

# **Core A**

## ***A Study of the Illinois License Law***

## **Article 15. Agency Relationships**

### **Terms and Definitions of Agency**

The following are important terms dealing with agency as defined in the Real Estate License Act of 2000 (RELA):

**“Agency”** means a relationship in which a real estate broker or licensee, whether directly or through an affiliated licensee, represents a consumer by the consumer’s consent, whether express or implied, in a real property transaction.

**“Brokerage agreement”** means a written or oral agreement between a sponsoring broker and a consumer for the licensed activities to be provided to a consumer in return for compensation or the right to receive compensation from another. Brokerage agreements may constitute either a bilateral or a unilateral agreement between the broker and the broker’s client depending upon the content of the brokerage agreement. All exclusive brokerage agreements shall be in writing.

**“Client”** means a person who is being represented by a licensee.

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

- (1) the client permits the disclosure of information given by that client by work or conduct;
- (2) the disclosure is required by law; or
- (3) the information becomes public from a source other than the licensee.

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

**“Consumer”** means a person or entity seeking or receiving licensed activities.

**“Customer”** means a consumer who is not being represented by the licensee but for whom the licensee is performing ministerial acts.

**“Designated agency”** means a contractual relationship between a sponsoring broker and a client under Section 15-50 of the Act in which one or more licensees associated with or employed by the broker are designated agents of the client.

**“Designated agent”** means a sponsored licensee named by a sponsoring broker as the legal agent of a client, as provided for in Section 15-50 of the Act.

**“Dual agency”** means an agency relationship in which a licensee is representing both the buyer and seller or both landlord and tenant in the same transaction. When the agency relations is a designated agency, the question of whether there is a dual agency shall be determined by the agency relationships of the designated agent of the parties and not of the sponsoring broker.

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

**“Ministerial acts”** means those acts that a licensee may perform for a consumer that are informative or clerical in nature and do not rise to the level of active representation on behalf of a consumer. Examples of these acts without limitation:

- (i) responding to phone inquiries by consumers as to the availability and pricing of brokerage services;
- (ii) responding to phone inquiries from a consumer concerning the price or location of property;
- (iii) attending an open house and responding to questions about the property from a consumer;
- (iv) setting an appointment to view property;
- (v) responding to questions of consumers walking into a licensee’s office concerning brokerage services offered or particular properties;
- (vi) accompanying an appraiser, inspector, contractor, or similar third party on a visit to property;
- (vii) describing a property or the property’s condition in response to a consumer’s inquiry;
- (viii) completing business or factual information for a consumer on an offer or contract to purchase on behalf of a client;
- (ix) showing a client through a property being sold by an owner on his or her own behalf; or
- (x) referral to another broker for service provider.

The intent and purpose of Article 15 of the Real Estate License Act of 2000 (RELA) is to **govern the relationships between real estate licensees and consumers** of real estate brokerage services. Agency seems to be the most misunderstood aspect of the real estate business. Common law and statutes are the legal framework which are used to govern the relationships between real estate licensees and consumers. *Common law* are those rules of society that have been established over a period of time by tradition and court decisions. *Statutory law* are those laws which have been enacted a legislative body, an example would be the Real Estate License Act of 2000.

- Licensees are considered to be the designated agent of and **representing the consumer they are working with unless**, there is a written agreement stating that there is a different relationship, or the licensee is only providing **ministerial acts**. (*Sec. 15-10*)

- A licensee has the following duties when representing real estate clients: (*Sec.15-15*)

- **Perform the terms** of the brokerage agreement;
- **Promote the best interests** of the client by:
  1. Seeking a transactions at the price and terms as established in a brokerage agreement or other acceptable to the client;
  2. **Timely present all offers** to and from the client; and
  3. **Disclosing all materials facts** concerning the transaction, which the licensee has knowledge.
- **Timely account** for all money and property of the client;
- Obey specific directions from the client;
- Acting in a manner that promotes the client's best interests;
- **Exercise reasonable care** in the performance of their duties;
- **Keep confidential information** confidential; and
- Comply with all statutes, regulations including fair housing and civil rights statutes.

