Division of Professional Regulation

Real Estate Frequently Asked Questions

INTRODUCTION

The following sets forth common questions and answers involving the practice of real estate in Illinois. References to the "Act" are to the "Real Estate License Act of 2000" and references to the "Rules" are to the "Rules for the Administration of the Real Estate License Act of 2000." It is strongly recommended that every licensee carefully study and review the Act and the Rules.

The Act and Rules may be found on the DPR website:

To find the Act or Rules, visit the real estate profession web page at http://www.idfpr.com/DPR/RE/REALEST.asp and select Real Estate License Act of 2000 or Rules for the Real Estate License Act of 2000.

The Act and Rules each contain a helpful Table of Contents.

Disclaimer - the information contained in this question/answer format is intended for general reference only. In any instance where there is a discrepancy between the question/answer format and the language in the Act or Rules, the Act or Rules govern.

GENERAL LICENSE ISSUES

Q. When do I need an Illinois real estate license?

A. A person needs a real estate license if they provide assistance which is in any way intended to result in the sale or lease of real estate. The definition of the word "broker" under the Act provides 11 examples of the types of "assistance" that require a real estate license. Included are: representing clients in the negotiation of real estate sales contracts or leases, and issuing advertisements for the sale, purchase or lease of real estate.

The assistance must be provided for others. Accordingly, a person who buys, sells or leases real estate as a "principal" does not need a real estate license.

Compensation is required. Therefore, a person who provides assistance on a real estate transaction to a friend or relative, without compensation, does not need a license.

Q. Are there any exemptions from the license requirement?

A. Yes. Exemptions from the license requirement are set forth in Section 5-20 of the Act. In other words, some individuals and entities who engage in the "practice of real estate" in Illinois do not need to obtain a real estate license from DPR.

Included in the exemptions are owners of real estate and the employees of the owners of real estate. See Section 5-20(1) of the Act. Accordingly, owners of real estate and their employees may advertise the sale or lease of their property and negotiate real estate contracts and leases without a license. Note that for this exemption to apply, (i) the "practice of real estate" must be limited to those properties "owned," (ii) the employment relationship must be per a "W-2" wage basis, not per an independent contract basis, and (iii) the employer must hold title to the real estate, not just have a financial interest in the real estate (there must be a direct connection between the unlicensed employee and the holder of title).

Also included in the exemptions are (i) attorneys acting under an executed and recorded power of attorney and (ii) attorneys whose services for a real estate consumer are limited to the practice of law. See Section 5-20(2) of the Act. Note that attorneys who engage in the practice of real estate must obtain a real estate license (attorneys are exempt from the pre-license education but attorneys still must pass the state exam and obtain a

real estate license to practice real estate).

Q. What kind of real estate licenses are available for individuals?

A. DPR issues three kind of real estate licenses for individuals: leasing agent licenses, broker licenses, and managing broker licenses. The department will not issue any new salesperson licenses effective 5/1/2011. Existing salespersons will need to transition to broker prior to 5/1/2012.

Q. What kind of real estate licenses are available for business entities?

A. DPR issues three kinds of "business entity" licenses: real estate broker corporation licenses, partnership licenses, and limited liability company licenses. Note that the business must be properly registered with the Illinois Secretary of State office before an application for a license is filed with DPR. The procedures for filing an application for a business entity licenses are found in Section 5-15 of the Act and in 1450.600 of the Rule. The procedures for renewing a business entity licenses are found in 1450.140 of the Rule. Ownership: Individuals with a real estate license may own a brokerage business. In this regard, licensed managing brokers and brokers may own an unlimited amount of a brokerage business. However, a salesperson, leasing agent or group of salespersons or leasing agents may own only up to 49% of a brokerage business. Also, unlicensed individuals or unlicensed entities may own an unlimited amount of a brokerage business, as long as all unlicensed owners file Affidavits of Non Participation.

Management: Any officer of a broker corporation, manager of a limited liability company, and general partner of a partnership, who are involved in any way in the brokerage activities of the business, must have a broker or managing broker license.

Note - A broker (until 5/1/2012 and provided that the broker was licensed prior to 5/1/2011) or a managing broker may also operate a real estate business as a sole proprietor. A sole proprietor business does NOT require a sole proprietor license from DPR. However, a sole proprietor broker must maintain an “office” and must comply with all other applicable provisions of the Act and Rules. Please see the question below in the General Practice Issues section regarding operating a real estate office.

Q. What do I need to do to obtain an Illinois real estate license?

A. An individual who wants to obtain an Illinois real estate license must complete the required pre-license education (subject to the few exemptions below), pass the state exam, and file an application with the required fee.

