

Land Office Realty School



Continuing Education

SCHOOL LICENSE # 562000243

Course Book
For Illinois Real Estate Licensees

ILLINOIS CONTINUING EDUCATION FOR *REAL ESTATE LICENSEES*

All content of this text is considered accurate any applications of this information to a specific circumstance should be in tandem with competent legal council. Any points of law are subject to the constraints of chronology.

Donald McKirdie
Licensed CE Real Estate Instructor
License #563.001933 (2min)

In the course of building a plan for a successful real estate career you must first look at what you are trying to accomplish. This can only be realized through satisfying a public need. Only by understanding the laws and why they are in place can you succeed. Do not put the cart in front of the horse! Without proper consideration for the people you intend to serve, you may be trying to traverse an oncoming stream without a source of propulsion.

Continuation of education is an ongoing journey in pursuit of this goal. There have been many laws and refinements in this state culminating in what we know as The Real Estate Act of 2000. It, in itself, has had several amendments to adjust to the never ending demand of unforeseen circumstances. As you continue this endeavor it is my wish, and all who concur that you will further enhance the industry and yourself. Any thoughts to the contrary escape my attention.

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(3-hours core A – License # 564000802)

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Agency Law B contractual relationships, fiduciary rights and obligations, and Illinois agency.

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(3-hours core B – License # 564000803)

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3. Ethical Practice

(6-hour elective – License # 564000804)

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ILLINOIS REAL ESTATE CONTINUING EDUCATION CORE COURSE B Agency /License Law and Escrow

[3 hours-[core A]

REAL ESTATE LICENSE ACT OF 2000

After completing this course you should be able to answer questions pertaining to changes to the Real Estate License Act of 2000, structure of the agencies governing real estate, escrow law, escrow rules, and maintenance of records. Agency Law – contractual relationships, fiduciary rights and obligations, and Illinois agency.

This study includes changes to the act in August 2004

Exclusive Brokerage Agreement (3min)

The changes made in 2004 define A exclusive brokerage and the responsibilities of the listing broker. There are penalties for violations of this written agreement for a broker or his licensees.

The broker or his agents must -

- 1) accept delivery of and present to the client offers and counteroffers to buy, sell, or lease the client's property or the property the client seeks to purchase or lease;
- 2) assist the client in developing, communicating, negotiating, and presenting offers, counteroffers, and notices that relate to the offers and counteroffers until a lease or purchase agreement is signed and all contingencies are satisfied or waived; and
- 3) answer the clients questions relating to the offers, counteroffers, notices, and contingencies.

The changes also provide for disciplinary penalties to be imposed against a licensee for failure to provide the minimum services required when acting under an exclusive brokerage agreement. Penalties may include the maximum fine of \$25,000.00 applicable to violations of the Act.

Broker Management Continuing Education (10min)

Brokers will need an additional 6 credit-hour continuing education course in addition to the current 12 hours. New brokers will be required to complete the broker management course within 180 days of receiving a license. If the new license is issued within 90 days before a renewal date, the new licensee will be required to complete management course requirement, but will not be required to repeat the course a second time during his or her first broker renewal. If a broker does not want to continue to hold a broker license, a provision has also been included that allows any person licensed as a broker to change there license status from broker to salesperson.

Pre-License Education Exemption

Only attorneys licensed in Illinois will be exempt from taking the pre-license courses specified in the Act.

Continuing Education Exemption

All licensees (other than attorneys licensed in Illinois) will now be required to complete the continuing education requirements. With the exception of broker management continuing education, each of the changes described above became effective on August 19, 2004 when the Governor of Illinois signed the senate bill and it became law.

STRUCTURE OF THE ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, DIVISION OF PROFESSIONAL REGULATION

B BUREAU OF REAL ESTATE PROFESSIONS

On July 1, 2004, the Governor signed an Executive Order consolidating the Department of Financial Institutions, Department of Professional Regulation, Department of Insurance and the Office of Banks and Real Estate into the Illinois Department of Financial and Professional Regulation. The professions that had been regulated by Office of Banks and Real Estate will now be under the authority and supervision of the Illinois Department of Financial and Professional Regulation, Division of Professional Regulation, Bureau of Real Estate Professions.

Real Estate Administration and Disciplinary Board

The Real Estate Administration and Disciplinary Board (the Board) stays the same. The Board consists of nine members appointed by the Governor. The Governor is required to follow specific guidelines in appointing members to the Board. All members must have been residents and citizens of Illinois for at least six years prior to appointment. Six of the nine members are to represent licensees and must have held a salesperson or broker license for at least ten years prior to appointment. Three members shall represent consumer interests and must not be licensed under the Act, married to a licensee, or own an interest in a real estate brokerage business. The Board makes recommendations on issues concerning standards of professional conduct, discipline, and examination of license candidates. The Board also provides feedback concerning administrative rule changes under consideration in connection with implementation of the Act. Any disciplinary actions against licensees may only be made after a written report of recommendation from the Board.

Advisory Counsel

The governor also appoints eight members to serve on the Real Estate Education Advisory Council. The duties of the Advisory Council center on licensee education including: approval of pre-license and continuing education schools, instructors, and course curriculum. The Advisory Council also makes recommendations to the Real Estate Administration and Disciplinary Board concerning administrative rules to be adopted regarding the education provisions in the Act.

Real Estate Licensing

The Act establishes requirements for individuals performing real estate services related to properties not personally owned by that individual. There are three categories of real estate licenses: (1) salesperson, (2) broker, and (3) leasing agent. An individual who holds a leasing agent license can only perform services related to the leasing of residential real property. Broker and salesperson licensees can perform services related to sales or leasing and are not required to hold a separate leasing agent license. Salespeople and leasing agents must work under the sponsorship of a broker and can only accept compensation from their sponsoring broker. Brokers are allowed to sponsor themselves or be sponsored by another broker. When a broker chooses not to sponsor herself, she can only accept compensation from her sponsoring broker and not from the public or another broker.

Exemptions to Licensing Requirements

Any owner selling or leasing her own property, or any regular employee assisting an owner in the management, sale, or leasing of the owner's property is exempt from licensing requirements.

The following list includes other special exceptions to the requirements:

- individuals acting under a power of attorney
- an attorney at law in the performance of his or her duties
- receiver
- trustee in a bankruptcy
- administrator
- executor
- guardian
- anyone acting under the authority of a court

- a resident manager (a manager who lives at the property), employed by the owner or by a broker who manages the property
- state and federal officers and employees acting in an official capacity
- Multiple Listing Services
- employee of public utilities and railroads acting in an official capacity
- those who operate businesses that only advertise real estate
- tenants receiving referral fees for referring other tenants in the same property, provided that the tenant (1) refers no more than three tenants within a 12-month period, (2) receives no more than the lesser of \$1,000 or one months rent within a 12-month period, and (3) limits activities to referral and no other activity

Licensing Requirements

Each applicant for licensing must:

- be a minimum age (18 for leasing agent, 21 for salesperson or broker)
- be a high school graduate or have passed the G.E.D. exam
- complete a course of study in real estate topics prescribed by law 15 credit hours for leasing agent 45 credit hours for salesperson 120 credit hours for broker (45 of these hours can be fulfilled by taking the salesperson course or holding a salesperson's license)
- pass a state regulated exam and
- be sponsored by a broker licensee (a broker may sponsor himself) A broker is required to enter into and retain a copy of a written employment agreement with each licensee he sponsors.

License Issuance

When the above qualifications have been met, a license certificate is issued to each licensee. The license bears the name of the licensee and the type of license held. The licensee must display the license certificate prominently in his or her place of business. It should be noted that the procedure for a sponsor to terminate a license is printed on the reverse side of the license. Each licensee is also issued a pocket card indicating the licensee's status. The licensee must carry this pocket card or a copy of the sponsor card when engaged in real estate activity, and must show it when requested.

Disclosure of Licensure

When a licensee is involved in a real estate transaction as a buyer or seller, the license law requires that he or she disclose to all parties to the transaction the fact that he or she is a licensee. When buying, the licensee must disclose in writing that he or she is a licensee. When selling, all prospects must be informed that the seller is a licensee. When a licensee lists the property with a broker, the listing broker must post the fact that the owner is a licensee. This must be done in a manner which notifies an agent who offers or is asked about the listing that the property is agent owned, and the agent can inform prospects. When a licensee offers its property for sale by owner, he or she must provide notice stating the property is agent owned in all advertising, including lawn signs.

Sponsoring Brokers (5min)

When a broker chooses to sponsor a new or inoperative licensee, the broker must require proof of eligibility from the new employee. The broker is required to issue a sponsor card, and send to the licensing authority a copy of the sponsor card and either proof of the licensee's eligibility or the licensee's license that has been terminated by a former sponsor. These documents together with the required fee must be sent to the licensing authority within 24 hours of issuance of the sponsor card. Sponsor cards also act as 45-day work permits. This allows licensees to perform licensed activities between the date the sponsor card is issued and the date the license is received from the licensing authority. To terminate the relationship between a broker and licensee, the broker must sign the licensee's license indicating the date of termination of sponsorship, make copies of the license, return the original to the licensee, and mail a copy to the licensing authority within two days of termination.

Inoperative and Non-Renewed License Status (5min)

Upon receipt of the copy of the terminated license, the licensing authority places the licensee on inoperative status until the licensee associates with a broker or misses a renewal. At the license renewal date, if a licensee does not meet the requirements to renew his or her license, the licensee is placed on non-renewed status at that time. This is the same for operative and inoperative licensees. When a sponsoring broker's license is revoked, suspended, terminated, or expired, all licensees sponsored by that broker become inoperative. Any inoperative or non-renewed licensee shall not be permitted to engage in the sale, management or leasing of property which is not personally owned by the licensee.

Licensing Of Business Entities

The Act allows corporations, partnerships, and limited liability companies to hold broker licenses. All officers, partners, and managers of these organizations must hold broker licenses. All employees of these organizations providing real estate services must hold the appropriate real estate license, be it broker, salesperson, or leasing agent. No more than 49% of the ownership of any corporation, partnership, or limited liability company holding a broker license may be held by salespersons or leasing agents.

Place of Business B Office Licensing

The Act permits any broker, or above-listed business entity holding a broker license, to operate one office at which the broker or business entity transacts real estate business. Any sponsoring broker maintaining more than one office must acquire and display a branch office license for each additional office. The name of each branch office must be the same as the name of the principal office or clearly indicate its relationship to the main office. The licensing authority must be notified in writing of the opening, closing, or change of location of any principal or branch office.

A sponsoring broker maintaining a place of business in Illinois must conspicuously display (1) a sign identifying the place of business as a real estate office, (2) the sponsoring broker's real estate license, and (3) the licenses of all licensees working at that location. A sponsoring broker may manage one or more offices or may assign another broker to manage offices. The sponsoring broker must assign a managing broker for each office and notify the licensing authority of the person who will be the managing broker for each location. A broker is permitted to manage more than one office.

Rules for Brokers Keeping Escrow Accounts (15min)

The rules for handling of special accounts define escrow moneys as all moneys, promissory notes or any other type of financial consideration deposited with any person for the benefit of the parties to the transaction. A transaction exists once an accepted real estate contract is signed or agreed to by the parties.

Sponsoring brokers who accept earnest money or hold security deposits for clients must maintain and deposit the funds entrusted to them in an account separate from personal or other business accounts.

Escrow accounts must be non-interest bearing, unless otherwise required by law or requested by the principals to the transaction. If an interest bearing account is required, the recipient of the interest must be specified, in writing, by the principals. A sponsoring broker may maintain more than one escrow account; however, he or she is not required to maintain an escrow account if he or she does not act as an escrowee. All escrow accounts must be maintained at federally insured depositories. Commingling (keeping the broker's money in the same account as the client's money) is prohibited in escrow accounts. Only escrow moneys received in connection with a real estate transaction are to be deposited in any escrow account. It is permissible, though, for the broker to deposit personal funds to the escrow account to avoid incurring service charges. The sponsoring broker must provide a receipt to anyone depositing cash as escrow funds and must retain a copy for the sponsoring broker's records. Escrow moneys must be deposited in the sponsoring broker's escrow account no later than the business day following receipt of the funds. However, if a broker has branch offices and the escrow accounting is all carried out at the main office, the broker is allowed one additional business day to get the funds to the main office.

