) sales rate.
- The number of properties that were "For Sale on the Last Day of the Month (FSLDM)" is, by definition, the remaining inventory for the month.
- This figure is then divided by the current sales rate for the month.
- Market absorption is one of the most reliable indicators of market conditions.

<b>Seller's Market</b>	<b>1 - 3 Months' Supply</b>
<b>Even Market</b>	<b>4 - 6 Months' Supply</b>
<b>Buyer's Market</b>	<b>7+ Months' Supply</b>



**BROKERAGE FORMS AND GUIDES AVAILABLE ON ILLINOIS REALTORS® SITE**

[www.illinoisrealtors.org/legal/forms](http://www.illinoisrealtors.org/legal/forms)

**Agency, dual agency and non-agency disclosure forms**

No.	Name	Update	Versions
335	Disclosure and Consent to Dual Agency	05/2019	<a href="#">PDF</a>
336	Confirmation of Consent to Dual Agency	05/2019	<a href="#">PDF</a>
340	Additional Agency Designation	05/2019	<a href="#">PDF</a>
349	Disclosure of Buyer's Designated Agent	05/2019	<a href="#">PDF</a>
349s	Disclosure of Seller's Designated Agent (For possible use during listing presentation)	05/2019	<a href="#">PDF</a>
349t	Disclosure of Tenant/Lessee's Designated Agent	05/2019	<a href="#">PDF</a>
350	Notice of No Agency Relationship	05/2019	<a href="#">PDF</a>
350t	Notice of No Agency Relationship (For prospective tenants)	05/2019	<a href="#">PDF</a>
	Consumers Guide to Real Estate Agency in Illinois	05/2019	<a href="#">PDF</a>

**Checklists**

No.	Name	Update	Versions
343	Buyer Agency Checklist	05/2019	<a href="#">PDF</a>
344	Buyers Information Checklist	05/2019	<a href="#">PDF</a>
345	Seller Agency Checklist	05/2019	<a href="#">PDF</a>
	Shortsale checklist (Buyer)	05/2019	<a href="#">PDF</a>
	Shortsale checklist (Seller)	05/2019	<a href="#">PDF</a>
	<b>NEW:</b> Office Company Start-Up Checklist	01/2020	<a href="#">PDF</a>

## Property disclosure forms

No.	Name	Update	Versions
103	Mine Subsidence Disclosure	05/2019	<a href="#">PDF</a>
108	Residential Real Property Disclosure Report	05/2019	<a href="#">PDF</a>
346	Flood Insurance Disclosure to Buyer Clients	05/2019	<a href="#">PDF</a>
420	Disclosure of Information and Acknowledgement (Lead-based paint and lead-based paint hazards)	05/2019	<a href="#">PDF</a>
421	Pre-1978 Housing and Rental Leases Disclosure of Information (Lead-based paint and/or lead-based paint hazards)	05/2019	<a href="#">PDF</a>
422	Disclosure of Information on Radon Hazards (For residential Real Property Sales or Purchases)	05/2019	<a href="#">PDF</a>
422L	Disclosure of Radon Hazards (For Lessees/rentals of a residential dwelling unit)	05/2019	<a href="#">PDF</a>
	Radon Testing Guidelines for Real Estate Transactions pamphlet (Ill. Emergency Management Agency, Real Estate Radon Safety <a href="#">webpage</a> )		<a href="#">PDF</a>
	Radon Testing Guidelines for Real Estate Transactions Fact Sheet (Ill. Emergency Management Agency, Real Estate Radon Safety <a href="#">webpage</a> )		<a href="#">PDF</a>
	Illinois Seller Disclosure Law Guide	05/2019	<a href="#">PDF</a>