Pre-license Education Requirements:

Leasing agent license = 15 hours of instruction in an approved course of study relating to the leasing of residential property.

Broker license = 90 hours of instruction in approved courses by the Advisory Council in accordance with Section 1450.1105, 15 hours shall be the Applied Real Estate Principles course presented in the classroom or by an interactive delivery method. The course shall consist of any or a combination of the following: Situational and Case Studies, Role Playing and Demonstration of Real Estate Activities primarily dealing with the application of the topics listed above to the practice of real estate brokerage. For detailed information on the broker curriculum please visit: http://www.idfpr.com/dpr/re/Education/90HrBrokerPreLicenseCourse.pdf

Note- Broker licensees will need to take an additional 30 hours of broker post-license courses prior to the first renewal through an approved pre-license school.

Managing Broker license = 45 hours of instruction in approved courses including the 15 hour interactive Applied Management and Supervision course and experience as a salesperson or broker for two of the past three years. This is in addition to the 120 hours taken to become a broker. The Managing Broker curriculum is available at: http://www.idfpr.com/dpr/re/Education/45HrBrokerManagementPreLicenseCourse.pdf

The persons who are exempt from pre-license education are persons who are active Illinois licensed attorneys and persons who qualify based upon Reciprocity with another State - check the DPR webpage for a list of reciprocal States. Information regarding Pre-license Education Schools and Testing locations may be found on the DPR web site. Application forms are also available on the DPR web site. The application must include the certification of a passing score on the exam, a properly issued sponsor card, and a check for the license. The current fees for each license are available on the DPR web site.

Q. Do Illinois real estate licensees have continuing education (CE) requirements?

A. Brokers must complete 12 hours of CE every 2 years (6 hours core/6 hours elective).

Managing Brokers must complete 12 hours of CE every 2 years (6 hours core/6 hours elective) and 12 hours of Managing Broker CE. The Managing Broker CE is an interactive/classroom course.

Exemptions include: an individual who served in the armed services of the United States during the renewal period and a real estate licensee who is also an active Illinois licensed attorney. See Section 5-70(b) of the Act.

Note: for the first renewal after the transition period there may be additional CE requirements; please visit the DPR website for additional information on CE requirements.

Q. How do I renew my license?

A. It is the responsibility of each licensee to properly renew their license. The licensee must accurately complete a renewal application and send the renewal application, together with the fee, to the Licensing Department in Springfield before the renewal date. If a renewal form is not received in the mail, it remains the responsibility of the licensee to file the renewal application. The licensee will also have the option to renew via Internet or telephone using a credit card.

Renewal Dates:
Managing Brokers must renew their license by April 30 of every odd numbered year (ex. April 30, 2013, April 30, 2015, etc).

Brokers must renew their license by April 30 of every even numbered year (ex. April 30, 2012, April 30, 2014, etc.)

Note - A person whose license has been expired for more than 2 years shall be required to meet the requirements for a new license, including completing all pre-license education and passing the exam. See Section 5-50(c) of the Act.

Q. Does Illinois offer license Reciprocity with any other states?

A. Yes. The current list of states having Reciprocity with Illinois appears on the DPR web site. Note that even those out-of-state licensees who qualify for reciprocity still must pass a test on Illinois specific real estate brokerage laws and obtain an Illinois license before practicing in Illinois. See Section 5-60 of the Act.

Q. What are the procedures regarding termination of sponsorship?

A. In order to terminate sponsorship, the sponsoring broker should:

Sign the license of the sponsored licensee and mark the date of the termination in the section provided for terminating sponsorship on the front of the license.

Submit a copy of the endorsed license to DPR within 2 business days after termination.

Retain a copy of the endorsed license at least until the next renewal date; and

Give the original endorsed license to the licensee.

In most cases, the managing broker of the office will be responsible for the endorsement required of the sponsoring broker. However, in the event the managing broker is unavailable, any broker authorized to sign on behalf of the sponsoring broker may provide the endorsement. For the Department to process the termination the managing broker's name should be signed by the authorized individual. Either the sponsoring broker or the sponsored licensee may demand the endorsement of the licensee. Failure of the sponsoring broker to endorse the license upon demand may subject the sponsoring broker (or managing broker) to discipline. The reason for this is DPR has complete jurisdiction over each license. However, the endorsement should not preclude either the sponsoring broker or sponsored licensee from pursuing any right or obligation pursuant the terms of the written employment agreement, or pursuant to any other civil remedy. See Section 5-40(b) of the Act and Rule 1450.110

GENERAL PRACTICE ISSUES

Q. What are the requirements for operating a real estate "office"?

A. The scope of this question is very broad. All brokers operating their own real estate brokerage business should carefully review the Act and Rules. By way of overview, consider the following:

In the case of corporations, partnerships, and LLCs, the main office and each branch office must be licensed. The main office for a sole proprietor does not need a main office license (the individual broker license of the sole proprietor constitutes the main office license) but each branch office of a sole proprietorship must have a branch office license.