Disbursement of Escrow Moneys

The sponsoring broker must keep escrow moneys in an escrow account until the transaction is consummated or terminated, unless the sponsoring broker is instructed by the principals to do otherwise. The sponsoring broker must disburse escrow moneys upon consummation or termination of the transaction, in accordance with the terms of the contract or at the direction of the principals. Disbursement, including disbursement of commissions, cannot take place before the day the transaction is consummated or terminated no later than one business day after the sponsoring broker receives notice of the consummation or termination. The broker can disburse at an earlier time only at the direction of all of the principals to the transaction. Lease security deposits not held directly by the sole owner of the property shall be maintained in an escrow account for the duration of the lease, unless the tenant waives this requirement in writing. Such waiver, if included in the lease, shall appear in bold print.

Disputes Regarding Escrow Moneys

In the event of a dispute over the return, forfeiture, or disbursement of any escrow moneys, the broker is to maintain the deposit in the escrow account until the parties to the transaction agree in writing to a resolution. If the parties are unable to come to an agreement, dispensation may be determined by a civil action (filed by the broker or one of the parties) or by a designated state officer, such as the State Treasurer.

Unclaimed Escrow Moneys—Jan 1st 2009

In the absence of notice of the filing of any claim in a court of competent jurisdiction; and if 6 months have elapsed after the receipt of a written demand for the escrow moneys from one of the principals to the transaction or the principal's duly authorized agents. The moneys shall be deemed abandoned and transferred to the state treasurer.

Consent To Examine and Audit Special Accounts

The Consent to Examine and Audit Special Accounts form requires information about the depository and those individuals who will have access to the account. When applying for a license, a broker licensee is required to complete the Consent to Examine and Audit Special Accounts form or sign a statement saying he or she does not hold escrow funds. The Consent to Examine and Audit Special Accounts form must also be completed within 10 days of opening a new escrow account or making any change to an escrow account. However, a new form is not required each time a new escrow account is opened for an individual transaction where the account falls under an umbrella account that has already been identified in a prior form. A broker found to be in violation of the rules for keeping escrow accounts may be considered to have so endangered the public interest that a temporary license suspension may be imposed in addition to other penalties.

Sponsored Licensees

Sponsoring brokers shall institute office policies to ensure that the sponsored licensees tender escrow moneys received in compliance with these rules. Sponsored licensees may not maintain their own escrow accounts, whether salespersons, brokers, or leasing agents. Sponsoring brokers may allow their sponsored licensees to maintain a duplicate of the transaction records.

Bookkeeping System

Each sponsoring broker who accepts earnest money must maintain a sound bookkeeping system in his or her office as prescribed by the Act and related administrative rules. The rules require this system to contain specific escrow records, including an escrow journal, ledger, monthly reconciliation statement, Master Escrow Account Log.

Master Escrow Account Log

This is a list of the names and addresses of all the banks where escrow accounts are kept including all bank account numbers. The account numbers of individual accounts under an umbrella account must also be listed.

Journals and Ledgers

Financial records are referred to as the books of a business or entity. Before computerization, the three parts of the system were each kept in a separate book. This is why it is called a bookkeeping system. The three parts create a way of insuring accurate tracking of financial events.

Escrow Journal

The first book or part of the system is a journal. When money is received or paid out, this activity is entered in the journal. When funds are received, the entry in the escrow journal must include the date, the name of the person in whose behalf the funds were delivered, and the amount. When funds are disbursed, the journal must include the date, the payee, the check number and the amount. It is important to keep a running balance that is kept after each entry.

Escrow Ledger

An entry must be made for each transaction. This will show for comparison that the ledger matches the journal or running total. When funds are received, the entry to the escrow ledger must include the date of receipt, the names of all parties to the transaction, and the amount of the funds received. For disbursements the entry must include the date, the payee, the check number and the amount disbursed. A ledger must also be created for the broker's funds kept in the escrow account to offset bank fees. This is mandatory, it must match the account balance.

Monthly Reconciliation Statement

Within ten days of receiving the bank statement the broker must reconcile the amounts with the bank statement. The reconciliation compares the total of the journal and ledgers to the actual total of funds in the bank.

Transfer of Escrow Funds

If escrow moneys are transferred from an escrow account to another account for disbursement, the sponsoring broker must maintain a copy of all records reflecting a disbursement from the other account.

Record Maintenance

All escrow related records must be kept for a minimum of five years. Records of transactions with escrow funds currently being held and records of transactions for the prior two years must be maintained at the broker's office and made available for inspection by the licensing authority within 24 hours of request. After two years these records may be stored out of the broker's office, but must be made available for inspection within 30 days of a request by the licensing authority. Escrow records that must be kept by these standards include:

Master Escrow Account Log

Escrow Journals

Escrow Ledgers

Monthly Bank Statements

Monthly Bank Reconciliations

Written direction to place earnest money

Copies of all checks and money orders

Promissory notes or other financial instruments

Documentation of all disbursements or transfers in or out of an escrow account if escrow records are kept electronically, the sponsoring broker shall ensure that a back-up is made. The back-up shall be made at least monthly. The monthly reconciliation, including its worksheet, shall be printed out and maintained by hard copy. The journal shall be reduced to hard copy at least monthly. If escrow records are lost, stolen, or destroyed due to fire, flood or any other circumstances, the broker must report such loss to the licensing authority within 30 days by signature restricted delivery. The broker must also immediately obtain copies of monthly bank statements, deposit and disbursement receipts, and any other available records to reconstruct such loss of escrow records. A sponsoring broker may delegate the bookkeeping duties to another person. Ultimately, however, responsibility for proper administration of the escrow accounts and compliance with the bookkeeping duties remains the responsibility of the sponsoring broker.

Disciplinary Actions and Causes (25 min)

(225 ILCS 454/20-20)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-20. Disciplinary actions; causes, OBRE may refuse to issue or renew a license, may place on probation, suspend, or revoke any license, or may censure, reprimand, or otherwise discipline or impose a civil fine not to exceed \$25,000 upon any licensee hereunder for any one or any combination of the following causes:

- a. When an applicant or licensee has, by false or fraudulent representation, obtained or sought to obtain a license.
- b. When the applicant or licensee has been convicted of any crime, an essential element of which is dishonesty or fraud or larceny, embezzlement, or obtaining money, property, or credit by false pretenses or by means of a confidence game, has been convicted in this or another state of a crime that is a felony under the laws of this State, or has been convicted of a felony in a federal court.
- c. When the applicant or licensee has been adjudged to be a person under legal disability or subject to involuntary admission or to meet the standard for judicial admission as provided in the Mental Health and Developmental Disabilities Code.
- d. When the licensee performs or attempts to perform any act as a broker or salesperson in a retail sales establishment from an office, desk, or space that is not separated from the main retail business by a separate and distinct area within the establishment.
- e. Discipline of a licensee by another state, the District of Columbia, a territory, a foreign nation, a governmental agency, or any other entity authorized to impose discipline if at least one of the grounds for that discipline is the same as or the equivalent of one of the grounds for discipline set forth in this Act, in which case the only issue will be whether one of the grounds for that discipline is the same or equivalent to one of the grounds for discipline under this Act.
- f. When the applicant or licensee has engaged in real estate activity without a license or after the licensee's license was expired or while the license was inoperative.
- g. When the applicant or licensee attempts to subvert or cheat on the Real Estate License Exam or continuing education exam or aids and abets an applicant to subvert or cheat on the Real Estate License Exam or continuing education exam administered pursuant to this Act.
- h. When the licensee in performing, attempting to perform, or pretending to perform any act as a broker, salesperson, or leasing agent or when the licensee in handling his or her own property, whether held by deed, option, or otherwise, is found guilty of:
 1. Making any substantial misrepresentation or untruthful advertising.
 2. Making any false promises of a character likely to influence, persuade, or induce.
 3. Pursuing a continued and flagrant course of misrepresentation or the making of false promises through licensees, employees, agents, advertising, or otherwise.
 4. Any misleading or untruthful advertising, or using any trade name or insignia of membership in any real estate organization of which the licensee is not a member.
 5. Acting for more than one party in a transaction without providing written notice to all parties for whom the licensee acts.
 6. Representing or attempting to represent a broker other than the sponsoring broker.
 7. Failure to account for or to remit any moneys or documents coming into his or her possession that belong to others.
 8. Failure to maintain and deposit in a special account, separate and apart from personal and other business accounts, all escrow moneys belonging to others entrusted to a licensee while acting as a real estate broker, escrow agent, or temporary custodian of the funds of others or failure to maintain all escrow moneys on deposit in the account until the transactions are consummated or terminated, except to the extent that the moneys, or any part thereof, shall be:
 - A. disbursed prior to the consummation or termination (i) in accordance with the written direction of the principals to the transaction or their duly authorized agents, (ii) in accordance with directions providing for the release, payment, or distribution of escrow moneys contained in any written contract signed by the principals to the transaction or their duly authorized agents, or (iii) pursuant to an order of a court of competent jurisdiction; or

- B. deemed abandoned and transferred to the Office of the State Treasurer to be handled as unclaimed property pursuant to the Uniform Disposition of Unclaimed Property Act. Escrow moneys may be deemed abandoned under this subparagraph (B) only: (i) in the absence of disbursement under subparagraph (A); (ii) in the absence of notice of the filing of any claim in a court of competent jurisdiction; and (iii) if 6 months have elapsed after the receipt of a written demand for the escrow moneys from one of the principals to the transaction or the principal's duly authorized agent. The account shall be noninterest bearing, unless the character of the deposit is such that payment of interest thereon is otherwise required by law or unless the principals to the transaction specifically require, in writing, that the deposit be placed in an interest bearing account.
- 9. Failure to make available to the real estate enforcement personnel of OBRE during normal business hours all escrow records and related documents maintained in connection with the practice of real estate within 24 hours of a request for those documents by OBRE personnel.
- 10. Failing to furnish copies upon request of all documents relating to a real estate transaction to all parties executing them.
- 11. Failure of a sponsoring broker to timely provide information, sponsor cards, or termination of licenses to OBRE.
- 12. Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public.
- 13. Commingling the money or property of others with his or her own.
- 14. Employing any person on a purely temporary or single deal basis as a means of evading the law regarding payment of commission to non licensees on some contemplated transactions.
- 15. Permitting the use of his or her license as a broker to enable a salesperson or unlicensed person to operate a real estate business without actual participation therein and control thereof by the broker.
- 16. Any other conduct, whether of the same or a different character from that specified in this Section, that constitutes dishonest dealing.
- 17. Displaying a "for rent" or "for sale" sign on any property without the written consent of an owner or his or her duly authorized agent or advertising by any means that any property is for sale or for rent without the written consent of the owner or his or her authorized agent.
- 18. Failing to provide information requested by OBRE, within 30 days of the request, either as the result of a formal or informal complaint to OBRE or as a result of a random audit conducted by OBRE, which would indicate a violation of this Act.
- 19. Advertising by means of a blind advertisement, except as otherwise permitted in Section 10-30 of this Act.

AGENCY

Types of Agency Relationships (5min)

The principal - agent relationship has evolved from English common law in which the servant owed complete loyalty to the master. In modern - day agency the agent still owes loyalty to the principal above personal interests. .However in recent times there has been some confusion among the public as to whom agents represented. Most agents were representing sellers and yet were thought to be working for buyers. Now in Illinois laws have been changed making it easier for licensees to avoid this and other problems that have risen.

Illinois Real Estate License Law and Agency Relationships (20min)

By designating the licensee working with a member of the public in a real estate transaction as that person's agent, the law provides the best possibility that each party in the transaction receives professional representation.

Illinois Specific Definitions

There are a number of terms given specific definitions for their use in the License Act. It is important that you understand the meaning of the terms listed below before continuing your study.

A Brokerage agreement: means a written or oral agreement between a sponsoring broker and a consumer for 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.

A Client: means a person who is being represented by a licensee.

A Consumer: means a person or entity seeking or receiving licensed activities.

A Customer: means a consumer who is not being represented by a licensee but for whom the licensee is performing ministerial acts. These definitions clarify some of what we have already discussed. They state that any time you are approaching buyers or sellers with the intent to earn a fee (whether the fee will come from them or someone else) you are automatically and instantly changing their status from being a member of the general public to being a consumer of real estate services. This is important because there are specific rules with regard to the treatment of consumers of real estate services. In some instances you may also find the client referred to as the principal, which means the same thing.

A Confidential information: means information obtained by a licensee from a client during the term of a brokerage agreement that was made confidential by the written request or written instruction of the client, deals with the negotiating position of the client, or is information the disclosure of which could materially harm the position of the client.

Confidential information is no longer considered confidential when the client permits the disclosure, law requires disclosure, or 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. Therefore information about the physical condition of the property is never to be withheld from either party in a transaction.