## Buyer and seller brokerage agreement forms

No.	Name	Update	Versions
338	Exclusive Buyer Representation/Exclusive Right to Purchase (Dual Agency Disclosure and Consent Included)	05/2019	<a href="#">PDF</a>
338a	Exclusive Buyer Representation/Exclusive Right to Purchase (Without Dual Agency Disclosure and Consent)	05/2019	<a href="#">PDF</a>
339	Non-Exclusive Buyer Representation Contract (Dual Agency Disclosure and Consent Included)	05/2019	<a href="#">PDF</a>
339a	Non-exclusive Buyer Representation Contract (Without Dual Agency Disclosure and Consent)	05/2019	<a href="#">PDF</a>
341	Terms of Non-exclusive Buyer Representation (Designated Agent)	05/2019	<a href="#">PDF</a>
342	Exclusive Right to Sell Contract (Dual Agency Disclosure & Consent Included)	05/2019	<a href="#">PDF</a>
342a	Exclusive Right to Sell Contract (Without Dual Agency Disclosure & Consent)	05/2019	<a href="#">PDF</a>
351	Rider to Brokerage Agreements	05/2019	<a href="#">PDF</a>
425	Exclusive Seller Representation Contract (Dual agency disclosure and consent included)	05/2019	<a href="#">PDF</a>
426	Exclusive Seller Representation Contract (Without dual agency disclosure and consent)	05/2019	<a href="#">PDF</a>

## Independent contractor form

No.	Name	Update	Versions
201	Sponsoring Broker-Sponsored Licensee Contract (Independent Contractor Agreement Form)	05/2019	<a href="#">PDF</a>

## Manuals, guides and sample policies

Name	Update	Versions
Agency Compliance Manual	01/2020	<a href="#">PDF</a>
Antitrust Compliance Manual	05/2019	<a href="#">PDF</a>
REALTOR® Code of Ethics	01/2019	<a href="#">LINK</a>
NAR Designations & Certifications	01/2019	<a href="#">LINK</a>
Exclusive Brokerage Agreements & Minimum Services	05/2019	<a href="#">PDF</a>
Lead-based Paint Manual	05/2019	<a href="#">PDF</a>
Municipal Requirements Involving the Inspection of Residential Property	03/2019	<a href="#">PDF</a>
The P.A. Manual (personal assistant)	05/2019	<a href="#">PDF</a>
Illinois Seller Disclosure Law Guide	05/2019	<a href="#">PDF</a>
Sample Office Policy Manual	01/2020	<a href="#">DOC</a>
Sample Do Not Call Policy	05/2019	<a href="#">DOC</a>
Teams and the Illinois Real Estate Brokerage Firm	01/2020	<a href="#">PDF</a>
Fair Housing – A Guide For Real Estate Professionals	04/2019	<a href="#">PDF</a>
Fair Housing – A Sellers’ Guide	04/2019	<a href="#">PDF</a>
<b>NEW:</b> Office Company Start-Up Checklist	01/2020	<a href="#">PDF</a>

## Consumer resources

Name	Update	Versions
Consumers Guide to Real Estate Agency in Illinois	05/2019	<a href="#">PDF</a>
Municipal Requirements Involving the Inspection of Residential Property	03/2019	<a href="#">PDF</a>
Municipal Transfer Taxes in Illinois	01/2018	<a href="#">PDF</a>

## Additional resources

No.	Name	Update	Versions
427	Disclosure of Contemporaneous Offers	05/2019	<a href="#">PDF</a>
428	Disclosure and Consent for Compensation by Multiple Parties	05/2019	<a href="#">PDF</a>
500	BPO-CMA Form	05/2019	<a href="#">PDF</a>
	REALTOR® Code of Ethics	01/2019	<a href="#">LINK</a>
	NAR Designations & Certifications		<a href="#">LINK</a>
	Brokerage Verification Report (Illinois Department of Financial and Professional Regulation form)	04/2011	<a href="#">PDF</a>
	Compliance Examination Report	04/2011	<a href="#">PDF</a>
	Illinois Real Estate License Act		<a href="#">LINK</a>
	Administrative Rules Under Illinois Real Estate License Act		<a href="#">LINK</a>
	Mold FAQs (Ill. Dept. of Public Health)		<a href="#">LINK</a>
	More on Mold Disclosure: In the latest forms revision, <a href="#">the mold disclosure form was dropped</a> after a legal review for three main reasons, according to Illinois REALTORS® Legal Counsel Betsy Urbance.		
	<b>NEW:</b> Affirmation To Cooperating/Buyer's Broker	05/2019	<a href="#">PDF</a>

## Concealed carry

No.	Name	Update	Versions
352	Model Office Policy (Concealed firearms)	05/2019	<a href="#">PDF</a>
353	Concealed Carry language: Sponsoring Broker/Sponsored Licensee Contract	05/2019	<a href="#">PDF</a>
354	Residential Property Owner Release Form (IL Concealed Carry Firearm Consent)	05/2019	<a href="#">PDF</a>

## COMMON MYTHS ABOUT THE HOME BUYING PROCESS



# REAL ESTATE BROKERS

## MYTH

REAL ESTATE BROKERS ARE PROHIBITED FROM COMMUNICATING WITH APPRAISERS.