Every real estate office must have a managing broker of record. The managing broker does not need to be the owner of the business. The same individual who serves as the managing broker of a main office may serve as the managing broker of each branch office, or a different individual may serve as the managing broker of some or all of the branch offices. The managing broker of each office is responsible for the supervision of all of the real estate activities performed by the office. See Rule 1450.705

The license of every sponsored licensee must be displayed in the office. The "display" of a license may be satisfied by hanging the license on a wall in the office that is open to the public, or by including the license in an album or binder which is kept on a desk or shelf in the office that is accessible to the public. In the case of a business with a main and a branch office(s), a license should be posted in the office out of which the licensee "predominately" works or the sponsoring broker's main office. See Rule 1450.730.

Each office must have a "sign." The sign must be outside the office and must be of a size and nature that will be reasonably readable by the public (a listing on a building directory fulfills this requirement). The sign must include the name of the sponsoring broker. The sign must be professional in appearance and meet all applicable zoning restrictions and restrictive covenants - in other words, if you live in a subdivision that does not allow commercial signs, you CANNOT maintain your office out of your home. Each branch office must also have a sign that meets with these same requirements. The sign for the branch office should include the same name as the main office or clearly delineate the branch office's relationship with the main office (e.g. "Affiliated with"). See Rule 1450.725.

Consumers and clients must be welcome in the office.

The managing broker must maintain all of the required records at the office. Please see Rule 1450.755 for recordkeeping requirements. The required records include a written employment agreement with each sponsored licensee. See Rule 1450.735. If escrow monies are maintained, the managing broker must ensure that the proper Consent to Audit forms are filed with the Licensing Department in Springfield and must ensure compliance with every provision of the Escrow Rule 1450.750.

Other businesses may be operated out of the same office location. However, the real estate business must

be physically separated from the other businesses. The intention here is to ensure that real estate consumers know where they can meet with their real estate broker and know where their real estate records will be maintained. The real estate business may use a shared reception area and may use other common areas at a multi-business location.

If an assumed business is used, please see the question below addressing the Assumed Business Name Act.

Q. What are the requirements regarding compensation of licensees?

A. All compensation earned by a licensee must be paid through the sponsoring broker.

Note - as a general rule, a commission is earned at the time the real estate contract or lease is executed. Therefore, even if the licensee's license is not active at the time of closing, the licensee can still receive the commission. The commission should be paid through the sponsoring broker of record at the time the commission was earned. Or, if a licensee has changed sponsoring brokers by the time of the closing, the commission can be paid either through the sponsoring broker of record at the time the commission was earned or through the new sponsoring broker.

Q. What is a Corporation for Indirect Payment of Compensation?

A. A Corporation for Indirect Payment of Compensation was authorized in the Real Estate License Act of 2000 to allow licensees to gain certain tax advantages regarding their compensation earned as a licensee. All licensees (leasing agents, salespersons, brokers, managing brokers) qualify. If properly set up, a sponsoring broker may pay compensation earned by a licensee directly to the corporation rather than to the licensee individually. Note the following:

It is a corporation, and therefore the licensee must register the corporation with the Illinois Secretary of State. Questions on how to register the corporation should be directed to the Illinois Secretary of State (www.cyberdriveillinois.com), not DPR.

The licensee must be the SOLE shareholder of the corporation. Accordingly, licensees who are related (ex. husband/wife) or who work together as a team may NOT use the same corporation for receipt of each licensees compensation.

After the corporation is registered with the Illinois Secretary of State, the licensee must file a copy of the certificate of incorporation with the Licensing Department in Springfield.

The corporation does NOT require a real estate broker corporation license issued by DPR.

The licensee may NOT use the corporation to perform real estate activities, associate other licensees with the corporation, or advertise to the public under the corporation's name.

The licensee may use the corporation for receiving compensation earned by the licensee arising out of activities unrelated to the practice of real estate.

See Section 10-20(e) of the Act and Rule 745.

Q. Must the managing broker ensure that every brokerage agreement is in writing?

A. No. Only exclusive brokerage agreements are required to be in writing. See Rule 1450.770 for a list of the provisions that are required to be included in a written exclusive brokerage agreement. It is certainly recommended that even non-exclusive brokerage agreements be in writing.

Q. What should a licensee know about filling out real estate contracts or leases and about modifications to real estate contracts or leases?