A Designated agency: means a contractual relationship between a sponsoring broker and a client in which one or more licensees associated with the broker are designated as agent of the client.

A Designated agent: means a sponsored licensee named by a sponsoring broker as the legal agent of a client.

A Dual agency: means an agency relationship in which a licensee is representing buyer and seller or both landlord and tenant in the same transaction. When the agency relationship 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. The licensee who has direct contact with the buyer or seller is the only person considered to be the agent of that buyer or seller. A broker can have one salesperson under his or her sponsorship representing the seller and another representing the buyer, and no one will be considered a dual agent.

A 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 include 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 a 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 or service provider.

Section 15-10. Relationships between licensees and consumers (3min)

Licensees shall be considered to be representing the consumer they are working with as a designated agent for the consumer unless:

1. there is written agreement between the sponsoring broker and the consumer providing that there is a different relationship; or
2. the licensee is performing only ministerial acts on behalf of the consumer.

This Section makes it clear that the law prefers that the agent represent everyone he or she works with, rather than treat anyone as a customer.

Section 15-15. Duties of licensees representing clients (20min)

(a) A licensee representing a client shall:

1. Perform the terms of the brokerage agreement between a broker and the client.
2. Promote the best interests of the client by:
 - A) Seeking a transaction at the price and terms stated in the brokerage agreement or at a price and terms otherwise acceptable to the client.
 - B) Timely presenting all offers to and from the client, unless the client has waived this duty.
 - C) Disclosing to the client material facts concerning the transaction of which the licensee has actual knowledge, unless that information is confidential information. Material facts do not include the following when located on or related to real estate that is not the subject of the transaction:
 - (i) physical conditions that do not have a substantial adverse effect on the value of the real estate, (ii) fact situations, or (iii) occurrences.
 - D) Timely accounting for all money and property received in which the client has, may have, or should have had an interest.
 - E) Obeying specific directions of the client that are not otherwise contrary to applicable statutes, ordinances, or rules.
 - F) Acting in a manner consistent with promoting the clients best interests as opposed to a licensee's or any other person's self-interest.
3. Exercise reasonable skill and care in the performance of brokerage services.
4. Keep confidential all confidential information received from the client.
5. Comply with all requirements of this Act and all applicable statutes and regulations, including without limitation fair housing and civil rights statutes.

Section 15-15 above replaces the generalities of the fiduciary duties imposed by common law and creates a list of statutory duties more specific to a real estate transaction. This is intended to give licensees a better understanding of their responsibilities as well as to let the public know what to expect from their real estate licensees.

The rules promote adherence to the traditional fiduciary duties of Loyalty, Obedience, Care, Accounting, and Disclosure. The balance of Section 15-15 and 15-20 that appears below offers protection to real estate licensees regarding some practices which might otherwise seem to be in conflict with this law if they were not specifically mentioned.

(b) A licensee representing a client does not breach a duty or obligation to the client by showing alternative properties to prospective buyers or tenants or by showing properties in which the client is interested to other prospective buyers or tenants.

8) A licensee representing a buyer or tenant client will not be presumed to have breached a duty or obligation to that client by working on the basis that the licensee will receive a higher fee or compensation based on a higher selling price or lease cost.

(d) A licensee shall not be liable to a client for providing false information to the client if the false information was provided to the licensee by a customer unless the licensee knew or should have known the information was false.

(e) Nothing in this Section shall be construed as changing a licensee's duty under common law as to negligent or fraudulent misrepresentation of material information.

Section 15-20. Failure to disclose information not affecting physical condition

No cause of action shall arise against a licensee for the failure to disclose:

- (i) that an occupant of the property was afflicted with Human Immunodeficiency Virus (HIV) or any other medical condition;
- (ii) that the property was the site of an act or occurrence that had no effect on the physical condition of the property or its environment or the structures located thereon;
- (iii) fact situations on property that is not the subject of the transaction; or
- (iv) physical conditions located on property that is not the subject of the transaction that do not have a substantial adverse effect on the value of the real estate that is the subject of the transaction.

The provisions of section 15-20 protect the licensee and avoid the licensee having to research the background of every property they work with.

Section 15-25. Licensee's relationship with customers (5min)

(a) Licensees shall treat all customers honestly and shall not negligently or knowingly give them false information. A licensee engaged by a seller client shall timely disclose to customers who are prospective buyers all material adverse facts pertaining to the physical condition of the property that are actually known by the licensee and that could not be discovered by a reasonably diligent inspection of the property by the customer. A licensee shall not be liable to a customer for providing false information to the customer if the false information was provided to the licensee by the licensee's client and the licensee did not have actual knowledge that the information was false. No cause of action shall arise on behalf of any person against a licensee for revealing information in compliance with this Section.

(b) A licensee representing a client in a real estate transaction may provide assistance to a customer by performing ministerial acts. Performing those ministerial acts shall not be construed in a manner that would violate the brokerage agreement with the client, and performing those ministerial acts for the customer shall not be construed in a manner as to form a brokerage agreement with the customer.

This Section offers more protection for the licensee than it does for the public by defining how limited the licensee's obligations are to someone who he or she does not represent. The only responsibility a licensee has to customers is honesty, nothing more.

Section 15-30. Duties after termination of brokerage agreement (2min)

Except as may be provided in a written agreement between the broker and the client, neither a sponsoring broker nor any licensee affiliated with the sponsoring broker owes any further duties to the client after termination, expiration, or completion of performance of the brokerage agreement, except:

1. to account for all moneys and property relating to the transaction; and,
2. to keep confidential all confidential information received during the course of the brokerage agreement.

This Section on termination makes it clear it is necessary to keep confidential information confidential even when the agency relationship has ended. It also points out the fact that with the exception of confidentiality, there is no further obligation on the part of the licensee when the relationship is over. Therefore, if you terminate your relationship with a seller and two days later you show that seller's home to a buyer you represent, you are not a dual agent.

Section 15-35. Agency relationship disclosure (5min)

(a) A consumer shall be advised of the following no later than entering into a brokerage agreement with the sponsoring broker:

- (1) That a designated agency relationship exists, unless there is written agreement between the sponsoring broker and the consumer providing for a different brokerage relationship.
- (2) The name or names of his or her designated agent or agents in writing.
- (3) The sponsoring broker's compensation and policy with regard to cooperating with brokers who represent other parties in a transaction.

(b) A licensee shall disclose in writing to a customer that the licensee is not acting as the agent of the customer at a time intended to prevent disclosure of confidential information from a customer to a licensee, but in no event later than the preparation of an offer to purchase or lease real property.

This subsection (b) does not apply to residential lease or rental transactions unless the lease or rental agreement includes an option to purchase real estate. These laws are to help protect all involved from any ambiguity or the perception thereof.

Section 15-40. Compensation does not determine agency (8min)

Compensation does not determine agency relationship. The payment or promise of payment of compensation to a licensee is not determinative of whether an agency relationship has been created between any licensee and a consumer.

This has been a matter of some confusion probably stemming from previous years of sub-agency. Sub-agency is not and has not been law in Illinois for many years.

Section 15-45. Dual Agency (20min)

The following form can be of help in many instances. However, dual agency is not an avenue recommended to be approached without extreme care, diligence and experience.

A licensee may act as a dual agent only with the informed written consent of all clients. Informed written consent shall be presumed to have been given by any client who signs a document that includes the following:

DUAL AGENCY CONSENT AGREEMENT

The undersigned _____, (insert name(s)), (Licensee) may undertake a dual representation (represent both the seller or landlord and the buyer or tenant) for the sale or lease of property. The undersigned acknowledge they were informed of the possibility of this type of presentation. Before signing this document please read the following:

Representing more than one party to a transaction presents a conflict of interest since both clients may rely upon the Licensee's advice and the client's respective interests may be adverse to each other. Licensee will undertake this representation only with the written consent of ALL clients in the transaction.

Any agreement between the clients as to a final contract price and other terms is a result of negotiations between the clients acting in their own best interests and on their own behalf. You acknowledge that the Licensee has explained the implications of dual representation, including the risks involved, and understand that you have been advised to seek independent advice from your advisors or attorneys before signing any documents in this transaction.

WHAT A LICENSEE CAN DO FOR CLIENTS WHEN ACTING AS A DUAL AGENT

1. Treat all clients honestly.
2. Provide information about the property to the buyer or tenant.
3. Disclose all latent material defects in the property that are known to Licensee.
4. Disclose financial qualification of the buyer or tenant to the seller or landlord.
5. Explain real estate terms.
6. Help the buyer or tenant to arrange for property inspections.
7. Explain closing costs and procedures.
8. Help the buyer compare financing alternatives.
9. Provide information about comparable properties that have sold, so both clients may make educated decisions on what price to accept or offer.

WHAT A LICENSEE CANNOT DISCLOSE TO CLIENTS WHEN ACTING AS A DUAL AGENT

1. Confidential information that Licensee may know about a client, without that client's permission.
2. The price the seller or landlord will take other than the listing price without permission of the seller or landlord.
3. The price the buyer or tenant is willing to pay without permission of the buyer or tenant.
4. A recommended or suggested price the buyer or tenant should offer.
5. A recommended or suggested price the seller or landlord should counter with or accept. If either client is uncomfortable with this disclosure and dual representation, please let the Licensee know. You are not required to sign this document unless you want to allow Licensee to proceed as a Dual Agent in this transaction. By signing below, you acknowledge that you have read and

understand this form and voluntarily consent to Licensee acting as a Dual Agent (that is, to represent BOTH the seller or landlord and the buyer or tenant) should that become necessary. Dated this _____ day of _____ 20_____
LICENSEE CLIENT(S)

signature

print name

(b) The dual agency disclosure language provided for in subsection (a) of this Section must be presented by a licensee, who offers dual representation, to the client at the time the brokerage agreement is entered into and may be signed by the client at that time or at any time before the licensee begins acting as a dual agent as to the client.

A licensee acting in a dual agency capacity in a transaction must obtain a written confirmation from the licensee's clients of their consent for the licensee to act as a dual agent in the transaction. This confirmation should be obtained at the time the clients are executing any real estate sales contract or lease in a transaction in which the licensee is acting as a dual agent. This confirmation may be included in another document, such as a contract to purchase, in which case the client must not only sign the document but also initial the confirmation of dual agency provision. That confirmation must state, at a minimum, the following: AThe undersigned confirm that they have previously consented to (insert name(s), Alicensee@), acting as a Dual Agent in providing brokerage services on their behalf and specifically consent to Licensee acting as a Dual Agent in regard to the transaction referred to in this document.@

(d) No cause of action shall arise on behalf of any person against a dual agent for making disclosures allowed or required by this Article, and the dual agent does not terminate any agency relationship by making the allowed or required disclosures.

(e) In the case of dual agency, each client and the licensee possess only actual knowledge and information. There shall be no imputation of knowledge or information among or between the clients, brokers, or their affiliated licensees.

(f) In any transaction, a licensee may without liability withdraw from representing a client who has not consented to a disclosed dual agency. The withdrawal shall not prejudice the ability of the licensee to continue to represent the other client in the transaction or limit the licensee from representing the client in other transactions.

Section 15-50. Designated Agency (5min)

(a) A sponsoring broker entering into an agreement with any person for the listing of property or for the purpose of representing any person in the buying, selling, exchanging, renting, or leasing of real estate may specifically designate those licensees employed by or affiliated with the sponsoring broker who will be acting as legal agents of that person to the exclusion of all other licensees employed by or affiliated with the sponsoring broker. A sponsoring broker entering into an agreement under the provisions of this Section shall not be considered to be acting for more than one party in a transaction if the licensees specifically designated as legal agents of a person are not representing more than one party in a transaction.

(b) A sponsoring broker designating affiliated licensees to act as agents of clients shall take ordinary and necessary care to protect confidential information disclosed by a client to his or her designated agent.

8) A designated agent may disclose to his or her sponsoring broker or persons specified by the sponsoring broker confidential information of a client for the purpose of seeking advice or assistance for the benefit of the client in regard to a possible transaction. Confidential information shall not be disclosed by the sponsoring broker or other specified representative of the sponsoring broker unless otherwise required by this Act or requested or permitted by the client who originally disclosed the confidential information.

In Illinois – Minimum Service Laws (5min)

Minimum service laws were adopted to maintain a standard of service to the public, it is considered by many that charging a fee to implement a listing on the MLS and allowing the seller to fend for his/herself does not correlate to a standard of service akin to what consumers deserve and expect to date, minimum service requirements are the law in Illinois. The broker must follow and service the transaction to it's culmination.