## FACT

Brokers are permitted to communicate with an appraiser and to provide them with additional information as long as the communication is not intended to unduly influence the outcome of the appraisal. The exchange of relevant information—including terms of the sale, relevant comps, and home improvements—can help an appraiser develop a more credible opinion of value.

## MYTH

NOTHING CAN BE DONE IF A BROKER HAS CONCERNS OR QUESTIONS REGARDING A COMPLETED APPRAISAL.

## FACT

If there are questions or concerns with an appraisal, there are concrete steps brokers can take through the lender, like submit additional comps for the appraiser to consider, request the appraiser correct errors in the appraisal report, and ask the appraiser to provide further detail to explain his/her conclusion.

## MYTH

APPRAISERS REQUEST COPIES OF THE PURCHASE AGREEMENT FROM BROKERS SIMPLY SO THEY'LL KNOW HOW MUCH TO APPRAISE THE HOME FOR.

## FACT

Appraisers are required to review the purchase agreement (if available during the ordinary course of business) to fully understand the terms of the transaction. Appraisers don't simply look at a pending sale price and try to "justify" the transaction. They perform research and analyses to provide their own opinion of value.



The Appraisal  
**FOUNDATION**

Authorized by Congress as the Source of Appraisal Standards and Appraiser Qualifications

<https://appraisalfoundation.sharefile.com/share/view/s3e14cae069543cd9>



# LENDERS

## MYTH

A LENDER AND AN APPRAISER CANNOT COMMUNICATE BEFORE, DURING, OR AFTER AN APPRAISAL IS COMPLETE.

## FACT

**Not only are lenders permitted to talk to appraisers, they must.** Communication is essential for the exchange of appropriate information, including the intended use of the appraisal, the scope of work necessary for credible assignment results, and more.

## MYTH

NOTHING CAN BE DONE IF A LENDER HAS CONCERNS OR QUESTIONS REGARDING A COMPLETED APPRAISAL.

## FACT

**If there are questions or concerns with an appraisal, there are concrete steps lenders can take,** like submit additional comps for the appraiser to consider, request the appraiser correct errors in the appraisal report, and ask the appraiser to provide further detail to explain his/her conclusion.

## MYTH

LENDERS MUST USE AN APPRAISAL MANAGEMENT COMPANY (AMC) TO ORDER AN APPRAISAL.

## FACT

**Lenders are entitled to engage an appraiser directly.** However, to avoid any potential undue influence on the appraiser, certain safeguards are required (e.g., in most cases the person at the lending institution selecting the appraiser cannot be the same person approving the loan).

## MYTH

AMCs ARE NECESSARY TO ENSURE THAT APPRAISERS AREN'T INFLUENCED BY LENDERS.

## FACT

**Regardless of whether an AMC is used, lenders are not permitted to influence the value of a home, and licensed and certified appraisers are required by law to follow strict guidelines** (i.e., the Uniform Standards of Professional Appraisal Practice) that guarantee an unbiased and meaningful analysis of value.



# BORROWERS

## MYTH

AN APPRAISER IS HIRED BY THE BORROWER.

## FACT

Even though the borrower may be responsible for the cost of an appraisal, **appraisers are hired by lenders.** Appraisers provide an analysis of the collateral, so that lenders understand the value of a property when making the loan decision.

## MYTH

THE MONEY PUT INTO A HOME TRANSLATES DOLLAR-FOR-DOLLAR INTO A HIGHER APPRAISAL.

## FACT

The cost put into a home improvement project may very well add value to a home; however, the value of any improvements are based on what the market is willing to pay for them, and may not necessarily correlate to the cost. Not all renovations positively impact property values.

## MYTH

APPRAISERS SET THE VALUE OF A HOME.

## FACT

Appraisers don't set the value of a home, nor do they confirm a home's **sale price.** Their role is to produce a credible opinion of value which reflects the current market.

## MYTH

APPRAISERS AND HOME INSPECTORS PERFORM THE SAME FUNCTION.