A. Rule 1450.775(a) requires that a licensee make sure that a real estate contract or lease does NOT contain any blanks to be filled in after signing or initialing. For example, it is important for a licensee to make sure that a real estate contract includes a date of acceptance, which is normally established by including the date next to the seller's signature.

Rule 1450. 775(b) requires that a licensee obtain the written consent of all principals to a real estate contract or lease before making any modification to the contract or lease. In addition, if a modification is made to a contract or lease, a licensee must make sure that each principal initial the modification. It is also strongly recommended that a licensee make sure that the principals' initials are dated.

Q. May compensation be paid to a principal to a transaction, even if the principal does not have a real estate license?

A. Yes. Section 10-15(c) of the Act authorizes the offer or payment of compensation ("prizes, merchandise, services, rebates, discounts or other consideration") to an unlicensed person who is a party to a contract or lease. Of course, such compensation is not required. The payment of such compensation should be pursuant to the negotiations on the transactions. The payment of such compensation is not limited to payment by a licensee to the licensee's client - in other words, a seller's agent may pay compensation to an unlicensed buyer.

Q. May a licensee offer compensation to solicit clients?

A. Yes. Section 10-15(d) of the Act authorizes the offer or payment of compensation ("cash, gifts, prizes, awards, coupons, merchandise, rebates or chances to win a game of chance") to a consumer as an inducement to that consumer to use the services of a licensee, even if the consumer and licensee ultimately do not enter into a client relationship. Any advertisement under this Section must also comply with all requirements regarding real estate advertisements. Also, care should be taken not to offer compensation to unlicensed persons for referrals of clients - this is prohibited.

Q. What must a licensee disclose to a client regarding compensation and ownership of related entities?

A. A licensee must disclose to a client the sponsoring broker's policy with regard to paying compensation to cooperating brokers who represent other parties in a transaction.

A licensee must disclose to a client all sources of compensation related to the transaction received by the licensee from a third party.

If a licensee refers a client to a third party in which the licensee has greater than a 1% ownership interest, the licensee must disclose the ownership interest to the client at the time the referral is made.

A licensee must disclose in writing to a client in any transaction in which the licensee is being paid by both the buyer and seller or lessee and lessor.

See Section 10-10 of the Act.

Q. What are the requirements regarding Licensed Personal Assistants?

A. Licensed Personal Assistants must be sponsored by the same broker that sponsors the licensee being assisted. The license of the Licensed Personal Assistant must be displayed in the office of the sponsoring broker.

The sponsoring broker must have a written employment agreement with the Licensed Personal Assistant. The written employment agreement must set forth the employment or independent contractor terms, supervision, duties, compensation and termination terms. See Section 10-20(d) of the Act.

All compensation earned by the Licensed Personal Assistant must be paid through the sponsoring broker. See Section 10-5(c) of the Act.

A Licensed Personal Assistant MAY serve as an assistant to a licensee sponsored by a broker AND actively practice real estate for the same sponsoring broker.

A Licensed Personal Assistant may NOT assist a licensee sponsored by one broker and also practice real estate for another sponsoring broker. This prohibition applies even if the "assistant" duties are only administrative or clerical.

Q. What are the requirements regarding Unlicensed Personal Assistants?

A. An Unlicensed Assistant may not engage in licensed activities. An excellent list of examples of what an Unlicensed Assistant may and may not do appears in Rule 1450.740 paragraphs (b) and (c).

An Unlicensed Assistant may be employed directly by the licensee being assisted. The licensee being assisted is responsible for the actions of the Unlicensed Assistant.

Compensation for an Unlicensed Assistant does NOT need to pass through the sponsoring broker of the licensee being assisted.

See Rule 1450.740

Q. What are the requirements regarding referral fees or finder fees?

A. It is illegal for an Illinois real estate licensee to pay a fee for the referral of a real estate client to any individual or business entity that does not have a real estate license. For example, an Illinois real estate licensee cannot pay a referral fee to an unlicensed friend or neighbor. Nor can an Illinois real estate licensee pay a referral fee to an unlicensed professional otherwise involved in real estate transactions, e.g., to an employee of a mortgage company that does not have a real estate license.

It is legal for an Illinois licensee to pay or receive a referral fee to/from another Illinois real estate licensee. It is also legal for an Illinois real estate licensee to pay or receive a referral fee to/from a person who has a real estate license in another state. See Rule 1450.780(a).

Referral fees must be paid through a sponsoring broker.