Section 15-55. No Sub-agency

A broker is not considered to be a subagent of a client of another broker solely by reason of membership or other affiliation by the brokers in a multiple listing service or other similar information source, and an offer of sub-agency may not be made through a multiple listing service or other similar information source

1. In Illinois : clients, must be either (a) represented by you, or (b) given clear disclosure of the fact you will not represent them.
2. Who pays commission has no effect on agency.
3. Any time you ask confidential questions or offer advocacy or advice to consumers, they have the right to believe you are representing them as a result of an implied agency.
4. Dual agency should be avoided and must be fully disclosed when practiced.
5. The laws regarding real estate relationships apply to all real estate transactions including those that are residential, industrial, commercial, or agricultural.
6. Facts regarding the physical condition of the property must be disclosed to all parties in the transaction.

For Sale by Owner Agreement

In the course of events you may encounter a for sale by owner and approach a possible sale as the buyers Broker. In this case you would need to inform said seller with written notice of agency. As in many instances the seller may agree to compensate the broker to have the sale consummated.

A FOR SALE BY OWNER AGREEMENT

AGREEMENT TO COOPERATE WITH AND TO COMPENSATE BUYER'S BROKER
NOT TO BE USED WHEN SELLER IS REPRESENTED BY A BROKER

This agreement is entered into on _____, 20_____, by and between Seller, _____ and Buyer's Broker _____ (insert name of Company) regarding the sale of real estate (hereinafter referred to as the Property) commonly known as

_____, IL.

The parties to this Agreement hereby acknowledge that:

- A. The Buyer's Broker has established an agency relationship with _____, the Proposed Buyer of the Property;
- B. _____ is a Sales Associate of the Buyer's Broker and is acting in this transaction as the Designated Agent of the Proposed Buyer.
- C. As the Designated Agent of the Proposed Buyer, the Licensee and the Buyer's Broker have duties established by law to represent the interests of the Proposed Buyer.
- D. As a result of the agency relationship established with the Proposed Buyer, the licensee and the Buyer's Broker will not establish an agency relationship with the Seller, without the written consent to all parties to the transaction in the form of a specific Dual Agency Agreement.

In accordance with the above and foregoing Acknowledgments, and for good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties to this Agreement, it is agreed as follows:

1. In the event that the Seller accepts a written offer from the Proposed Buyer to sell the Property upon terms and conditions acceptable to Seller and Proposed Buyer, and
2. The Proposed Buyer satisfies all conditions precedent in the written offer to purchase the Property, then
- 3 Seller agrees to compensate Buyer's Broker in an amount equal to _____% of the sales price contained in the accepted written offer referred to in paragraph 1 above. Such compensation should be paid to Buyer's broker at the time of the closing of the subject transaction.
4. This document represents an Agreement to Compensate a Buyer's Broker and shall not be construed as establishing a brokerage agreement, and agency relationship or a fiduciary relationship between the Seller and the Buyer's Broker. It is also acknowledged that this document does not establish a Dual Agency Agreement.

5. Notwithstanding anything in paragraph 4 to the contrary, the Proposed Buyer and Seller may designate the Buyer's Broker as an Escrowee for the purpose of holding earnest money in accordance with the terms of their accepted written offer.

6. The term of this Agreement is for _____ days from and after the date of execution hereof (hereinafter the Marketing Period). If the Property is sold, conveyed or exchanged in any transaction wherein the Proposed Buyer or Proposed Buyer's Designee acquires the Property during the time of the Marketing Period, or if the Proposed Buyer or Proposed Buyer's Designee acquires the Property from any person who was granted an option to acquire the Property during the time of the marketing period, or if the Proposed Buyer or Proposed Buyer's Designee leases the Property during the time of the Marketing Period and subsequently acquires the Property, or if the Property is acquired by the Proposed Buyer or the Proposed Buyer's Designee directly or indirectly within _____ days after termination of the Marketing Period, Seller agrees to compensate Buyer's Broker as provided in paragraph 3 above.

For information purposes, the Licensee acting as Proposed Buyer's Designated Agent is

SELLER HEREBY ACKNOWLEDGES THAT SELLER IS NOT REPRESENTED BY A BROKER IN THIS TRANSACTION.

SELLER IS CAUTIONED THAT THIS DOCUMENT WILL BECOME A LEGALLY BINDING DOCUMENT WHEN SIGNED BY ALL PARTIES AND DELIVERED, AND THEREFORE THE SELLER MAY WISH TO SEEK LEGAL ADVICE PRIOR TO SIGNING IT.

Accepted on the date above written

BUYER'S BROKER:

By: _____
MANAGING BROKER SELLER

There may be an occasion when you have to temporarily or otherwise need to substitute an agent for another. Disclosure is still in order and the same confidentiality applies. Written disclosure would be in order as the proceeding form or its equivalent.

ILLINOIS ASSOCIATION OF REALTORS

ADDITIONAL AGENT DESIGNATION

(Use this form when naming an additional designated legal agent to represent a seller-client or buyer-client)

The following modifies the terms of our (Check one)

Exclusive Right to Sell Agreement Buyer Representation Agreement

as follows:

_____(Broker) is designating the licensee named below as an additional designated agent for the client named below.

Additional Designated Agent: _____
(print or type name)

Additional Designated Agent Signature: _____

Additional Designated Agent shall serve as your agent until _____, 2_____, at which time said Designated Agent's representation on your behalf shall terminate.

Broker: _____
(signature)

Client Name: _____
(print or type)

Property Address (if listing): _____

ILLINOIS REAL ESTATE CONTINUING EDUCATION CORE COURSE B Agency /License Law and Escrow

Study Questions

Answer the following questions true or false.

1. Each licensee must complete 12-hours of continuing education in every calendar year.
2. Leasing agents are also permitted to sell apartments in the properties where they lease apartments.
3. The total shown in the escrow journal will always be greater than the combined total of all the escrow ledgers.
4. If real estate salespeople own a real estate company, they must give no less than 49% of the stock to the broker.
5. The IDFPR may suspend or revoke a license for failure to pay Illinois taxes.
6. As part of their continuing education requirement for each renewal period, each salesperson must enroll in and successfully complete 6-hours of core/mandatory curriculum.
7. The educational requirement for an active Illinois salesperson licensee to become a licensed broker is 75 hours.
8. Bank statements for escrow accounts must be reconciled weekly.
9. The broker must deposit escrow funds within 48 hours of receipt.
10. A broker may withdraw his or her commission from an escrow account at any time after the sale has closed.
11. Physical defects in the property must be disclosed to all parties to the transaction.
12. The fact that a person with AIDS previously lived in the home is a material defect.
13. Acting as a dual-agent oral notice is sufficient to both parties.
14. Sub-agency may still be used in Illinois.
15. A dual agency is one where the licensee represents both the buyer and seller.
16. Answering an inquiry about the price or location of a property for a consumer who calls your office can be considered a ministerial act.
17. The person being represented by a real estate licensee is referred to as the client.
18. You always represent the person who pays you.
19. A for sale by owner only needs notice of agency if you represent him/her.
20. Confidential information can be disclosed if the client gives permission.

Answers to Study Questions appear on Page 40

ILLINOIS REAL ESTATE CONTINUING EDUCATION

CORE COURSE B Anti-Trust

[3 hours-[core B]

After completing this course you should be able to answer questions pertaining to Business Practices, Tying Arrangements, Collusion, Boycotts, Service Agreements as they apply to Real Estate in Illinois

Antitrust: an overview (5min)

Trusts and monopolies are concentrations of economic power in the hands of a few. Economists believe that such control injures both individuals and the public because it leads to anticompetitive practices in an effort to obtain or maintain total control. Anticompetitive practices then lead to price controls and diminished individual initiative. These results in turn cause markets to stagnate and depress economic growth.

Because of fears during the late 1800s that monopolies dominated America's free market economy, Congress passed the Sherman Antitrust Act in 1890 to combat anticompetitive practices, reduce market domination by individual corporations, and preserve unfettered competition as the rule of trade. The Sherman Antitrust Act forms the foundation and the basis for most federal antitrust litigation.

As for the states, many have adopted antitrust laws that parallel the Sherman Antitrust Act to prevent anticompetitive behavior within local intrastate commerce. Since Congressional jurisdiction does not reach purely intrastate commerce, states needed to pass their own legislation to avoid having anticompetitive behavior depress their own local economies. See, for example, the Massachusetts Antitrust Act.

The Federal Antitrust Acts (10min)

Congress derived its power to pass the Sherman Act through its constitutional authority to regulate commerce. Therefore, the Sherman Act can only be used when the conduct in question restrains or substantially affects either interstate commerce or trade within the District of Columbia. To satisfy this jurisdictional requirement, the plaintiff must show that the conduct in question occurs during the flow of interstate commerce or has an appreciable effect on some activity that occurs during interstate commerce.

The Sherman Act is divided into three sections. Section 1 delineates and prohibits specific means of anticompetitive conduct, and Section 2 deals with end results that are anticompetitive in nature. Sections 1 and 2 supplement each other in an effort to outlaw all types of anticompetitive conduct. Congress designed the supplementary relationship to prevent businesses from violating the spirit of the Act, while technically remaining within the letter of the law. Section 3 simply extends the provisions of Section 1 to U.S. territories and the District of Columbia.

Because the courts found certain activities to fall outside the scope of the Sherman Antitrust Act, Congress passed the Clayton Antitrust Act of 1914 to further widen its scope. For example, the Clayton Act added the following practices to the list of impermissible activities: price discrimination between different purchasers, if such discrimination tends to create a monopoly; exclusive dealing agreements; tying arrangements; and mergers and acquisitions that substantially reduce market competition.

The Robinson-Patman Act of 1936 amended the Clayton Act. The amendment aimed to outlaw certain practices in which manufacturers discriminated in price between equally-situated distributors to decrease competition.

The *Per se* Rule vs. the Rule of Reason (5min)

Violations under the Sherman Act take one of two forms - either as a *per se* violation or as a violation of the rule of reason. Section 1 of the Sherman Act characterizes certain business practices as a *per se* violation. A *per se* violation requires no further inquiry into the practice's actual effect on the market or the intentions of those individuals who engaged in the practice. Some business practices, however, at times constitute anticompetitive behavior and at other times encourage competition within the market. For these cases the court applies a totality of the circumstances test and asks whether the challenged practice promotes or suppresses market competition. Courts often find intent and motive relevant in predicting future consequences during a rule of reason analysis. A presumption exists in favor of the rule of reason for ambiguous cases.

Types of Prohibited Anticompetitive Schemes (10min)

Congress designed these federal antitrust laws to eradicate certain frequently used anticompetitive practices of which the following are a few.

Section 2 of the Sherman Act prohibits monopolization, attempts to monopolize, and conspiring to monopolize. Any such act constitutes a felony. A monopoly conviction requires proof of the individual having intent to monopolize with the power to monopolize, regardless of whether the individual actually exercised the power.

Price-fixing occurs when a company or companies within a given market artificially set or maintain the price of goods or services at a certain level, contrary to the workings of the free market.

Section 1 provides that price-fixing is an illegal restraint on trade, regardless of whether a vertical or horizontal scheme. A vertical scheme is a scheme among parties in the same chain of distribution. A horizontal scheme occurs among competitors on the same level.

In 1911 vertical price-fixing schemes became a per se violation of Section 1 when the Supreme Court interpreted the statute in *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U.S. 373. However, in the landmark case of *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. ___ (2007), the Supreme Court overturned the 96-year-old *Dr. Miles* precedent and held that courts should apply the rule of reason when analyzing vertical price-fixing schemes. The ruling renders all vertical limitation schemes subject only to the rule of reason.

Collusive bidding occurs when two or more competitors agree to change the bids they otherwise would offer absent the agreement. Under Section 1, collusive bidding is per se illegal.

A tying arrangement is an agreement by a party to sell one product only on the condition that the buyer agrees either to buy different products from the seller or not to buy those different products from another seller. Tying arrangements are subject to the rule of reason unless the arrangement shuts out a substantial quantity of commerce in which case the scheme is per se illegal.

Section 2 makes illegal a firm's refusal to deal with another firm if the refusing firm refuses for the purpose of trying to monopolize the market. Meanwhile, section 1 prohibits a group from refusing to deal with a particular firm. A group refusal to deal is known as a group boycott. Because of seemingly contradictory Supreme Court decisions over the years, the question of whether group boycotts are subject to the rule of reason or a per se rule has been left murky.