## FACT

Though both provide crucial information, their roles are very **different.** An appraiser provides an objective, unbiased analysis so the lender can better understand the value of a property. An inspector is typically hired by the borrower and performs an objective visual examination of the physical structure and systems of a house to ensure the structural integrity of the property.





State of Illinois  
Department of Human Rights

## Sexual Harassment Prevention: Minimum Training Standards for Employers (Handout SHP-TR01)

### Employers Must Provide Sexual Harassment Prevention Training

Every employer with employees working in the State of Illinois is required to provide all employees with annual sexual harassment prevention training that complies with Section 2-109 of the Illinois Human Rights Act (“IHRA”).<sup>1</sup> Employers may develop their own sexual harassment prevention training program that meets or exceeds the minimum standards for sexual harassment prevention training as outlined in Section 2-109(B) of the IHRA, or they may use the model sexual harassment prevention training developed by the Illinois Department of Human Rights (“IDHR”).

Restaurants and bars are required to provide “supplemental” sexual harassment prevention training that complies with Section 2-110 of the IHRA.<sup>2</sup>

### Minimum Standards for Sexual Harassment Prevention Training

Employers may develop their own sexual harassment prevention training programs provided they meet or exceed the minimum training standards outlined in Section 2-109(B) which include:

- an explanation of sexual harassment consistent with the IHRA;
- examples of conduct that constitutes unlawful sexual harassment;
- a summary of relevant federal and State statutory provisions concerning sexual harassment, including remedies available to victims of sexual harassment; and
- a summary of responsibilities of employers in the prevention, investigation, and corrective measures of sexual harassment.

### Additional Compliance Information

- **Supplemental Training.** For the purposes of satisfying the requirements under Section 2-109, employers may use IDHR’s model sexual harassment prevention training program to supplement any existing program an employer is utilizing or develops.
- **Deadline to Train Employees.** Employers must train employees by December 31, 2020 and on an annual basis thereafter.
- **Civil Penalty.** Any employer that is in violation of Section 2-109 will be issued a notice to show cause giving the employer 30 days to comply. Failure to comply within 30 days will result in IDHR petitioning the Illinois Human Rights Commission for entry of an order imposing a civil penalty against the employer.

**For more information** please visit IDHR’s website at [www.illinois.gov/dhr/training](http://www.illinois.gov/dhr/training). View Section 2-109 and Section 2-110 of the [Illinois Human Rights Act](#).

<sup>1</sup> Section 2-109 requirements do not apply to employers subject to Section 5-10.5 of the State Officials and Employees Ethics Act.

<sup>2</sup> For more information about Section 2-110 (training requirements for restaurants and bars), visit IDHR’s website and download handout SHP-TR01 (Sexual Harassment Prevention: Minimum Training Standards for Restaurants and Bars).

## Multi-Board 7.0 Buyer Due Diligence Dates

Buyers \_\_\_\_\_

Acceptance Date \_\_\_\_\_

Line 42	Delivery of earnest money Business Days as specified in contract	Date: _____
Line 43	Delivery of additional earnest money, if any Business Days as specified in contract	Date: _____
Line 135	Initial attorney modifications 5 Business Days after Date of Acceptance	Date: _____
Line 171	Home Inspection done and issues disclosed to seller 5 Business Days after Date of Acceptance	Date: _____
Line 71	Loan application and fees paid to lender 10 Business Days after Date of Acceptance	Date: _____
Line 141	Agreement reached on attorney modification issues 10 Business Days after Date of Acceptance	Date: _____
Line 181	Agreement reached on inspection issues 10 Business Days after Date of Acceptance	Date: _____
Line 191	Verification of affordable homeowners insurance 10 Business Days after Date of Acceptance	Date: _____
Line 197	Verification of affordable flood insurance 10 Business Days after Date of Acceptance or during mortgage contingency	Date: _____
Line 226	Notify Seller of unacceptable issues in Condo Docs 5 Business Days after receipt of Docs <small>Note: Docs ordered 10 Business Days after Date of Acceptance</small>	Date: _____
Line 56	Loan Approval received 45 Days after Date of Acceptance	Date: _____

This is not a part of the contract. It is a tool you can use if you choose to – to be sure your buyers are meeting their contingency dates. Please check with your Managing Broker prior to use. When using –