Q. How long must a real estate office save real estate records?

A. Five years. Please see Rule 1450.755 for the specific requirements on record retention.

Q. If I have a real estate license, can I sell my property "by owner" or do I have to list the property with a broker?

A. Any licensee (whether sponsored or inoperative) CAN sell their property "by owner," provided the licensee is "sole owner" of the property. In this context, the licensee is a "sole owner" if the licensee (i) has a 100% ownership interest, (ii) has ownership as a joint tenant or tenant by the entirety, or (iii) holds a 100% beneficial interest if the property is held in a land trust. A licensee who qualifies to sell property "by owner" must include in all advertisements (including yard signs) the words “agent owned” or “broker owned.” See Section 10-30(a) of the Act.

Q. Must I disclose my status as a real estate licensee every time I am a principal in a real estate transaction?

A. Yes. Every time a licensee is a principal (the seller, buyer, landlord or tenant) in a real estate transaction, the licensee must disclose in writing his or her status as a real estate licensee. The best way to comply with this requirement is to write the disclosure (e.g. “Illinois real estate licensee,” “real estate salesperson,” “real estate broker,” etc.) next to the licensee's signature on the real estate contract or lease. Another way to comply is to add the disclosure as a printed provision within the contract or lease. Disclosure may also be made by a separate writing (e.g. via a letter to all of the other principals) tendered prior to the execution of the contract or lease. However, simply providing the licensee's business card to all of the principals is insufficient disclosure.

If a licensee signs a real estate contract or lease as an employee of the principal (e.g. as an officer of a corporation that is the seller), the licensee must make the same disclosure.

See Sections 10-27 and 10-30(c) of the Act and Rule 1450.765.

Q. Can an individual work both as a real estate licensee and as a mortgage brokerage or loan officer?

A. The Act and Rules do not prohibit this dual role. Accordingly, an individual may represent the same client both as a real estate agent and as a mortgage broker or loan officer, even on the same transaction. However, Sections 10-10(b) and (c) of the Act may require that some disclosures be made (a real estate licensee must disclose to a client all sources of compensation related to a transaction and disclose any ownership interest in any entity with whom the client may do business). Also, it is the responsibility of the individual in this dual role to comply any other applicable laws, local, state or federal, regarding their mortgage activities.

Q. Can the same broker serve as the managing broker for more than one office?

A. Yes. This provision under the Real Estate License Act of 2000 allows the same broker to serve as the managing broker of the main office and serve as the managing broker of any number of its branch offices. In addition, one managing broker may serve as the managing broker for the main office, and a different managing broker or brokers may serve as the managing broker of any number of its branch offices. Other variations are permissible.

The sponsoring broker license is responsible for the supervision of all managing brokers.

Note - Having the same managing broker serve as managing broker of multiple offices is not a requirement. If desired, a different broker may serve as the managing broker for each different office.

Note also - The same managing broker may NOT serve as the managing broker for multiple offices under different sponsoring broker licenses. For example, the same managing broker cannot serve as the managing broker of the main offices of two broker corporations.

Q. When do I need to register my real estate business under an ASSUMED BUSINESS NAME?

A. Registration for an assumed business name is required any time a real estate business is marketed to the public under a name that is IN ANY WAY different than the name appearing on the sponsoring broker license. A sole proprietor registration must first be made in each county in Illinois in which the sponsoring broker is doing business. A corporation, limited partnership, general partnership or limited liability company must register with the Illinois Secretary of State. Copies of the registration documents must then be filed with the Licensing Department in Springfield. See Rule 1450.120.

Q. Is a real estate license required for Property Management?

A. The answer to this question depends upon the specific types of property management services provided.

Property management activities that involve general administration, like contracting for property maintenance (garbage pick-up, etc.) and paying general expenses (utilities, etc.), do NOT require a real estate license. Serving as an accountant for association dues also does not require a real estate license.

Only those property management activities that involve a conveyance of real estate by contract or lease require a real estate license. Accordingly, property management activities that require a real estate license include: showing a unit for sale or lease, negotiating lease or real estate contract terms, maintaining security deposits, rent payments or earnest money deposits.

Note: you may also need a Community Association Manager license. For more information please visit: http://www.idfpr.com/dpr/who/cam.asp

Q. What are the requirements for real estate advertisements?

A. Real estate advertisements are governed by Section 10-30 of the Act and Rule 1450.715. Advertisements on the Internet are also governed by Section 10-35 of the Act and Rule 1450.720.

All real estate advertisements must be supervised by the managing broker. The name of the sponsoring broker must appear in each advertisement. It is recommended that the sponsoring broker's address and telephone number also appear in each advertisement. The name and telephone number of a sponsored licensee may appear in an advertisement along with the information regarding the sponsoring broker. In other words, a sponsored licensee may not advertise in his or her name only - this includes a listing in a telephone directory. Subparagraph (f) of Section 10-30 states: “Nothing in this Act shall be construed to require specific print size as between the broker's business name and the name of the licensee.” Also, note that business cards are advertisements and must comply with these requirements.