- A licensee cannot have an action brought against them for failure to disclose: (*Sec. 15-20*)

- That an **occupant** of a property was afflicted with **HIV**;
- That the property was the **site of an act or occurrence** that did not effect the physical condition of the property, such as **suicide or murder**;
- **Fact situations** that is not pertinent to the subject property, such as **neighboring property**; or
- **Physical conditions of neighboring property** that does not have an adverse effect of the value of the subject property.

- A licensee's relationship with customers (**not clients**). (*Sec. 15-25*)

- Licensees must **treat all customers honestly** and will not knowingly give them false information. A **licensee** who is representing a seller client **must disclose all materials latent defects** that are know to any buyer, even though the buyer may be a customer and not a client. A licensee is not subject to liability if a seller client provides false information to the licensee and the licensee did not have actual knowledge that the information was false.

- A licensee representing a client in a real estate transaction **may provide assistance to a customer by providing ministerial acts** to the customer. As long as the licensee is only providing ministerial acts to a customer, it will not be construed to be a violation of an existing brokerage agreement with a client nor shall it be considered to form a brokerage agreement with the customer.
- A licensee's duties after terminating a brokerage agreement. (*Sec. 15-30*)
- Upon termination of a brokerage agreement, the licensee must:
    1. account for all monies and property belonging to the client; and
    2. keep all confidential information confidential that was obtained while representing the client.
- A licensee's responsibilities to disclosure of agency relationships no later than entering into a brokerage agreement. (*Sec. 15-35*)
- A consumer must be **advised in writing** that a **designated agency relationship** exists, unless there is a written agreement to the contrary;
  - The **name(s) of the person's designated agent(s) in writing**; and
  - The sponsoring broker's **compensation and policy** regarding cooperating with other brokers in a transaction.
- In addition, a licensee must **disclose in writing** that the licensee is **not acting as the agent of the customer** to prevent the disclosure of confidential information, no later than the preparation of an offer to purchase real property.

**Important Note:** The need to give written disclosure of notice of agency and designated agency is many times overlooked. The normal course in representing a seller includes a written exclusive listing agreement, which includes the proper designated agency disclosure. The confusion most normally occurs in the first contact with a prospective buyer, because the licensee must disclose in writing, the name(s) of the designated agent(s), no later than when a licensee has entered into a brokerage agreement with the buyer. It should be noted that most licensees believe that since they do not have a written agreement with the buyer, there is no requirement to disclose the designated agent(s) in writing. This is not the case, because a brokerage agreement is defined as an agreement, either in writing or oral, in which the licensee will provide licensed activities to a consumer with the expectation of compensation. This effectively creates a brokerage agreement when the licensee agrees to assist a buyer in finding a home, thus creating the requirement for written disclosure of designated agency. Illinois Realtors® can use the form "*Non-Exclusive Buyer Representation Contract (With or Without Dual Agency Disclosure)*". This form addresses the problem of disclosing designated agency very well, as well as addressing a number of issues. Another form which could be used is "*Disclosure of Buyer's Designated Agent*".

Likewise, when a licensee is not acting as an agent for a customer, such as when representing a buyer in a transaction and the seller is not represented. The licensee must disclose in writing that the licensee is not the agent for the seller prior to preparing a contract for purchase to prevent any presumption of agency by the seller, so the seller will not disclose any confidential information to the licensee. The Realtor® would also

have the availability of using the form “*Notice of No Agency Relationship*”, which also includes a disclosure that the licensee is only providing ministerial acts.

- Compensation does not determine agency. (*Sec. 15-40*)

- The **payment** or promise of payment of compensation is **not a determining factor of whether an agency relationship** has been established.