Exclusive dealing agreements require a retailer or distributor to purchase exclusively from the manufacturer. These arrangements make it difficult for new sellers to enter the market and find prospective buyers, thus depressing competition. However, because companies widely-use requirements contracts, which essentially are exclusive dealing agreements, for purposes that promote competition, exclusive dealing arrangements only face rule of reason scrutiny.

Below-cost pricing intended to eliminate specific competitors and reduce overall competition is known as predatory pricing. Section 2 disallows this conduct. In *Brooke Group Ltd. v. Brown & Williamson Tobacco*, 509 U.S. 209 (1993), the U.S. Supreme Court devised a two-part test to determine if predatory pricing had occurred. First, the plaintiff must establish that the defendant's production costs surpass the market price charged for the item. Second, the plaintiff must establish that a "dangerous probability" exists that the defendant will recover the investment in above-cost inputs. In *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co., Inc.* (05-381) (2007), the Supreme Court said that this test also applies when determining if a predatory bidding scheme exists.

Exemptions (3min)

Certain practices and organizations have received exemption from the federal antitrust laws.

First, patent owners received an exemption in the Sherman Act because federal policy favors incentivizing innovation. Of course, the exemption does not go beyond the granted patent monopoly.

Second, the Clayton Act exempted labor unions and agricultural organizations from the Sherman Act's reach.

Third, the Securities Exchange Act of 1934 (SEA) heavily regulates securities trading; thus, certain activities that fall within the scope of the SEA are exempt from antitrust law. The U.S. Supreme Court took up this very issue in 2007 in *Credit Suisse Securities (USA) v. Billing* (05-1157). The Court decided that if securities regulation and antitrust law are incompatible, then the securities regulation prevails and individuals who would otherwise violate antitrust law receive antitrust immunity. Determining incompatibility requires the presence of the following four criteria: 1) behavior squarely within securities regulation; 2) clear and adequate SEC authority to regulate;

3) active and ongoing SEC regulation; and 4) a serious conflict between regulatory and antitrust regimes.

Federal Trade Commission (2min)

The Federal Trade Commission Act of 1914 (FTCA) bolstered the Sherman Act and Clayton Act by providing that the Federal Trade Commission (FTC) could proactively and directly protect consumers rather than only offer indirect protection by protecting business competitors. Congress endowed the FTC with the power to fill gaps remaining in antitrust law or to stop new business practices not yet invented at the time of the Clayton Act's enactment but contrary to public policy. Section 5 of the FTCA gives the FTC broad powers to cope with new threats to the competitive free market.

Fixing Prices or Commissions:

This is a major concern of real estate per se antitrust offenses. If two or more companies or brokerages agree to set their pricing or have violated the law and the penalties can be severe. Agents and brokers in any setting, business or social, should take great care to never even discuss commission rates in any context. It's much better to be safe than sorry in this case.

Boycotting a Competitor for Any Reason (5min)

With new real estate business and commission pricing models being tried all the time, most agents or brokers have experienced a competitor in their market doing some type of commission discounting, fee for service or other types of alternative pricing models for real estate services. A couple of brokers are having lunch and discuss the new commission discounting company in town. They both agree that it's a bad thing for business and that they're not going to show that broker's discounted listings. They've probably guilty of a per se offense and couldn't even argue otherwise in court.

Boycotting a Supplier or Vendor (2min)

In many areas, the newspaper business has contracted to one major daily or weekly publication in each market area. There are real estate agents and brokers that lament the lack of competition and the high advertising costs. If a group of the local real estate offices grouped together, even very informally, and pulled their advertising in an effort to force a change of policies and/or advertising rates on the newspaper, they would most likely be guilty of a per se offense of the antitrust statutes.

Attempting to Fix or Control the Cooperative Splits in the Market (2min)

The traditional compensation model in real estate is for the seller to agree to a commission amount with the listing broker. This broker would place the property into the MLS and offer a certain split of the commission to cooperating brokers or agents that successfully bring a buyer. Any agreements between companies that would attempt to set or control the amount or percentage of the splits offered in a market would very likely be a per se violation of antitrust statutes.

Setting or Attempting to Control the Length of Listings (8min)

Any agreements between companies that would attempt to fix the minimum or maximum time frame for listings or just about any other contractual items in a listing agreement would likely be per se violations also. Discussing or Agreeing to Different Treatment of a Competitor as a Group: This is a variation on the boycott idea. Let's say that the competitor is discounting commissions and several companies or brokers agree that they'll allow that competitor to show their listings, but set a different coop rate for this competitor because they don't like the limited service model they're working with. This would also very likely be deemed a per se offense.

In Short - If You Have the Slightest Doubt You Probably Shouldn't Do It

The predominant model for doing real estate representation has been around for quite a while. There has been time for ample court case history and decisions to form pretty clear parameters for what is a per se violation of the antitrust statutes. Remember, it's considered a per se offense when the government has deemed it definite and egregious damage to the free trade of another. A per se violator cannot even present a defense as to whether it was damaging, whether it restrained trade or not. They're only left with whether they committed the offense or not. If they

did, in this instance, they're dead. If you're in a meeting or even a social gathering, and the conversation turns toward any of these topics, you should leave the area immediately. It would probably also be wise to make it known that the possibility of violation is why you're leaving.

Tying arrangements pertaining real estate

Tying arrangements in real estate could come in the form of enticing someone use a mortgage or title company as part or condition of a real estate transaction or listing agreement. This may be thin ice, consult your attorney before proceeding on this avenue.

Supply, demand, and commissions

In a buyers market where supply is plentiful and real estate seems more difficult to sell commissions will have a tendency to rise. For instance one area may have 100 homes for sale and three potential buyers, thus putting downward pressure on prices and anxiety on sellers. This degree of difficulty causes more expense, time and effort on the part of the broker/agent. These market conditions lend themselves to more monetary incentives.

A sellers market is the inverse with supply limited, mortgage rates favorable, demand has a propensity to rise. This condition will cause more competition for listings therefore effecting the percentage one can charge for listing and marketing. Ideally this is how the market should work anything to the contrary should be looked at with scrutiny.

Settlement Opens Listing Database, May Lower Commissions (20min)

The U.S. Justice Department has reached an agreement with the National Association of Realtors, Settling the Government's anti-trust case against the group. Officials say the agreement clears the way for more competition among brokers and should reduce the commissions home sellers pay.

In September 2005, the Department's Antitrust Division filed a civil anti-trust lawsuit in U.S. District Court in Chicago, against NAR challenging policies that placed limits on brokers who used the Internet to offer better services and lower costs to consumers.

The government claimed the policies prevented consumers from receiving the full benefits of competition, discouraged discounting, and threatened to lock in outmoded business models. If approved by the court, the proposed settlement would require NAR to change policies and adhere to certain conduct remedies to resolve the Department's competitive concerns.

Under the terms of the settlement, NAR will require affiliated multiple listing services (MLS's) to repeal their rules and allow greater access to the database. NAR will enact a new policy that guarantees the Internet-based brokerage companies will not be treated differently the traditional brokers.

Under the new policy, brokers participating in a NAR-affiliated MLS will not be permitted to withhold their listings from brokers who serve their customers through virtual office websites (VOW's). In addition, brokers will be able to use VOW's to educate consumers, make referrals, and conduct brokerage services.

Such brokers will not be excluded from MLS membership based on their business model. NAR will report to the Department any allegations of noncompliance. NAR also has agreed to adopt anti-trust compliance training programs that will instruct local Associations of Realtors about the anti-trust laws generally and about the requirement of the proposed settlement specifically.

Today's settlement prevents traditional brokers from deliberately impeding competition, said Deborah A. Garza, Deputy Assistant Attorney General of the Anti-Trust Division. When there is unfettered competition from brokers with innovative and efficient approaches to the residential real estate market, consumers are likely to receive better services and pay lower commission rates.

In addition, under this settlement, NAR will foster compliance with the anti-trust laws by educating its members and its 800 affiliated MLSs, she said. NAR is a trade association of more than 1.2 million residential real estate members who operate in local real estate markets nationwide. In almost every area of the country, brokers have organized MLSs through which they share information about homes for sale in their community.

Brokers regard MLS participation to be essential to their ability to compete, and virtually all brokers participate in a local MLS. More than 80 percent of the approximately 1,000 MLSs in the United States are affiliated with NAR. NAR oversees rules governing how its affiliated MLS operate.

The Department's 2005 anti-trust lawsuit challenged NAR policies adopted in 2003 and 2005 that obstructed competition from brokers providing residential brokerage services via the Internet. One way that brokers use the Internet to provide brokerage services to their customers is through password-protected Internet sites, known as VOWs.

VOWs allow a broker's customers to search real estate listings themselves instead of relying on a broker to conduct searches for them.

Delivering listings via the Internet enables customers to control their search process and educate themselves about the real estate market in their area on their own schedule. These VOWs have allowed brokers to be more productive, and some VOWs have passed these efficiencies on to consumers in the form of lower commission rate to home seller and rebates to home buyers.

It seems to this observer that the D.O.J. deems anything that creates competition is healthy for the marketplace. However many of these opines do not seem to have evolved from first hand experience in the Real Estate industry. Choosing a Realtor to represent a buyer should not be based on how much of a kickback or (rebate) they will receive, but rather the competence of the brokerage working for them. In continuum I have listed some opinions from the D.O.J. and others to many states over a period of time.

Steering As a Possible Obstacle to Greater Price Competition (30min)

The obstacles discussed so far in this Chapter represent concerted efforts of real estate incumbents to insulate themselves from new and innovative types of competitors. As such, these obstacles have received particular attention from the Agencies. Even without any impediments presented by state law, regulation or MLS policies, however, those new entrants who seek to compete in a different manner, and who have the potential to make the entire industry more competitive, would still face a significant obstacle inherent in the structure of the industry.

Namely, a broker's success typically depends on securing significant cooperation from direct competitors. If that cooperation cannot be obtained, it is possible that an entrant might fail even if it is more efficient and provides a more attractive combination of price and service to consumers. The antitrust laws generally do not require firms to cooperate with their competitors. One reason is that, if one firm refuses to cooperate with rivals for self-serving reasons when cooperation would have benefited customers, those customers ordinarily would punish the uncooperative firm by taking their business elsewhere. However, that dynamic may not operate as well in industries, like real estate brokerage, where many consumers have significant limits on their knowledge, thus making it easier for competitors to steer business away from new or maverick brokers, or to otherwise withhold necessary cooperation, without the knowledge of their customers.

Commission Rates and Fees: Empirical Evidence

In light of the contrasting views presented above, it is reasonable to ask what empirical evidence reveals about commission rates and fees in recent years. Unfortunately, as one author recently noted, "There is not much empirical evidence on commission rates. The data are usually proprietary and not readily available to the public or to academic analysts. Consistent with this observation, none of the Workshop participants or commenter's provided data on commission rates or fees. To our knowledge, REAL Trends is the only source that publishes commission rate data. REAL Trends publishes nationwide average commission rates. Its data are derived from a survey of the top 500 brokerage firms in the country and a group of rising firms just below the top 500.

Table 1 lists REAL Trends national average commission rates and fees from 1991 through 2005. Fees, measured in constant 2006 dollars, are based on median home prices so as to represent what a typical consumer would pay in real estate commissions to sell his or her home. As illustrated in Figure 1, commission rates have fallen gradually over this time period, from 6.1 percent to just over 5 percent

Rates and Real Commission Fees: 1991-2005

Year	Commission Rates	Median Home Prices		Commission Fees	
		2006 Dollars	% Change	2006 Dollars	% Change
1991	6.10%	\$153,925		\$9,389	
1992	6.04%	\$153,235	-0.45%	\$9,255	-1.43%
1993	5.94%	\$153,632	0.26%	\$9,126	-1.40%
1994	5.88%	\$155,145	0.98%	\$9,123	-0.04%
1995	5.83%	\$155,365	0.14%	\$9,058	-0.71%
1996	5.75%	\$158,029	1.71%	\$9,087	0.32%
1997	5.64%	\$162,168	2.62%	\$9,146	0.66%
1998	5.48%	\$167,881	3.52%	\$9,200	0.59%
1999	5.44%	\$171,031	1.88%	\$9,304	1.13%
2000	5.42%	\$172,427	0.82%	\$9,346	0.45%
2001	5.12%	\$177,939	3.20%	\$9,110	-2.52%
2002	5.14%	\$188,634	6.01%	\$9,696	6.42%
2003	5.12%	\$198,557	5.26%	\$10,166	4.85%
2004	5.08%	\$212,655	7.10%	\$10,803	6.26%
2005	5.02%	\$230,059	8.18%	\$11,549	6.91%

Through a settlement reached between the Kentucky Real Estate Commission and the U.S. Department of Justice in 2005, real estate brokers may now offer rebates and other inducements to consumers. The Commission suspended enforcement of its regulation banning rebates, and in February 2006 the Commission instituted an emergency regulation to comply with the terms of the settlement.