ESCROW

The Escrow Rule is found at 1450.750. The Escrow Rule is relatively long and detailed. The Escrow Rule is

strictly enforced. All managing brokers who accept escrow money should carefully study the Escrow Rule.

Q. What is escrow money?

A. Generally defined, escrow money is any money in the possession of a broker that does not belong to the broker. Refer to Section 1-10 of the Act and paragraph 1450.750(a) of the Escrow Rule for the complete definition.

Q. Can any real estate licensee hold real estate escrow money?

A. No. Only sponsoring brokers may hold real estate escrow money. The managing broker of each office is responsible to ensure compliance with the Escrow Rule. Branch offices have the option to either maintain escrow money or to forward escrow money to the main office. Managing brokers of branch offices should refer to paragraph 1450.750(k) of the Escrow Rule for the requirements regarding branch offices.

Leasing agents, salespersons, or brokers who are sponsored by another broker may NOT hold real estate escrow money.

Unlicensed persons, leasing agents, salespersons, or brokers who are sponsored by another broker may assist in the escrow bookkeeping duties in the office.

Q. Is it required that sponsoring brokers accept real estate escrow money?

A. No. The Act and Rules do NOT require that a sponsoring broker accept escrow money. It is the choice of the sponsoring broker whether to accept escrow money. The sponsoring broker may recommend to the principals to the transaction that an attorney, or closing agent, or other professional serve as the escrow agent. The sponsoring broker should ensure that the real estate contract, or any other document, does not contain language in conflict with the sponsoring broker's choice not to accept the escrow money.

Q. What information must a managing broker provide to DPR regarding escrow accounts?

A. 1450.750(m) of the Escrow Rule requires that a managing broker file with the Licensing Department in Springfield a Consent to Examine and Audit All Escrow Accounts form at the time of application for license and at every renewal date. In addition, in between renewal dates, the managing broker must file a new Consent to Examine and Audit All Escrow Accounts form within 10 days after adding new escrow account(s) with the existing bank, changing signatories on an existing escrow account(s), or changing or adding a new bank at which escrow accounts will be maintained. However, a new form is not required if a new escrow account is opened which falls under an umbrella escrow account which has already by identified in a prior form.

Q. Does a managing broker have a choice whether to deposit escrow money into an interest bearing or non-interest bearing escrow account?

A. No. Paragraph 1450.750(b)(1) of the Escrow Rule provides that the escrow money must be deposited into a non-interest bearing escrow account unless all of the principals to the transaction provide written instructions requiring the deposit into an interest bearing escrow account, or unless some other law requires a deposit into an interest bearing escrow account (e.g. security deposits for leases at some types of buildings).

Q. What are the time requirements for the deposit and disbursement of escrow money from the escrow account?

A. First, note that absent any other written agreement, earnest money deposits should NOT be deposited until a real estate contract is executed.

Deposits - Once a real estate contract or lease is executed, escrow monies should be deposited into an escrow account not later than the end of the next business day following the broker's receipt of the escrow money. Accordingly, if an earnest money check is tendered days prior to the execution of a contract, the check must be deposited into an escrow account not later than the end of the next business day after the date of the execution of the contract. If subsequent installments of earnest monies are received, those earnest monies must be deposited not later than the end of the next business day following their receipt.

Disbursements - If a transaction closes and the managing broker is directed to forward the escrow money to

the closing agent, the managing broker must forward the escrow money to the closing agent as instructed. If a transaction closes and the managing broker is directed to pay commissions (either the broker's own commission or a cooperating commission) directly from the escrow deposit, the escrow money must be transferred out of the escrow account not later than the end of the next business day after the closing. This is true even if there is a dispute regarding commissions - the escrow money must be moved out of the escrow account by the end of the next business day after closing (unless of course a possession escrow is in issue). If a transaction does not close, the managing broker must keep the escrow money in the escrow account until the broker receives written authorization from all of the principals to the transaction (or their attorneys) showing agreement as to how the escrow money is to be disbursed, or until receipt of a court order (see below). Upon receipt of the written authorization or court order, the broker must disburse accordingly by no later than the end of the next business day.

Q. What must a managing broker do if escrow monies that are required to be deposited into the broker's escrow account are not tendered or do not clear?