**Important Note:** This is another often misunderstood concept. Agency is determined by the actions of a licensee in dealing with consumers or clients, the fact that a licensee is being paid does not automatically create an agency relationship nor does the fact that a licensee is not paid create a scenario of no agency. The best illustration of this scenario is when a licensee has a listing that does not sell, when the compensation is based on the property selling. Obviously for the term of the exclusive listing agreement the licensee at all times was the agent for the seller, but was never paid.

- Disclosure of Dual Agency. (*Sec. 15-45*)

- A licensee may act as a **dual agent** only with the **informed written consent** of all clients.
- The **disclosure of dual agency** must be presented and signed **prior to a the licensee acting as a dual agent**.
- A **confirmation of consent to dual agency** is required at the time the parties are executing a written offer or contract to purchase.

**Important Note:** Dual Agency is a unique form of representation when all parties (buyer and seller) agree that one licensee may act as agent on behalf of both clients during a real estate transaction. The RELA is very specific in the requirements for disclosure and consent for dual agency. The RELA requires written consent with specific language in the consent which must be used in that disclosure (See Page 5 of Article 15). In addition, the RELA is specific in what an agent CAN and CANNOT do when acting as a dual agent (See Page 5 and 6 of Article 15). In addition, at the time an offer or contract to purchase a real property is executed by the parties, both once again must confirm in writing that the parties have previously agreed to and consented to dual agency.

- Disclosure of designated agency. (*Sec. 15-50*)

- A sponsoring broker who has entered into a brokerage agreement **must disclose** to a client, the agent(s) who will specifically be acting as the **legal agent(s)** of the client with the exclusion of all other agents employed or affiliated with the sponsoring broker. The sponsoring broker will not be considered to be acting for both parties in a transaction, unless the designated agent(s) are specifically representing both parties in a transaction (dual agent).
- A sponsoring broker must **take reasonable and necessary care to protect confidential information** disclosed by the client to his or her designated agent(s).
- A designated agent may disclose to his or her sponsoring broker confidential information for the purpose of seeking advice.

- No subagency. (Sec. 15-55)

- A **broker is not considered to be a subagent** of a client solely by his or her affiliation with a multiple listing service, and **an offer of subagency may not be made** through a multiple listing service.

- No vicarious liability. (Sec. 15-60)

- A consumer can not be vicariously liable due to the acts of a licensee providing licensed activities on behalf of the consumer.

- Regulatory Enforcement. (Sec. 15-65)

- IDFPR has the authority to enforce this and other articles of the RELA and promulgate rules necessary to implement those provisions.

- Actions for damages. (Sec. 15-70)

- In any action brought under this Article, the court, may only award actual damages and court costs or grant injunctive relief.
- Any court action taken under this Article must be brought within 2 years of the when the person knew of the alleged violation or omission.

- Exclusive brokerage agreements require minimum services. (Sec. 15-70)

- An **exclusive brokerage agreement** must include a **minimum level of service** which includes:
  - (1) **accept delivery** of and **present** to the client **offers and counteroffers** to buy, sell, or lease a client's property or the property a client seeks to purchase or lease;
  - (2) assist the client in developing, communicating, negotiating, and notices that relate to the offers or counteroffers until a lease or purchase agreement is signed and all contingencies are satisfied or waived; and
  - (3) **answer** the client's **questions** relating to the offers, counteroffers, notices and contingencies.

**Important Note:** This provision provides that when a sponsoring broker and a client enter into any exclusive brokerage agreement, the sponsoring broker must provide a minimum level of services, which basically include the presentation of all offers and counteroffers, and assisting the client in understanding those offers and counteroffers.