In January 2007, the Kentucky House of Representatives introduced House Bill 86 formally repealing the ban on rebates. The legislation is pending.

The Antitrust Division has also commented to the Kentucky state bar about the benefits that consumers realize when non-attorneys are allowed to compete with attorneys to provide real estate closing services.

Illinois (10min)

Illinois's minimum service provision requires real estate brokers entering into exclusive brokerage agreements to accept and present offers and counteroffers, and answer their clients' questions in every real estate transaction.

Many MLSs in Illinois have now passed rules requiring brokers to enter into exclusive brokerage agreements, so brokers in those MLSs are prevented from offering, and their clients are prevented from buying, MLS-listing-only services.

In 2008, a bill prohibiting broker rebates was introduced into the General Assembly. The Department of Justice wrote a letter on February 21, 2008 opposing the bill.

Illinois House Bill 4313

Proposed by Illinois state Rep. Robert S. Molaro, D-Chicago, seeks to amend the state's Real Estate License Law Act of 2000 to state that "no licensee shall give or pay cash rebates, cash gifts or cash prizes to an unlicensed person who is a party to a contract to buy or sell real estate." The legislation would allow licensees to offer compensation "including prizes, merchandise, services, rebates, discounts or other consideration to an unlicensed person who is a party to the lease of real estate," as long as that offer complies with other provision of the existing act, according to the bill text

The U.S. Department of Justice has taken legal action in other states to undo similar restrictions that prevent real estate agents and brokers from rebating a portion of the money they receive in a home sale to consumers, and the department is aware of the proposed Illinois legislation.

COMPETITION AND REAL ESTATE (20min)

Consumers Can Save Thousands of Dollars in Commissions

Consumers who live in states permitting them the option to choose innovative brokerage options, such as rebates or fee-for-service MLS-only packages, can potentially save thousands of dollars on commission payments.

This table shows that consumers can save as much as \$7,500 in commissions on the sale of a median-priced home.

Table: Brokerage Options and Potential Savings on Home Sold for \$222,273

Option	Seller's Broker Commission	Buyer's Broker Commission	Total Commission	Saving
Full-Service (5.2% commission)	\$5,779	\$5,779	\$11,558	\$0
Option 1: Buyer's Broker Rebate (1%)	\$5,779	\$3,557	\$9,419	\$2,222
Option 2: Fee-for-Service, MLS Only	\$500	\$5,779	\$6,336	\$5,279
Options 1 and 2 Combined	\$500	\$3,557	\$4,083	\$7,501

This looks great on paper, but it fails to account for the inexperience of the seller and buyer. In theory the seller and buyer save money. On one hand you have a seller fending for him/herself in negotiation with a trained professional, on the other a buyer with full representation. This lends itself to a seller beware situation, not to mention the agency confusion of the public. In Illinois we still have minimum service laws that will not lead us into these situations. Buyer rebates have also led to confusion in the marketplace and create tax reporting more difficult. Thus far, I have not seen buyer rebates reported on public records or M.L.S. therefore not reflected on comparables for appraisal purposes. Buyers and sellers focusing only on the relatively small picture of rebates and commissions may have a tendency to overlook the true situation. This is my empirical opinion not merely theory.

Competition among Brokers (10min)

Real estate brokers compete to attract customers in different ways based on price and non-price dimensions. To compete on price, they can offer lower commissions to home sellers and, where permitted, rebates to home buyers. On the service dimension, they can offer more assistance or convenience to customers. Brokers also compete for customers by marketing their services to potential buyers and sellers in various ways.

Although consumers benefit to some extent from all of these forms of competition, the available data suggest that brokers may compete less on price than would be expected in a competitive market. Even though national average commission rates have fallen steadily since 1991 and commission rates appear to vary inversely with housing prices, it appears that rates are sufficiently inflexible to cause commission fees to move in tandem with housing prices. The recent run-up in housing prices illustrates this phenomenon: from 1998 to 2005, housing prices rose 37 percent in real terms and, although national average commission rates appear to have fallen from 5.5 percent to 5 percent, average brokerage fees per transaction rose 26 percent in real terms during the same period. At the same time, the efficiencies generated by the Internet and other technological advances suggest that broker costs should be falling. The evidence also suggests that rising per-sale profits for brokers induce entry by new brokers so that the average number of sales per broker declines.

Conclusion and Recommendations (20min)

The Workshop afforded real estate brokers, state regulators, and academics an opportunity to express their various views on competition in the real estate brokerage industry. Using that information, as well as Agency expertise, the almost 400 submissions filed in response to the Agencies' request for public comment in connection with the Workshop, and other available information, this Report has undertaken a careful examination of the real estate brokerage industry. Our review suggests that although the real estate industry has undergone a number of substantial changes in recent years – in particular as a result of technological advances such as the Internet – competition in the industry has been hindered as a result of actions taken by some

real estate brokers, acting through MLSs and NAR, state legislatures, and real estate commissions. In addition, consumers likely would benefit significantly from additional knowledge about the range of options available in brokerage services and fees. Based on the foregoing, the FTC and DOJ recommend the following to help maintain competition and protect consumers in the real estate brokerage industry:

The Agencies should continue to monitor the cooperative conduct of private associations of real estate brokers, and bring enforcement actions in appropriate circumstances. While cooperation among brokers through a multiple listing service can provide consumers with important efficiencies, cooperation used to adopt rules that hinder rivals can be anticompetitive and, as recent Agency actions indicate, may violate the antitrust laws.

The Agencies should continue to provide state legislators and industry regulators with information concerning the competitive consequences of state legislation and regulations that threaten to or already do restrict competition and consumer choice in the real estate brokerage industry, and take enforcement action in appropriate circumstances.

State legislators and industry regulators should consider repealing existing laws, rules and regulations, such as minimum-service and anti-rebate provisions, that limit choice and reduce the ability of new brokerage models (e.g., fee-for-service brokers, discount full-service brokers, virtual office website brokers, and broker referral networks) to compete and that do not appear to provide any consumer benefits that would justify such restrictions. They should also avoid enacting such laws, rules, and regulations in the future.

The Agencies and industry regulators should promote consumer understanding of marketplace options. Some consumers may not be aware of the range of alternatives available to them when hiring a real estate broker, including the types of business models available and the negotiability of fees, for both home buyers and sellers, and/or may not understand the duties owed by their broker. Competition in the real estate brokerage industry would likely be enhanced if consumers had better access to such information.

The Agencies and industry regulators should assess the feasibility of an empirical study of the real estate brokerage industry. Transaction-level data on commission rates and fees are not publicly available, but broad national aggregate data suggest that commission rates and fees move in tandem with housing prices. Just as the 1983 FTC study provided valuable information about how real estate brokers competed in the late 1970s and early 1980s, a new study examining how transaction-level commission rates and fees vary based on such factors as market conditions, housing prices, and regulation would provide a better understanding of the current state of competition in the real estate brokerage industry.

These are some of the many opinions brought forth over the years. It is your responsibility to abide and adhere to the laws in Illinois.

ILLINOIS REAL ESTATE CONTINUING EDUCATION

CORE COURSE B Anti-Trust

Study Questions

Answer the following questions true or false.

1. Two competitors in my market asked me to cooperate with them in setting a standard commission for the area. I refused, but subsequently started charging the same rate that my competitors suggested. Because I didn't overtly agree to participate in price fixing, I am not part of a conspiracy.
2. Even though my salespeople are independent contractors, I may establish the commission rate for my company and require salespeople to charge that rate.
3. Brokers who agree not to cooperate with another company, such as by not showing that company's listings, do not violate antitrust laws if they enter into that agreement because they consider the company's aggressive "high-tech" marketing techniques to be unethical.
4. The best way to persuade sellers that they should enter into an exclusive-right-to-sell agreement with you is to tell them that MLS members have an "informal understanding" to show buyers exclusive-right-to-sell listings first.
5. My company benefits from MLS participation, but we don't want to pay a cooperative commission split to real estate companies that offer only nominal compensation on their listings, which we think they include simply so that their listings are shown on REALTOR.com and other public real estate Web sites. But if we decide to offer them the same amount of compensation that they offer us, we'll be breaking the law.
6. Antitrust price-fixing rules do not allow a real estate company to engage in a public advertising campaign that highlights the commission rate it charges to consumers.
7. Classified and display advertising rates in a local newspaper have increased substantially, which hurts all the real estate companies in town. Yet, no company is willing to stop advertising for fear of losing clients and customers to their competitors who continue to advertise at the high rates. To pressure the newspaper to reduce rates, which would benefit the companies and consumers, the real estate companies may agree that they will stop advertising unless and until the paper complies.
8. If one of my salespeople participates in a price-fixing discussion, my company can be held liable even if I have no personal knowledge of the salesperson's conduct.
9. If you are present when a discussion takes a turn toward a possible antitrust violation, you should leave as discretely as possible.
10. An MLS can not require a minimum term for listings.

Answers to Study Questions appear on Page 40

ILLINOIS REAL ESTATE CONTINUING EDUCATION

ELECTIVE COURSE B Ethical Practice

[6 hours-[Elective]

After completing this course you should be able to answer questions pertaining to The Realtor Code of Ethics – its enforcement, disclosure of representation, latent defects, conflicts of interest, escrows, litigation, and office policies. An explanation of ethical standards set by the Illinois Real Estate License Act.

The first version of the National Association of REALTORS (NAR) Code of Ethics was adopted in 1913.

The basis for the Code of Ethics is the Golden Rule, doing unto others, as you would have them do unto you.

The Code of Ethics gives guidance in three areas of practice: duties to clients and customers, duties to the public, and the duties REALTORS have to other REALTORS.

The NATIONAL ASSOCIATION OF REALTORS, Code of Ethics, quoted herein is taken from NATIONAL ASSOCIATION OF REALTORS Form effective January 1, 2006.

Article 1 (50 Min)

When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS remain obligated to treat all parties honestly. *(Amended 1/01)*

Standard of Practice 1-1

REALTORS, when acting as principals in a real estate transaction, remain obligated by the duties imposed by the Code of Ethics. *(Amended 1/93)*

Standard of Practice 1-2

The duties the Code of Ethics imposes are applicable whether REALTORS are acting as agents or in legally recognized non-agency capacities except that any duty imposed exclusively on agents by law or regulation shall not be imposed by this Code of Ethics on REALTORS acting in non-agency capacities. As used in this Code of Ethics, client means the person(s) or entity(ies) with whom a REALTOR or a REALTOR'S firm has an agency or legally recognized non-agency relationship; customer means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTOR or the REALTOR'S firm; prospect means a purchaser, seller, tenant, or landlord who is not subject to a representation relationship with the REALTOR or REALTOR'S firm; agent means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation; and broker means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. *(Adopted 1/95, Amended 1/04)* License law gives us the definitions to be used to describe our agency and non-agency relationships based on the concept of designated agency. Since agency relationships are based on the individual licensee rather than the firm or Broker, the definitions of client and customer used in the Code of Ethics are different from those used in the Illinois Real Estate License Act. It should also be

noted that where the Code of Ethics addresses sub-agency, this does not apply in Illinois since Illinois does not allow sub-agency through a Multiple Listing Service.

Standard of Practice 1-3

REALTORS, in attempting to secure a listing, shall not deliberately mislead the owner as to market value.

Standard of Practice 1-4

REALTORS, when seeking to become a buyer/tenant representative, shall not mislead buyers or tenants as to savings or other benefits that might be realized through use of the REALTOR'S services. *(Amended 1/93)* The Illinois Real Estate License Act places these same obligations on licensees by requiring licensees to place the interests of clients above their own and treat all others honestly.

Standard of Practice 1-5

REALTORS may represent the seller/landlord and buyer/tenant in the same transaction only after full disclosure to and with informed consent of both parties. *(Adopted 1/93)*

Standard of Practice 1-6

REALTORS shall submit offers and counter-offers objectively and as quickly as possible. *(Adopted 1/93, Amended 1/95)* License law states this same rule when it calls for timely presentation of offers.