A. Paragraph 1450.750(e) of the Escrow Rule requires that the managing broker notify all principals in writing.

Q. What does the prohibition against “commingling” mean?

A. Only escrow money related to real estate transactions and broker funds (funds the broker may deposit into the escrow account to avoid or to pay bank service charges) may be deposited into an escrow account. Mixing escrow money in an account with personal or business funds constitutes commingling. Great care should be taken to avoid commingling.

It is recommended that managing brokers use escrow accounts that have check writing ability to allow for direct disbursements from the escrow accounts. However, if the escrow account does not have check writing ability, the managing broker may transfer the escrow money to a business account with check writing ability for immediate disbursement from the business account (e.g. on the day of closing). This type of transfer, as long as the escrow money is immediately forwarded from the business account to the authorized recipient of the escrow money, does NOT constitute commingling.

Q. What are the escrow records that must be maintained?

A. Please refer to paragraph 1450.750(i) of the Escrow Rule for a description of the required escrow records. Managing brokers of branch offices should also refer to paragraph 1450.750(k). Great care should be taken to ensure that all of the required data is included in each required escrow record.

DPR has samples of a ledger card, journal, and reconciliation worksheet. Sample escrow records may be viewed at http://www.idfpr.com/dpr/re/EscrowRequirements-1005.pdf

Q. What are the obligations of the managing broker when there is a dispute between the principals to a transaction regarding an escrow deposit?

A. Paragraph 1450.750(h) of the Escrow Rule sets forth the options when there is a dispute. The options consist of:

(1) hold the money in the escrow account until the managing broker receives written direction from all principals to the transaction showing agreement as to disbursement;

(2) hold the money in the escrow account until the managing broker receives a court order providing for disbursement of the escrow money. Some courts in Illinois allow the managing broker to turn the escrow money over to the court during the tendency of the proceedings.

(3) hold the money in the escrow account until the funds are turned over to the State Treasurer. Note that the State Treasurer can only accept the funds pursuant to the Uniform Disposition of Unclaimed Property Act which requires that the escrow money be abandoned for five years. The term “abandoned” is satisfied if the managing broker is unable to contact a principal for five years or is unable to obtain the written direction from

all principals for five years.

Be aware - the “dispute” requirements trump any other escrow provision regarding escrow disbursement. For example, while Section 20-20(a)(17)of the Act provides that a managing broker may disburse escrow money prior to a closing pursuant to directions in any written contract signed by the principals, if there is any basis for the managing broker to believe that any principal disputes a disbursement pursuant to those directions, the managing broker must follow the options set forth in paragraph 1450.750(h) of the Escrow Rule.

A note on the nature of a “dispute” - be aware that the dispute must consist of a disagreement between the principals to the transaction rather than between a principal and principal's agent, associate, etc. For example, a husband and wife want to buy a home, but only the wife signs the contract as the buyer: If the contract does not close and the wife and the seller tender written direction to the broker releasing the earnest money to the seller, the broker must disburse accordingly - even if the broker knows that the husband disputes the release of the earnest money to the seller.

Q. Must a managing broker disburse escrow money upon receipt of written direction from the attorneys for the principals to the transaction, rather than from the principals themselves?

A. Yes. Section 20-20(a)(17)(ii) of the Act states that the written direction must come from the principals or their duly authorized agents. Accordingly, the managing broker must disburse the escrow money per written directions from the principals' attorneys (absent any evidence that a principal fired their attorney). If a principal subsequently objects, the principal will need to resolve the matter directly with their attorney.

Note - “duly authorized agent” does NOT include the principal's real estate agent.

Q. If the earnest money was tendered by someone other than the buyer identified on the real estate contract (for example, a relative who provides the earnest money as a gift to the buyer on the contract), if the earnest money is authorized to be returned to the buyer, to whom does the managing broker return the earnest money?

A. The buyer on the contract. This is true even if the earnest money was tendered via a check drawn by someone other than the buyer.

Q. I am closing my real estate office, so what should I do with my escrow account(s) that contain escrow money?

A. You have options:

You can close the escrow account(s) if you obtain written direction from all principals on each escrow deposit consenting to the identity of a replacement escrow agent. You must forward each escrow deposit according to the written direction

Or

You can keep the escrow account(s) open. You can continue to serve as an escrow agent by keeping the escrow money in the escrow account until closing or until you receive the necessary written authorizations. You must continue to comply with the escrow recordkeeping requirements and all other provisions of the Escrow Rule. However, you can become sponsored by another broker during this period (because a real estate license is not required to serve as escrow agent).

If the escrow money has been abandoned for at least five years, you may turn the escrow money over to the State Treasurer. Also see Section 20-20(a)(17)(B) which details when escrow monies can be considered abandoned and may be sent to the State Treasurer after six months has passed.