**Review Quiz on Agency  
True or False**

1. If a licensee is paid commission for providing licensed activities in a transaction, it can automatically be determined that the licensee was also the agent for the person paying his or her commission.
2. Subagency is still allowed under the RELA in Illinois.
3. When a licensee is representing a client, the licensee has a statutory duty to perform all the terms provided in a brokerage agreement.
4. According to the RELA, an agent is required to disclose the possibility of dual agency prior to acting as a dual agent.
5. A broker is **only** required to disclose to a client, who is the designated agent(s) when listing property for that client.
6. A licensee must disclose the fact that a person with HIV has lived in the property subject to a real estate transaction.
7. A client is a person who is being represented by a licensee.
8. Consumer means a person or entity seeking or receiving licensed activities.
9. Customer mean a consumer who is not being represented by the licensee but for who the licensee is performing ministerial acts.
10. Designated agent means a sponsored licensee named by a sponsoring broker as the legal agent of a client, as provided for in Section 15-50 of the Act.

## Licensing Issues

### *Who needs a real estate license?*

The **requirement for licensure** under The Real Estate License Act of 2000 (RELA) is found in the definition of “**broker**” in Sec. 1-10 of the RELA.

*“Broker means an individual, partnership, limited liability company, corporation, or registered limited liability partnership other than a real estate salesperson or leasing agent who for another and for compensation, or with the intention or expectation of receiving compensation, either directly or indirectly:*

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

These activities are commonly referred to as “**licensed activities**”. A synopsis of licensed activities, which would be the basis for the requirement for a license, is:

- A person or entity, who **for another and for compensation**, provides services which would result or is intended to result in the sale, exchange or lease of real property.

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### *Who is exempt from licensure?*

**Exemptions** from licensure are outlined in Section 5-20 of the RELA. A synopsis of those exemptions is:

- A person or entity or the regular employee of a person or entity who **owns the real property**, which is sold, exchanged or leased.
- An attorney in fact who has a legally executed and recorded **power of attorney** to act on behalf of the owner in the sale, exchange or lease of real property or an

- attorney at law** in the performance of their duty as an attorney representing the owner in the sale, exchange or lease of real property.
- A **trustee in bankruptcy**, administrator, **executor**, or guardian while acting under a court order or under the authority of a **will** in the sale, exchange or lease of real property.
  - A **resident manager** or employee for the owner of an apartment in the leasing of real property (with certain restrictions).
  - A federal officer or employee in conducting their official duties in the sale, exchange or lease of real property.
  - A state or local government official or employee in conducting their official duties in the sale, exchange or lease of real property.
  - A **Multiple Listing Service**.
  - Railroad or public utility officers and employees in the sale, exchange or lease of real property (with certain restrictions).
  - An **auctioneer** licensed under Section 10-25 of the Auction License Act in the sale, exchange or lease of real property at auction (with certain restrictions).

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*When do real estate licensees have to renew their licenses?*

**Renewal dates** are set by Section 1450.105 of the administrative rule.

- **Leasing agent** licenses expire and must be renewed prior to **July 31 of even numbered years**.
- **Salesperson** licenses expire and must be renewed prior to **April 30 of odd numbered years**.
- **Broker** licenses expire and must be renewed prior to **April 30 of even numbered years**.
- **Corporation, limited liability company, partnership, limited partnership, and branch office** licenses expire and must be renewed prior to **October 31 of even numbered years**.

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What are the continuing education (CE) requirements for licenses prior to renewal?

**Continuing education requirements** are established in Section 5-5 (leasing agents) and Section 5-70 (salespersons and brokers) of the RELA, and Section 1450.50 (leasing agents) and Section 1450.115 (salespersons and brokers) of the administrative rule.

During the 24 months prior to each renewal:

- **Leasing agents** must complete **6 hours** of CE prior to renewal.
- **Salespersons** must complete 6 hours of Core CE and 6 hours of Elective CE for a total of **12 hours** of CE prior to renewal.