## **National Association of REALTORS® Fair Housing Initiatives**

In January 2020, the leadership of the NATIONAL ASSOCIATION OF REALTORS® passed a Fair Housing Action Plan to reaffirm and strengthen the association's fair housing commitment. The Fair Housing Action Plan, abbreviated 'ACT'. ACT stands for Accountability, Culture and Training. "ACT" specifically committed the NATIONAL ASSOCIATION OF REALTORS® to:

- Work closely with State Association Executives to ensure that state licensing laws include effective fair-housing training requirements and hold real estate agents accountable to their fair housing obligations;
- Launch a Public-Service Announcement Campaign that reaffirm NAR's commitment to fair housing, and how consumers can report problems;
- Integrate fair housing into all REALTOR® conferences and engagements;
- Explore the creation of a voluntary self-testing program, in partnership with a fair housing organization, as a resource for brokers and others who want confidential reports on agent practices so they can address problems;
- Create more robust fair housing education, including unconscious-bias training, and education on how the actions of REALTORS® shape communities.
- Conduct a national study to determine what factors motivate discrimination in sales market
- Profile leaders who exemplify the best fair housing practices and workplace diversity
- Develop materials to help REALTORS® provide consumers with information on schools that avoids fair housing pitfalls.

## **Changes to the NAR Code of Ethics – effective 11/13/2020**

### **Change to Policy Statement 29, of the Code of Ethics and Arbitration Manual**

A REALTOR® shall be subject to disciplinary action under the Code of Ethics with respect to all of their activities.

### **Added Standard of Practice 10-5**

REALTORS® must not use harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.

## Section 2 of the NAR Bylaws

- Any Member Board which shall neglect or refuse to maintain and enforce the Code of Ethics with respect to the business activities of its members may, after due notice and opportunity for hearing, be expelled by the Board of Directors from membership in the National Association.
- Enforcement of the Code of Ethics also requires Member Boards to share with the state real estate licensing authority final ethics decisions holding REALTORS® in violation of the Code of Ethics in instances where there is reason to believe the public trust may have been violated.
- The "public trust", as used in this context, refers to demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud. Reporting requirement of discrimination against protected classes under Article 10 of the Code of Ethics limited to decision involving real estate related activity and transactions.

*Note: Section 2 has further points that do not affect this subject matter.*

## Progressive Discipline

Discipline imposed for violations of the Code of Ethics or for violations of other membership duties should be progressive, that is discipline should increase incrementally for subsequent violations. The disciplinary emphasis where first time violations occur should be primarily educational. Repeated or subsequent violations should result in more serious forms of discipline being utilized, including substantial fines, suspension, and termination of membership. At the same time, a gray area can exist where a first time violation is not attributable to ignorance or oversight but rather to blatant disregard for the Code and its obligations. While the educational emphasis of Code enforcement cannot be disregarded, the fact that the Code exists to protect the public must be carefully considered in determining appropriate discipline.

*Omitted 2 examples that do not pertain to this issue.*

## Example C:

- In social media discussions, REALTOR® C posted several discriminatory and offensive comments which were deemed to be in violation of Article 10 as they discriminated against individuals on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.
- In determining appropriate discipline, the Hearing Panel considered REALTOR® C's comments as hate speech and discrimination in violation of Article 10 and had reason to believe that a violation of the public trust occurred.

- Based on the offensiveness of REALTOR® C's comments and his total disregard for the Code of Ethics' obligation to not be a party to any plan to discriminate against members of the protected classes of Article 10, the Hearing Panel recommended a \$5,000 fine and mandatory completion of implicit bias training.

### **Appendix XII to Part Four Appropriate Interpretation of Standard of Practice 10-5 and Statement of Professional Standards Policy 29**

Standard of Practice 10-5 prohibits REALTORS® from using harassing speech, hate speech, epithets or slurs based on the protected classes of Article 10. Statement of Professional Standards Policy 29 provides that REALTORS® are subject to disciplinary action with respect to all of their activities.

To assist Hearing Panels in the appropriate interpretation and application of Standard of Practice 10-5 of the Code of Ethics and Statement of Professional Standards Policy 29, the Professional Standards Committee of the National Association provides the following for consideration by Hearing Panels when asked to determine whether a violation of Article 10 as supported by Standard of Practice 10-5 has occurred.