DISCIPLINARY ISSUES

Q. On what authority may DPR deny an application for a license?

A. The primary basis for DPR to deny a license fall under Section 20-20 of the Act.

In addition, every application for a leasing agent, broker and managing broker license contain a series of questions which may also provide basis to deny an application, including:

* Have you ever been convicted of any criminal offense in any state or federal court?

* Have you been denied a professional license or permit or the privilege of taking an examination?

* Have you ever had a professional license or permit disciplined in any way by any licensing authority in Illinois or any other state/jurisdiction?

* Have you ever been discharged other than honorable discharge from the armed services or from a city, county, state, or federal position?

* Are you more than 30 days in arrears on any court ordered child support payments?

* Are you in arrears on any state taxes due to the Illinois Department of Revenue?

* Are you in arrears on any student loan acquired through the Illinois Student Assistance Commission?

Answering in the affirmative to any of these questions may result in the transfer of the application to the DPR Legal Department for review. An affirmative answer will not automatically result in a denial of the license. The Legal Department may arrange for an informal meeting with the applicant and representatives of the Real Estate Administration and Disciplinary Board to discuss a resolution to the application. The Legal Department may also choose to issue a formal Intent to Deny Notice. All applicants have a right to a Formal Evidentiary Hearing on the application.

Note - Failing to answer all questions on the application honestly and accurately will likely result in the denial of the license.

Q. Can you obtain a real estate license if you have a criminal conviction?

A. The Act does authorize the denial of a license if the applicant has been convicted of a "felony" or "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." However, such a conviction does not automatically require denial of the license. In determining whether a license will be issued to such an applicant, factors to be considered include: (i) how many years prior to the date of the application was the conviction - if the conviction was more than 10 years prior, the conviction will be less of a deterrent to obtaining a license, (ii) was the conviction related to a financial crime - licensees are responsible for handling client funds and therefore financial crimes will be a greater deterrent to obtaining a license, (iii) was the conviction related to injury to a person - licensees spend substantial "person-to-person" time with the public and therefore such crimes will be a greater deterrent to obtaining a license. Also, in any case, the Division will seek denial of the license if the applicant has not completed serving a criminal sentence, including completing prison time and paying all fines.

If a criminal conviction occurs after an individual has already obtained a license, the Division may seek discipline of the license, and the same general factors apply.

License Applications and Renewal Applications contain questions regarding criminal convictions. It will be viewed as an extremely aggravating factor if it is shown that these questions are answered untruthfully, and in such a case the precedents show that the application will be denied or the license will be revoked.

Q. Does DPR prosecute the unlicensed practice of real estate?

A. Yes. DPR prosecutes individuals who practice real estate without a license. Under Section 20-10(a) of the Act, DPR has the authority to assess a civil fine up to $25,000 for each offense of unlicensed practice.

DPR also prosecutes licensed individuals who aid and abet the unlicensed practice of real estate.

Q. Under what authority may DPR discipline a real estate license?

A. A licensee may be subject to discipline for violating any provision of the Act or Rules. The primary basis for discipline are set forth in the subparagraphs that fall under Section 20-20 of the Act.

Q. How can I file a complaint against a real estate licensee?

A. A complaint form can be found at http://www.idfpr.com/banks/consumer/forms/RealEstateComplaint.pdf

You should ATTACH copies of ALL relevant documentation (ex. listing agreements, real estate sales contracts, copies of the front and back of earnest money checks, receipts, etc.).

Limited Jurisdiction - Be aware that a complaint must show that a provision of the Real Estate License Act or the Rules has been violated. In other words, DPR's regulatory power applies only to the conduct of LICENSEES WHO REPRESENT principals to a real estate transaction (buyers, sellers, tenants, and landlords). In some cases, DPR may regulate the conduct of licensees in their role as a principal in a real estate transaction.

DPR also regulates the unlicensed practice of real estate.

There are many aspects to a real estate transaction over which the Real Estate Division of DPR does not regulate. For example, the Division does NOT regulate the conduct of the principals themselves (including real estate development companies). Nor does the Division regulate the conduct of other professionals involved in real estate transactions (attorneys, mortgage brokers, etc.). Complaints or questions regarding these professionals should be made with their respective regulatory authority.

Also, the Division does not resolve commission disputes either between a licensee and a client or between two licensees. These commission disputes should be resolved independently, or through the courts, or in the case of a dispute between two licensees through the arbitration procedures available through Realtor Associations.

The complaint letter with the attachments should be mailed to:

Illinois Department of Financial and Professional Regulation
Division of Professional Regulation
Attn: Karen Konstant
100 West Randolph Street, 9th Floor
Chicago, IL 60601