- **Brokers** must complete 6 hours of Core CE, 6 hours of Elective CE and 6 hours of Broker Management for a total of **18 hours** of CE prior to renewal.
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***What is the procedure to terminate a sponsored license by a sponsoring broker?***

**License termination procedures** are established in Section 1450.75 of the administrative rule.

- The sponsoring broker shall immediately **endorse** the license of a sponsored licensee upon termination, submit a copy to the IDFPR within 2 days, retain a copy until the expiration date shown on the license, and **give the original endorsed license to the terminated licensee.**
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***What is the procedure for a sponsored licensee to change sponsoring brokers?***

The **procedure to change sponsoring brokers** is set in Section 1450.75 of the administrative rule.

- The sponsoring broker may complete and **issue a 45-day sponsor card** after a sponsored licensee has presented to them an original endorsed terminated license.
- The sponsoring broker must **submit to IDFPR** by signature restricted delivery, the original 45-day permit **within 24 hours of issuance**, the proper fee as set by Section 1450.95 of the administrative rule, and the original endorsed terminated license.
- The sponsoring broker must submit a copy to the sponsored licensee and must retain a copy of the 45-day sponsor card until such time as the new license is issued by IDFPR.
- The properly issued 45-day sponsor card shall serve as a temporary permit to practice and shall **expire 45-days after its' issuance**, unless extended by IDFPR.

**Review Quiz on Licensing  
(True or False)**

1. For a license to be properly terminated, the sponsoring broker must endorse the original license.
2. A salesperson is required to take 18 hours of continuing education prior to renewing his or her license.
3. A real estate license is required for all persons to sell real property, even if they own the property.
4. Opening a house to the public for marketing purposes by a salesperson is considered to be a licensed activity.
5. A leasing agent license expires on June 30<sup>th</sup> of odd numbered years.

## Compensation and Business Practices

### *Who can pay and receive compensation for providing licensed activities?*

The procedures for **payment of compensation** are established in Section 10-5 of the RELA.

- **No licensee shall pay any compensation directly to a licensee sponsored by another sponsoring broker** for the performance of licensed activities, except as provided below.
- No licensee sponsored by a broker may pay compensation to any licensee other than his or her sponsoring broker for licensed activities unless the licensee is a principal to the transaction.
- A non-sponsoring broker may pay compensation directly to a licensee sponsored by another broker only for compensation previously earned for licensed activities while sponsored by the non-sponsoring broker.
- **No licensee shall accept compensation from any broker other than his or her own sponsoring broker** for licensed activities.
- One sponsoring broker may pay another sponsoring broker for the performance of licensed activities.

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### *What disclosures are required when paying or receiving compensation in connection with a real estate transaction?*

**Disclosure of compensation** requirements are established in Section 10-10 of the RELA and Section 1450.185 of the administrative rule.

- A licensee **must disclose to a client the sponsoring broker's compensation and policy** with regard to cooperating with brokers who represent other parties in a real estate transaction.
- **A licensee must disclose in writing to a client all sources of compensation** related to a transaction received by the licensee from a third party, i.e., financial institution, insurance broker, mortgage broker, or home inspector.
- **A licensee shall disclose to a client any ownership interest** the licensee has (except for a publicly traded company) in a third party, if the licensee refers a client to the third party for the purpose of the client obtaining services related to the transaction.
- The sponsoring broker shall disclose in writing to both parties to a transaction, if both the buyer and seller in the transaction are paying the sponsoring broker.
- A sponsoring broker may cooperate and pay a broker licensed and domiciled in another state for referrals.

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***Can a sponsored licensee form a corporation to receive compensation from his or her sponsoring broker?***

The guidelines for a sponsored license to form a **corporation to receive compensation** from his or her sponsoring broker are established in Section 10-20 of the RELA and Section 1450.170 of the administrative rule.

- A sponsored licensee may form a corporation **solely owned** by that licensee to receive compensation earned by the licensee and will NOT be required to be licensed under the RELA.
- A sponsored licensee who forms a solely owned corporation for the purpose of receiving compensation **shall file a copy of the certificate of incorporation issued by the Secretary of State with the IDFPR.**
- A sponsored licensee who forms a solely owned corporation for the purpose of receiving compensation may NOT provide licensed activities, advertise, associate with other licensees or hold itself out to the public to be licensed under the corporation's name.
- A sponsored licensee who forms a solely owned corporation for the purpose of receiving compensation may also receive compensation earned from activities unrelated to the practice of real estate.