Standard of Practice 1-7

When acting as listing brokers, REALTORS shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. REALTORS shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease. *(Amended 1/93)*

Standard of Practice 1-8

REALTORS acting as agents or brokers of buyers/tenants shall submit to buyers/tenants all offers and counter-offers until acceptance but have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing. REALTORS acting as agents or brokers of buyers/tenants shall recommend that buyers/tenants obtain the advice of legal counsel if there is a question as to whether a pre-existing contract has been terminated. *(Adopted 1/93, Amended 1/99)*

Standard of Practice 1-9

The obligation of REALTORS to preserve confidential information (as defined by state law) provided by their clients in the course of any agency relationship or non-agency relationship recognized by law continues after termination of agency relationships or any non-agency relationships recognized by law. REALTORS shall not knowingly, during or following the termination of professional relationships with their clients:

- 1) reveal confidential information of clients; or
- 2) use confidential information of clients to the disadvantage of clients; or
- 3) use confidential information of clients for the REALTOR'S advantage or the advantage of third parties unless: a) clients consent after full disclosure; or b) REALTORS are required by court order; or c) it is the intention of a client to commit a crime and the information is necessary to prevent the crime; or d) it is necessary to defend a REALTOR or the REALTOR'S7 employees or associates against an accusation of wrongful conduct. Information concerning latent material defects is not considered confidential information under this Code of Ethics. *(Adopted 1/93, Amended 1/01)*

Standard of Practice 1-10

REALTORS shall, consistent with the terms and conditions of their real estate licensure and their property management agreement, competently manage the property of clients with due regard for the rights, safety and health of tenants and others lawfully on the premises. *(Adopted 1/95, Amended 1/00)*

Standard of Practice 1-11

REALTORS who are employed to maintain or manage a client's property shall exercise due diligence and make reasonable efforts to protect it against reasonably foreseeable contingencies and losses. *(Adopted 1/95)* Property managers must balance the goal of high returns for the owner and proper treatment of tenants.

Standard of Practice 1-12

When entering into listing contracts, REALTORS must advise sellers/landlords of:

- 1) the REALTOR'S company policies regarding cooperation and the amount(s) of any compensation that will be offered to subagents, buyer/tenant agents, and/or brokers acting in legally recognized non-agency capacities;
- 2) the fact that buyer/tenant agents or brokers, even if compensated by listing brokers, or by sellers/landlords may represent the interests of buyers/tenants; and
- 3) any potential for listing brokers to act as disclosed dual agents, e.g. buyer/tenant agents. *(Adopted 1/93, Renumbered 1/98, Amended 1/03)*

Standard of Practice 1-13

When entering into buyer/tenant agreements, REALTORS must advise potential clients of:

- 1) the REALTOR'S7 company policies regarding cooperation;
- 2) the amount of compensation to be paid by the client;
- 3) the potential for additional or offsetting compensation from other brokers, from the seller or landlord, or from other parties;

4) any potential for the buyer/tenant representative to act as a disclosed dual agent, e.g. listing broker, subagent, landlord's agent, etc., and
5) 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. *(Adopted 1/93, Renumbered 1/98, Amended 1/06)*
Standard of Practice 1-14

Fees for preparing appraisals or other valuations shall not be contingent upon the amount of the appraisal or valuation. *(Adopted 1/02)*

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 whether offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating broker. *(Adopted 1/03, Amended 1/06)*

Article 2 (10 Min)

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. *(Amended 1/00)*

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. *(Amended 1/96)*

Standard of Practice 2-2

(Renumbered as Standard of Practice 1-12 1/98)

Standard of Practice 2-3

(Renumbered as Standard of Practice 1-13 1/98)

Standard of Practice 2-4

REALTORS shall not be parties to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.

Standard of Practice 2-5

Factors defined as non-material by law or regulation or which are expressly referenced in law or regulation as not being subject to disclosure are considered not pertinent for purposes of Article 2. *(Adopted 1/93)*

Article 3 (20 Min)

REALTORS shall cooperate with other brokers except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker. *(Amended 1/95)*

Standard of Practice 3-1

REALTORS, acting as exclusive agents or brokers of sellers/landlords, establish the terms and conditions of offers to cooperate. Unless expressly indicated in offers to cooperate, cooperating brokers may not assume that the offer of cooperation includes an offer of compensation. Terms of compensation, if any, shall be ascertained by cooperating brokers before beginning efforts to accept the offer of cooperation. *(Amended 1/99)*

Standard of Practice 3-2

REALTORS shall, with respect to offers of compensation to another REALTOR, timely communicate any change of compensation for cooperative services to the other REALTOR prior to the time such REALTOR produces an offer to purchase/lease the property. *(Amended 1/94)*

Standard of Practice 3-3

Standard of Practice 3-2 does not preclude the listing broker and cooperating broker from entering into an agreement to change cooperative compensation. *(Adopted 1/94)*

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. *(Amended 1/02)* Illinois requires brokers to disclose to clients how they will be compensated, and with whom and how they will share their compensation.

Standard of Practice 3-5

It is the obligation of subagents to promptly disclose all pertinent facts to the principal's agent prior to as well as after a purchase or lease agreement is executed. *(Amended 1/93)*

Standard of Practice 3-6

REALTORS shall disclose the existence of accepted offers, including offers with unresolved contingencies, to any broker seeking cooperation. *(Adopted 5/86, Amended 1/04)*

Standard of Practice 3-7

When seeking information from another REALTOR concerning property under a management or listing agreement, REALTORS shall disclose their REALTOR status and whether their interest is personal or on behalf of a client and, if on behalf of a client, their representational status. *(Amended 1/95)*

Standard of Practice 3-8

REALTORS shall not misrepresent the availability of access to show or inspect a listed property. *(Amended 11/87)*

Article 4 (5 Min)

REALTORS shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent or broker. In selling property they own, or in which they have any interest, REALTORS shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative. *(Amended 1/00)*

Standard of Practice 4-1

For the protection of all parties, the disclosures required by Article 4 shall be in writing and provided by REALTORS prior to the signing of any contract. *(Adopted 2/86)* Illinois addresses the issue of a licensee disclosing that he is involved as a principal in a transaction; however, since Illinois law provides that licensees be representing any party they work with as a client, it is not necessary for a licensee to disclose that a client is a family member.

Article 5 (5 Min)

REALTORS shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

Article 6 (10 Min)

REALTORS shall not accept any commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent. When recommending real estate products or services (e.g., homeowner's insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTOR or REALTOR'S firm may receive as a direct result of such recommendation. *(Amended 1/99)*

Standard of Practice 6-1

REALTORS shall not recommend or suggest to a client or a customer the use of services of another organization or business entity in which they have a direct interest without disclosing such interest at the time of the recommendation or suggestion. *(Amended 5/88)*

Article 7 (10 Min)

In a transaction, REALTORS shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the REALTOR'S client or clients. *(Amended 1/93)*

Articles 4 through 7 clearly require licensees to make clients aware of any interest they may have in a transaction. This is also Illinois law possibility the licensee may experience financial gain or loss other than the disclosed compensation because of the clients' actions in a transaction. This same disclosure is required by Illinois law.

Article 8 (5 Min)

REALTORS shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients' monies, and other like items. Illinois has very specific laws and rules regarding the handling of and accounting for the funds of others held by licensees.

Article 9 (5 Min)

REALTORS, for the protection of all parties, shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing. *(Amended 1/04)*

Standard of Practice 9-1

For the protection of all parties, REALTORS shall use reasonable care to ensure that documents pertaining to the purchase, sale, or lease of real estate are kept current through the use of written extensions or amendments. *(Amended 1/93)*

Article 10 (20 Min)

REALTORS shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, or national origin. 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, or national origin. *(Amended 1/90)* 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, or national origin. *(Amended 1/00)*

Standard of Practice 10-1

When involved in the sale or lease of a residence, REALTORS shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood nor shall they engage in any activity which may result in panic selling, however, REALTORS may provide other demographic information. *(Adopted 1/94, Amended 1/06)*

Standard of Practice 10-2

When not involved in the sale or lease of a residence, REALTORS may provide demographic information related to a property, transaction or professional assignment to a party if such demographic information is (a) deemed by the REALTOR to be needed to assist with or complete, in a manner consistent with Article 10, a real estate transaction or professional assignment and (b) is obtained or derived from a recognized, reliable, independent, and impartial source. The source of such information and any additions, deletions, modifications, interpretations, or other changes shall be disclosed in reasonable detail. *(Adopted 1/05 and 1/06)*

Standard of Practice 10-3

REALTORS shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin. *(Adopted 1/94, Renumbered 1/05 and 1/06)*

Standard of Practice 10-4

As used in Article 10 real estate employment practices relates to employees and independent contractors providing real estate-related services and the administrative and clerical staff directly supporting those individuals. *(Adopted 1/00, Renumbered 1/05)*

Article 11 (20 Min)

The services which REALTORS provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate. REALTORS shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth. *(Amended 1/95)*

Standard of Practice 11-1

When REALTORS prepare opinions of real property value or price, other than in pursuit of a listing or to assist a potential purchaser in formulating a purchase offer, such opinions shall include the following:

- 1) identification of the subject property
- 2) date prepared
- 3) defined value or price
- 4) limiting conditions, including statements of purpose(s) and intended user(s)
- 5) any present or contemplated interest, including the possibility of representing the seller/landlord or buyers/tenants
- 6) basis for the opinion, including applicable market data
- 7) if the opinion is not an appraisal, a statement to that effect. *(Amended 1/01)*

Standard of Practice 11-2

The obligations of the Code of Ethics in respect of real estate disciplines other than appraisal shall be interpreted and applied in accordance with the standards of competence and practice which clients and the public reasonably require to protect their rights and interests considering the complexity of the transaction, the availability of expert assistance, and, where the REALTOR is an agent or subagent, the obligations of a fiduciary. *(Adopted 1/95)*

Standard of Practice 11-3

When REALTORS provide consultive services to clients which involve advice or counsel for a fee (not a commission), such advice shall be rendered in an objective manner and the fee shall not be contingent on the substance of the advice or counsel given. If brokerage or transaction services are to be provided in addition to consultive services, a separate compensation may be paid with prior agreement between the client and REALTOR. *(Adopted 1/96)*

Standard of Practice 11-4

The competency required by Article 11 relates to services contracted for between REALTORS and their clients or customers; the duties expressly imposed by the Code of Ethics; and the duties imposed by law or regulation. *(Adopted 1/02)*

Article 12 (20 Min)

REALTORS shall be careful at all times to present a true picture in their advertising and representations to the public. REALTORS shall also ensure that their professional status (e.g., broker, appraiser, property manager, etc.) or status as REALTORS is clearly identifiable in any such advertising. *(Amended 1/93)*

Standard of Practice 12-1

REALTORS may use the term free and similar terms in their advertising and in other representations provided that all terms governing availability of the offered product or service are clearly disclosed at the same time. *(Amended 1/97)*

Standard of Practice 12-2

REALTORS may represent their services as free or without cost even if they expect to receive compensation from a source other than their client provided that the potential for the REALTOR to obtain a benefit from a third party is clearly disclosed at the same time. *(Amended 1/97)*

Standard of Practice 12-3

The offering of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease is not, in itself, unethical even if receipt of the benefit is contingent on listing, selling, purchasing, or leasing through the REALTOR making the offer. However, REALTORS must exercise care and candor in any such advertising or other public or private representations so that any party interested in receiving or otherwise benefitting from the REALTOR'S offer will have clear, thorough, advance understanding of all the terms and conditions of the offer. The offering of any inducements to do business is subject to the limitations and restrictions of state law and the ethical obligations established by any applicable Standard of practice. *(Amended 1/95)*

Standard of Practice 12-4

REALTORS shall not offer for sale/lease or advertise property without authority. When acting as listing brokers or as subagents, REALTORS shall not quote a price different from that agreed upon with the seller/landlord. *(Amended 1/93)*

Standard of Practice 12-5

REALTORS shall not advertise nor permit any person employed by or affiliated with them to advertise listed property without disclosing the name of the firm. *(Adopted 11/86)*

Standard of Practice 12-6

REALTORS, when advertising unlisted real property for sale/lease in which they have an ownership interest, shall disclose their status as both owners/landlords and as REALTORS or real estate licensees. *(Amended 1/93)*

Standard of Practice 12-7

Only REALTORS who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have sold the property. Prior to closing, a cooperating broker may post a sold sign only with the consent of the listing broker. *(Amended 1/96)*

Article 13 (5 Min)

REALTORS shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

Article 14 (20 Min)

If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, REALTORS shall place all pertinent facts before the proper tribunals of the Member Board or affiliated institute, society, or council in which membership is held and shall take no action to disrupt or obstruct such processes.