Standard of Practice 10-5 is not focused on types of speech that might be subjectively deemed "offensive" or "discriminatory" by one person and not another. The Standard of Practice is based on very particular types of speech that are directly connected to the protected classes of race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity under Article 10. Only the use of harassing speech, hate speech, epithets and slurs based on the protected classes of Article 10 are prohibited. The terms "harassing speech," "hate speech," "epithets," and "slurs" can be commonly understood by use of a dictionary as well as other easily available references.

For example, NAR's Code of Conduct and Anti-Harassment Policy clearly defines "harassment" and "sexual harassment."

"Harassment includes inappropriate conduct, comment, display, action, or gesture based on another person's sex, color, race, religion, national origin, age, disability, sexual orientation, gender identity, and any other protected characteristic.

Examples of harassment include, but are not limited to: epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes; and the display or circulation of written or graphic material that denigrates or shows hostility toward an individual or group based on a protected characteristic."

“Sexual Harassment” includes not only physical acts but also includes verbal and nonverbal/non-physical acts.

“Sexual harassment can be:

- Verbal: Sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, or threats.
- Non-Verbal: Sexually suggestive objects or pictures, graphic commentaries, suggestive or insulting sounds, leering, whistling, or obscene gestures. ... ”

Hearing Panels should look to this existing information on harassment to determine whether harassing speech has occurred and then look to determine whether the harassing speech was based on one of the protected classes.

In similar fashion, Merriam Webster’s Dictionary defines “hate speech,” “epithets,” and “slurs” as follows:

Hate Speech: “speech that is intended to insult, offend, or intimidate a person because of some trait (as race, religion, sexual orientation, national origin, or disability).”

Epithet: “a) a characterizing word or phrase accompanying or occurring in place of the name of a person or thing; b) a disparaging or abusive word or phrase”

Slur: “a) an insulting or disparaging remark or innuendo: aspersion; b) a shaming or degrading effect: stain, stigma”

Again, Hearing Panels must look to whether the hate speech, epithet or slur is based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity and not on some other non-protected characteristic.

Under Statement of Professional Standards Policy #29, REALTORS® are subject to the Code of Ethics' standards in all of their activities. Thus, a violation of Article 10, as supported by Standard of Practice 10-5, can occur when a REALTOR® uses harassing speech, hate speech, epithets and slurs based on the protected classes in any media or context, regardless of whether related to their activities in the real estate business or their identification as a REALTOR®.

**Arbitration Worksheet**

NOTE: **Transmit to all parties.** This worksheet is intended to assist Hearing Panels in identifying relevant issues and facts in determining questions of entitlement to disputed funds. It is intended to supplement—and not replace—the comprehensive list of questions found in Factor #6 in the Arbitration Guidelines. These questions are not listed in order of priority and are not weighted equally.

Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
1. Was an offer of compensation made through the MLS or otherwise?					
2. Is the claimant a party to whom the listing broker's offer of compensation was extended?					
3. What was the nature of any buyer representation agreement(s)? Was the agreement(s) exclusive or non-exclusive? What capacity(ies) was the cooperating broker(s) functioning in, e.g., agent, legally-recognized non-agent, other?					
4. Were any of the brokers acting as subagents? As buyer brokers? In another legally recognized capacity?					
5. How was the first introduction to the property that was sold/leased made?					
(a) Did the buyer/tenant find that property on their own?					
(b) Who first introduced the purchaser or tenant to that property?					
(c) Was the introduction made to a different representative of the buyer/tenant?					
(d) Was the "introduction" merely a mention that the property was listed?					
(e) Was the property introduced as an open house?					
(f) What subsequent efforts were made by the broker after the open house?					
(g) What property was first introduced?					
6. When was the first introduction to the property that was sold/leased made?					

**Arbitration Worksheet**  
*(continued)*

NOTE: This worksheet is intended to assist Hearing Panels in identifying relevant issues and facts in determining questions of entitlement to disputed funds. It is intended to supplement—and not replace—the comprehensive list of questions found in Factor #6 in the Arbitration Guidelines. These questions are not listed in order of priority and are not weighted equally.

Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
(a) Was the introduction made when the buyer/tenant had a specific need for that type of property?					
(b) Was the introduction instrumental in creating the desire to purchase/lease?					
(c) Did the buyer know about the property before the broker contacted him? Did he know it was for sale/lease?					
(d) Were there previous dealings between the buyer and the seller?					
7. What efforts subsequent to the first introduction to the property were made by the broker introducing the property that was sold or leased?					
8. If more than one cooperating broker was involved, how and when did the second cooperating broker enter the transaction?					
9. Did the broker who made the initial introduction to the property engage in conduct (or fail to take some action) which caused the purchaser or tenant to utilize the services of another broker (estrangement)?					
(a) Were agency disclosures made? When?					
(b) Was the potential for dual agency disclosed? When?					
10. Did the broker who made the initial introduction to the property maintain contact with the purchaser or tenant, or could the brokers inaction have reasonably been viewed by the buyer or tenant as a withdrawal from the transaction (abandonment)?					



**Arbitration Worksheet**  
*(continued)*

NOTE: This worksheet is intended to assist Hearing Panels in identifying relevant issues and facts in determining questions of entitlement to disputed funds. It is intended to supplement—and not replace—the comprehensive list of questions found in Factor #6 in the Arbitration Guidelines. These questions are not listed in order of priority and are not weighted equally.

Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
11. Was the entry of any cooperating broker into the transaction an intrusion into an existing relationship between the purchaser and another broker, or was it the result of abandonment or estrangement of the purchaser?					
12. Did the buyer make the decision to buy independent of the broker's efforts/information?					
13. Did the seller act in bad faith to deprive the broker of his commission?					
(a) Was there bad faith evident from the fact that the difference between the original bid submitted and the final sales price equaled the broker's commission?					
(b) Was there bad faith evident from the fact that a sale to a third party was a straw transaction (one in which a non-involved party posed as the buyer) which was designed to avoid paying commission?					
(c) Did the seller freeze out the broker to avoid a commission dispute or to avoid paying a commission at all?					
14. Did the buyer seek to freeze out the broker?					
(a) Did the buyer seek another broker in order to get a lower price?					
(b) Did the buyer express the desire not to deal with the broker and refuse to negotiate through him?					
(c) Did the contract provide that no brokers or certain brokers had been involved?					

**Arbitration Worksheet**  
*(continued)*

NOTE: This worksheet is intended to assist Hearing Panels in identifying relevant issues and facts in determining questions of entitlement to disputed funds. It is intended to supplement—and not replace—the comprehensive list of questions found in Factor #6 in the Arbitration Guidelines. These questions are not listed in order of priority and are not weighted equally.

Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
15. Did the original introduction of the purchaser or tenant to the property start an uninterrupted series of events leading to the sale or lease, or was the series of events hindered or interrupted in any way?					
16. If there was an interruption or break in the original series of events, how was it caused, and by whom?					
(a) Did the seller change the listing agreement from an open listing to an exclusive listing agreement with another broker?					
(b) Did the buyer terminate the relationship with the broker? Why?					
(c) Was there interference in the series of events from any outside or intervening cause or party?					
(d) Was there abandonment or estrangement?					
17. Did the cooperating broker (or second cooperating broker) initiate a separate series of events, unrelated to and not dependent on any other broker's efforts, which led to the successful transaction—that is, did the broker perform services which assisted the buyer in making his decision to purchase?					
(a) Did the broker make preparations to show the property to the buyer?					
(b) Did the broker make continued efforts after showing the property?					
(c) Did the broker remove an impediment to the sale?					
(d) Did the broker make a proposal upon which the final transaction was based?					
(e) Did the broker motivate the buyer to purchase?					<i>(Adopted 11/03)</i>

## Listing Input Comparison

	Private Listing Network	Standard Listing Network	Exempt Listing (Not in MLS)
Requires a listing agreement	✓	✓	✓
Can be sent through IDX/Broker Reciprocity Programs, to clients through connectMLS (including Homesnap) and syndication websites		✓	
Can be marketed to the general public on an open website (Public Facebook page, Craigslist, etc). <i>Publicly marketing an exempt listing would be in violation of MRED's rules</i>	✓	✓	
Requires an offer of compensation	✓	✓	
Listings are required to be added within 48 hours of listing agreement or 24 hours of public marketing*; whichever comes first	✓	✓	
Listings accrues market time		✓	
Requires listings to have photos		✓	
Where does your listing have to end up for you to get credit in the MLS?		✓	
Requires a Private Network Authorization form	✓		
Requires an exemption form			✓

\*Public advertising includes any public-facing website or publicly accessible print advertising, including for sale signs.