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***When must a licensee disclose his or her status as a licensee?***

The requirements for **disclosure of licensee status** is set forth in Section 10-27 of the RELA and Section 1450.190 of the administrative rule.

- **A licensee shall disclose in writing his or her status as a licensee to all parties** in a transaction when selling, leasing or purchasing **any interest, direct or indirect**, in the real estate subject to the transaction.
- Written disclosure is also required when the licensee holds a beneficial interest in a land trust selling, leasing or purchasing an interest in the subject property; the licensee is a general partner in a partnership is selling, leasing or purchasing an interest in the subject property; or the licensee is an officer, director, majority or controlling shareholder of a corporation or limited liability company selling, leasing or purchasing an interest in the subject property.

***What are the advertising requirements for a sponsored licensee selling his or her own property?***

The **advertising requirements** for a licensee selling his or her own property are set forth in Section 10-30 of the RELA.

- A sponsored licensee who lists a property for which he or she has any interest, direct or indirect, with his or her sponsoring broker is **NOT required to disclose his or her licensee status on any yard sign or any advertisement**, but must immediately disclose in writing his or her licensee status to any person who responds to any advertisement or sign.
- A sponsored licensee who lists a property for which he or she has any interest, direct or indirect, with his or her sponsoring broker is **required to indicate on any property data form or MLS listing that the property is “broker owned” or “agent owned”**.
- A sponsored licensee or inoperative licensee who sells or attempts to sell a property for which he or she has any interest, direct or indirect, on their own without listing the property with his or her sponsoring broker or another broker, must disclose on any yard sign or advertisement that the property is “agent owned” or “broker owned”.

**Review Quiz on Compensation and Business Practices  
(True or False)**

1. A salesperson is allowed to collect a commission directly from a client.
2. A sponsored licensee must have “Agent Owned” displayed on a yard sign when listing his or her own home with their sponsoring broker.
3. A licensee is required to disclose to a client any compensation received from a third party related to a transaction.
4. A sponsored licensee can form a corporation, which is owned by the sponsored licensee’s spouse, for the purpose of receiving real estate commissions.
5. A licensee must disclose in writing to all parties any ownership interest the licensee has in the real estate subject to the transaction.

## Escrow Accounts

### *What are the requirements for handling monies belonging to others in escrow accounts held by a real estate licensee?*

The requirements for handling monies in **escrow accounts** are specified in Section 1450.175 of the administrative rule.

- All monies, such as earnest money or security deposits, belonging to others held by a real estate licensee **must be held in a special account** by the sponsoring broker separate and distinct from any other personal or business accounts except as provided below.
- Pursuant to the terms of a written agreement between a licensee and a client, such as a property management agreement, rent monies paid to a licensee for transmittal to the client are not considered to be escrow monies, or other monies held by a licensee for transmittal to a client, such as a contract for deed are NOT considered to escrow monies.
- **Escrow accounts must be non-interest bearing accounts**, except as specifically required in writing by the principals to a transaction, including the recipient of any interest.
- A sponsoring broker is **NOT required to hold escrow monies** or maintain special accounts **if the sponsoring broker elects not receive escrow monies**.
- Escrow accounts must be held in **federally insured depositories**.
- **Commingling escrow** monies in any other personal or business account is specifically **prohibited**.
- All escrow monies accepted by a real estate licensee must be **deposited** into the sponsoring broker's escrow account not later than **the next business day** after a real estate purchase contract has been signed by all parties, whether or not all contingencies have been met.
- A sponsoring broker shall **notify in writing all principals** to a transaction in the event a payment to the escrow account has not been honored for any reason, such as a **check returned for non-sufficient funds**.
- A sponsoring broker shall maintain all escrow monies on deposit in an escrow account **until a transaction is closed** or until he or she receives **written direction from all parties to a transaction**.
- In any event, no disbursement of funds shall be made earlier than when the transaction is closed or written direction is received from all parties to a transaction. In addition, **disbursement** shall be made not later than **the next business day** after a transaction has closed or written direction is received from all parties to a transaction.
- A sponsoring broker **shall not withhold**, for any period of time, an authorized disbursement of escrow monies due to any claim **for commission** or compensation to any licensee.