(Amended 1/99)

Standard of Practice 14-1

REALTORS shall not be subject to disciplinary proceedings in more than one Board of REALTORS or affiliated institute, society or council in which they hold membership with respect to alleged violations of the Code of Ethics relating to the same transaction or event. *(Amended 1/95)*

Standard of Practice 14-2

REALTORS shall not make any unauthorized disclosure or dissemination of the allegations, findings, or decision developed in connection with an ethics hearing or appeal or in connection with an arbitration hearing or procedural review. *(Amended 1/92)*

Standard of Practice 14-3

REALTORS shall not obstruct the Board's investigative or professional standards proceedings by instituting or threatening to institute actions for libel, slander or defamation against any party to a professional standards proceeding or their witnesses based on the filing of an arbitration request, an ethics complaint, or testimony given before any tribunal. *(Adopted 11/87, Amended 1/99)*

Standard of Practice 14-4

REALTORS shall not intentionally impede the Board's investigative or disciplinary proceedings by filing multiple ethics complaints based on the same event or transaction. *(Adopted 11/88)* Article 14 sets forth the ethical standards for dealing with complaints of unethical practice that specifically apply to REALTORS.

Article 15 (5 Min)

REALTORS shall not knowingly or recklessly make false or misleading statements about competitors, their businesses, or their business practices. *(Amended 1/92)*

Standard of Practice 15-1

REALTORS shall not knowingly or recklessly file false or unfounded ethics complaints. *(Adopted 1/00)*

Article 16 (60 Min)

REALTORS shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS have with clients. *(Amended 1/04)*

Standard of Practice 16-1

Article 16 is not intended to prohibit aggressive or innovative business practices which are otherwise ethical and does not prohibit disagreements with other REALTORS involving commission, fees, compensation or other forms of payment or expenses. *(Adopted 1/93, Amended 1/95)*

Standard of Practice 16-2

Article 16 does not preclude REALTORS from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another REALTOR. A general telephone canvass, general mailing or distribution addressed to all prospects in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed general for purposes of this standard. *(Amended 1/04)*

Article 16 is intended to recognize as unethical two basic types of solicitations: First, telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another REALTOR; and Second, mail or other forms of written solicitations of prospects whose properties are exclusively listed with another REALTOR when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, for sale or for rent signs, or other sources of information required by Article 3 and Multiple Listing Service rules to be made available to other REALTORS under offers of subagency or cooperation. *(Amended 1/04)*

Standard of Practice 16-3

Article 16 does not preclude REALTORS from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to brokerage) or from offering the same type of service for property not subject to other brokers' exclusive agreements. However, information received through a Multiple Listing Service or any other offer of cooperation may not be used to target clients of other REALTORS to whom such offers to provide services may be made. *(Amended 1/04)* Illinois law prohibits licensees from interfering in the relationship of another licensee and his or her client.

Standard of Practice 16-4

REALTORS shall not solicit a listing which is currently listed exclusively with another broker. However, if the listing broker, when asked by the REALTOR, refuses to disclose the expiration date and nature of such listing; i.e., an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client, the REALTOR may contact the owner to secure such information and may discuss the terms upon which the REALTOR might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing. *(Amended 1/94)* Illinois license law states specific rules that must be followed regarding how a licensee must request the information about expiration dates before they may legally contact another broker's seller.

Standard of Practice 16-5

REALTORS shall not solicit buyer/tenant agreements from buyers/tenants who are subject to exclusive buyer/tenant agreements. However, if asked by a REALTOR, the broker refuses to disclose the expiration date of the exclusive buyer/tenant agreement, the REALTOR may contact the buyer/tenant to secure such information and may discuss the terms upon which the REALTOR might enter into a future buyer/tenant agreement or, alternatively, may enter into a buyer/tenant agreement to become effective upon the expiration of any existing exclusive buyer/tenant agreement. *(Adopted 1/94, Amended 1/98)*

Standard of Practice 16-6

When REALTORS are contacted by the client of another REALTOR regarding the creation of an exclusive relationship to provide the same type of service, and REALTORS have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement. *(Amended 1/98)*

Standard of Practice 16-7

The fact that a prospect has retained a REALTOR as an exclusive representative or exclusive broker in one or more past transactions does not preclude other REALTORS from seeking such prospect's future business. *(Amended 1/04)*

Standard of Practice 16-8

The fact that an exclusive agreement has been entered into with a REALTOR shall not preclude or inhibit any other REALTOR from entering into a similar agreement after the expiration of the prior agreement. *(Amended 1/98)* Illinois law is consistent with standards 16-6, 16-7, and 16-8 with regard to the contact a licensee has with the client of another licensee.

Standard of Practice 16-9

REALTORS, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service. *(Amended 1/04)*

Standard of Practice 16-10

REALTORS, acting as buyer or tenant representatives or brokers, shall disclose that relationship to the seller/landlord's representative or broker at first contact and shall provide written confirmation of that disclosure to the seller/landlord's representative or broker not later than execution of a purchase agreement or lease. *(Amended 1/04)*

Standard of Practice 16-11

On unlisted property, REALTORS acting as buyer/tenant representatives or brokers shall disclose that relationship to the seller/landlord at first contact for that buyer/tenant and shall provide written confirmation of such disclosure to the seller/landlord not later than execution of any purchase or lease agreement. *(Amended 1/04)* REALTORS shall make any request for anticipated compensation from the seller/landlord at first contact. *(Amended 1/98)*

Standard of Practice 16-12

REALTORS, acting as representatives or brokers of sellers/landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable and shall provide written confirmation of such disclosure to buyers/tenants not later than execution of any purchase or lease agreement. *(Amended 1/04)*

Standard of Practice 16-13

All dealings concerning property exclusively listed, or with buyer/tenants who are subject to an exclusive agreement shall be carried on with the client's representative or broker, and not with the client, except with the consent of the client's representative or broker or except where such dealings are initiated by the client. Before providing substantive services (such as writing a purchase offer or presenting a CMA) to prospects, REALTORS shall ask prospects whether they are a party to any exclusive representation agreement. REALTORS shall not knowingly provide substantive services concerning a prospective transaction to prospects who are parties to exclusive representation agreements, except with the consent of the prospects' exclusive representatives or at the direction of prospects. *(Adopted 1/93, Amended 1/04)* License law prohibits a licensee from dealing directly with another licensee's client beyond performing a Ministerial Act.

Standard of Practice 16-14

REALTORS are free to enter into contractual relationships or to negotiate with sellers/landlords, buyers/tenants or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with their informed consent. *(Amended 1/98)*

Standard of Practice 16-15

In cooperative transactions, REALTORS shall compensate cooperating REALTORS (principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other REALTORS without the prior express knowledge and consent of the cooperating broker. In Illinois, brokers can only pay compensation directly to licensees they sponsor and other sponsoring brokers.

Standard of Practice 16-16

REALTORS, acting as subagents or buyer/tenant representatives or brokers, shall not use the terms of an offer to purchase/lease to attempt to modify the listing broker's offer of compensation to subagents or buyer/tenant representatives or brokers nor make the submission of an executed offer to purchase/lease contingent on the listing broker's agreement to modify the offer of compensation. *(Amended 1/98)*

Standard of Practice 16-17

REALTORS, acting as subagents or as buyer/tenant representatives or brokers, shall not attempt to extend a listing broker's offer of cooperation and/or compensation to other brokers without the consent of the listing broker. *(Amended 1/04)*

Standard of Practice 16-18

REALTORS shall not use information obtained from listing brokers through offers to cooperate made through multiple listing services or through other offers of cooperation to refer listing brokers' clients to other brokers or to create buyer/tenant relationships with listing brokers' clients, unless such use is authorized by listing brokers. *(Amended 1/02)*

Standard of Practice 16-19

Signs giving notice of property for sale, rent, lease, or exchange shall not be placed on property without consent of the seller/landlord. *(Amended 1/93)* Illinois law sets forth its own rule regarding the prohibition of placing for sale or for rent signs without specific written permission.

Standard of Practice 16-20

REALTORS, prior to or after terminating their relationship with their current firm, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm. This does not preclude REALTORS (principals) from establishing agreements with their associated licensees governing assignability of exclusive agreements. *(Adopted 1/98)*

Article 17 (20 Min)

In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS (principals) associated with different firms, arising out of their relationship as REALTORS, the REALTORS shall submit the dispute to arbitration in accordance with the regulations of their Board or Boards rather than litigate the matter. In the event clients of REALTORS wish to arbitrate contractual disputes arising out of real estate transactions, REALTORS shall arbitrate those disputes in accordance with the regulations of their Board, provided the clients agree to be bound by the decision. The obligation to participate in arbitration contemplated by this Article includes the obligation of REALTORS (principals) to cause their firms to arbitrate and be bound by any award. *(Amended 1/01)*

Standard of Practice 17-1

The filing of litigation and refusal to withdraw from it by REALTORS in an arbitrable matter constitutes a refusal to arbitrate. *(Adopted 2/86)*

Standard of Practice 17-2

Article 17 does not require REALTORS to arbitrate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to arbitrate before the Board. *(Amended 1/93)*

Standard of Practice 17-3

REALTORS, when acting solely as principals in a real estate transaction, are not obligated to arbitrate disputes with other REALTORS absent a specific written agreement to the contrary. *(Adopted 1/96)*

Standard of Practice 17-4

(OMITTED)

Enforcement (10 Min)

The NAR has set a process in place to enforce the Code of Ethics and Standards of Practice. To file a complaint you do not need to be a member of the NAR or even a licensee. Anyone is allowed to file a complaint alleging a violation of the Code of Ethics. When someone files a complaint he or she must specify which Article of the Code of Ethics has been violated. The Grievance Committee then reviews the complaint. The Grievance Committee decides whether or not the alleged wrongdoing would constitute a violation of the Code of Ethics. In cases where the Grievance Committee decides the accused may have committed an offense, the case is passed to either the Professional Standards Hearing Panel (if the case involves an ethics complaint) or the Arbitration Hearing Panel (if the complaint is of a nature that would otherwise be dealt with by filing a lawsuit). Arbitration hearings most often deal with commission disputes. If the Professional Standards Hearing Panel finds an individual guilty, he or she can be given one or more disciplinary sanctions. Possible sanctions include requiring additional education, the payment of fines, suspension or even termination of membership. The accused can appeal their case to the Board of Directors if he or she disagrees with the finding or the penalty. The Arbitration Hearing Panel will make a determination based on principles of ethics and law. Once the Arbitration Hearing Panel renders a decision there is no right of appeal. If the individuals or firms involved in an arbitration hearing wish to, they can agree to mediation. Mediation is not binding. If the decision of the mediator does not satisfy either party, an arbitration hearing can still be requested. This process of handling complaints has worked well. It allows judgment by peers who understand the special nature of the real estate business and is probably a better alternative when compared to the court system. Illinois law does not deal with the settling or arbitration of disagreements between brokers regarding commissions or any other private agreements.

ILLINOIS REAL ESTATE CONTINUING EDUCATION

ELECTIVE COURSE B Ethical Practice

STUDY QUESTIONS

Answer the following questions true or false.

1. Agents should give advice, but leave decisions up to clients.
2. Disclosure is a matter of personal discretion.
3. REALTORS have no obligation to continue to show properties to clients once an offer is accepted.
4. Decisions of the Professional Standards Hearing Panel can be appealed.
5. An agent should not represent a client in a transaction if the agent has an ownership interest in the property.
6. The process of handling complaints through arbitration allows for judgment by one's peers who are familiar with the nature of real estate transaction.
7. Except for ministerial acts, dealing directly with another agent's client is not acceptable.
8. Litigation is the only acceptable form of settling disputes among REALTORS.
9. A firm commitment to ethical practice avoids some risks for salespeople and brokers.
10. Directly soliciting a listing from a seller whose property is listed with another REALTOR is considered unethical.

Answers to Study Questions appear on Page 40

ILLINOIS REAL ESTATE CONTINUING EDUCATION ANSWER KEY FOR STUDY QUESTIONS

CHAPTER 1

Core Course B Agency
License Law/Escrow

1. F
2. F
3. F
4. F
5. T
6. T
7. T
8. F
9. F
10. F
11. F
12. T
13. F
14. F
15. T
16. F
17. T
18. F
19. T
20. F

CHAPTER 2

Anti-Trust

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

CHAPTER 3

Ethical Practice

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