- If a sponsoring broker receives an order from a court providing for the disbursement of escrow monies that broker must release the escrow monies in accordance with the terms of such court order.
- In the event there is a **dispute over the disbursement** of escrow monies, the sponsoring broker shall hold the deposit until he or she has written direction from all parties to disburse the monies; the sponsoring broker (interpleader) or either party files a civil action to determine the disposition of the escrow at which time the sponsoring broker may be made to the court; or until the funds are turned over to the Illinois State Treasurer pursuant to the Unclaimed Property Act. If the **sponsoring broker files an interpleader** action pursuant to the terms of the real estate contract, the sponsoring broker is allowed to be reimbursed for costs and attorney's fees associated only with that interpleader action.

**Review Quiz on Escrow Accounts  
(True or False)**

1. Escrow monies may be deposited in a sponsoring broker's business account.
2. A sponsoring broker must disburse the earnest money held to the seller if the seller believes the buyer has defaulted on the contract.
3. Rents collected on behalf of a client must always be deposited in an escrow account.
4. A sponsoring broker is required to provide written notice to all parties in a transaction that the earnest money check was returned for non-sufficient funds.
5. A salesperson should hold the earnest money check until all contingencies are satisfied on a real estate contract.

## Disciplinary Issues

*What is considered to be dishonorable, unethical, or unprofessional conduct?*

**Dishonorable, unethical or unprofessional conduct** is described in Section 20-20 of the RELA and Section 1450.220 of the administrative rule.

- A licensee may have his or her license **suspended, revoked, reprimanded, placed on probation, or otherwise disciplined** and fined for engaging in **dishonorable, unethical or unprofessional conduct** of a character likely to deceive, defraud, or harm the public.
- The following illustrates the conduct which would be deemed to constitute **dishonorable, unethical or unprofessional conduct**:

1. **Failure to act in the best interests of a client.**
2. Deliberately misleading a client as to the value of the property.
3. Failing to advertise the property as obligated by the listing agreement.
4. Deliberately misrepresenting to prospective purchasers or their agents the condition of the property or the availability of access to show the property.
5. **Purchasing or transferring of the property through an intermediary in order to conceal the purchase by the licensee.**
6. Inducing a seller to list the property through false representations.
7. Inducing a seller through false representations or false promises to transfer the property to the licensee.
8. Taking unfair advantage of a client's or customer's age, disability, or lack of understanding of the English language.
9. Engaging in conduct with the public or other real estate licensees in the practice of real estate in a manner that is abusive, harassing, or lewd.
10. Representing oneself as a sponsoring broker or **managing broker without providing the actual supervision and management** of the real estate business.
11. **Failing to reasonably safeguard confidential information** or improperly using confidential information.
12. Obstructing an inspection, audit, investigation, examination, or a disciplinary proceeding.
13. Any **violation of Section 1450.175 of the administrative rule, Special Accounts**, shall be deemed to unprofessional conduct.
14. Assisting or inducing a licensee to violate the Act or the administrative rule.

***What is the procedure for disciplinary action against a licensee for failure to comply with Illinois Tax Acts, an order to pay child support, or defaulting on an Illinois Guaranteed Student Loan?***

The procedures for discipline against a licensee who is **not in compliance with Illinois Tax Acts or an order to pay child support, or has defaulted on an Illinois Guaranteed Student Loan** are set in Sections 20-35, 20-40 and 20-45 of the RELA and Section 1450.225 of the administrative rule.

- The IDFPR may suspend or refuse to renew a license for failure to file a return, pay the tax, penalty or interest on any tax administered by the Illinois Department of Revenue.
- The IDFPR may refuse to renew a license for defaulting on an education loan or scholarship provided or guaranteed by the Illinois Student Assistance Commission.
- The IDFPR may revoke, suspend or refuse to renew a license for failing to comply with court ordered child support payments certified by the Illinois Department of Healthcare and Family Services.
- IDFPR may discipline a license only after receiving certification from any of the administering agencies for failure to comply with Illinois Tax Acts, or court ordered child support or defaulting on an Illinois Guaranteed Student Loan.
- IDFPR shall notify the licensee of the non-compliance or default and the notice of intent to refuse to renew or suspend and notice of hearing.
- The only basis of the hearing shall be for the licensee to prove that the licensee is not the person that was certified by the administering agency, that the licensee has entered into a formal written payment plan with the appropriate administering agency, or that the licensee has satisfied the outstanding debt.
- The licensee shall NOT be allowed to dispute the certification with IDFPR, to dispute any certification the licensee must petition the appropriate administering agency.

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***What is the meaning of “otherwise discipline”?***

**Otherwise discipline** is established in Section 20-20 of the RELA and defined in Section 1450.235 of the administrative rule.

- The IDFPR may impose discipline by refusing to renew, placing on probation, suspending or revoking a license, or by censuring, reprimanding or fining a licensee for violating any provision of the RELA or the administrative rule.
- **In conjunction with any discipline or fine**, the IDFPR may impose “**other discipline**” to maintain the standards of professional conduct, the competency of a licensee, and the protection of the public, which includes:

1. **Restricting a licensee’s access to escrow funds.**

2. Requiring the successful completion of any approved real estate course in addition to any other required continuing education.
3. **Requiring the licensee to provide any report, record or document** regarding real estate activity, which is deemed relevant and appropriate.

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*Can IDFPR inspect or audit a real estate office?*

The procedures for **inspections or audits** of a real estate licensee or office is established in Section 1450.245 of the administrative rule.

- The IDFPR may **inspect the public areas of a real estate office with or without notice or consent** during normal business hours.
- The IDFPR may **inspect the non-public areas** of a real estate office and interview any person, who may have knowledge of the licensee's real estate practice with consent, or if no consent is given, then **with 24 hours notice**.
- Except for the inspection or audit of escrow records pertaining to monies belonging to others held in special accounts, a licensee must produce any document within 30 days upon written notice by IDFPR.
- The IDFPR is **authorized to audit special accounts, escrow records or documents** related to any escrow accounts with or without the consent of the licensee during normal business hours upon **24 hours written or oral notice**.
- The licensee may have an attorney present during any inspection or audit if he or she so chooses.

**Review Quiz on Disciplinary Issues  
(True or False)**

1. A licensee's real estate license will automatically be revoked if he or she misses two consecutive child support payments.
2. The IDFPR is authorized to audit escrow accounts with 24 hours notice.
3. The IDFPR can restrict a licensee's access to escrow accounts.
4. A licensee can request a hearing with IDFPR to dispute his or her tax liability owed to the state of Illinois.
5. A licensee concealing the purchases of property by utilizing an intermediary is considered to be unprofessional conduct.

## Answers to Review Quizzes

### Page 7 Quiz

1. F
2. F
3. T
4. T
5. F
6. F
7. T
8. T
9. T
10. T

### Page 12 Quiz

1. T
2. F
3. F
4. T
5. F

### Page 16 Quiz

1. F
2. F
3. T
4. F
5. T

### Page 19 Quiz

1. F
2. F
3. F
4. T
5. F

### Page 23 Quiz

1. F
2. T
3. T
4. F
5. T