CHAPTER 13

REAL ESTATE BROKERAGE OPERATIONS & AGREEMENTS

REAL ESTATE BROKERAGE OPERATIONS

A brokerage business may take many forms. It may be a sole proprietorship (a single-owner company), a corporation, or a partnership. The office may be independent or part of a regional or national franchise. The business may consist of a single office or multiple branches. The brokerage office may be located in a downtown high rise, a suburban shopping center, or the sponsoring broker's home. A typical real estate brokerage may specialize in one kind of transaction or service, or it may offer a variety of services.

No matter what form it takes, a real estate brokerage has the same demands, expenses, and rewards as any other small business. A real estate broker faces many of the same challenges as an entrepreneur in any other industry. In addition to mastering the complexities of real estate transactions, the **real estate broker must be able to handle the day-to-day details of running a business and to set effective policies for every aspect of the brokerage operation.** This includes maintaining space and equipment, hiring employees and real estate licensees, determining compensation, directing staff and sales activities, and implementing procedures to follow in carrying out agency duties. Each state's real estate license laws and regulations establish the business activities and methods of doing business that are permitted.

In Illinois, <u>every real estate office must have a sponsoring or managing broker of record,</u> neither of which is required to be the owner of the business. After April 30, 2012, all licensees acting as a managing broker or self-sponsored broker must have a managing broker's license or acquire one within 90 days after being named managing broker.

Sponsoring brokers
By Section 1450.100 definition, **the sponsoring broker is the <u>entity</u> holding the company real estate license,** whether the entity is an **<u>individual</u>** who operates as a sole proprietorship, **<u>partnership,</u> limited <u>liability company, corporation</u> or registered <u>limited liability partnership.</u>**

- A sponsoring broker may be **self-sponsored.**
- There may be only one sponsoring broker for any one real estate company.
- A sponsoring broker may authorize a managing broker to issue sponsor cards in the name of the sponsoring broker.

Likewise, the sponsoring broker may assign escrow account bookkeeping duties to a qualified company employee or independent contractor and may delegate authorized individuals to sign on behalf of the sponsoring broker. The sponsoring broker may authorize company personnel to sign contracts entered into by the sponsoring broker according to the sponsoring broker's company policy. Even though the sponsoring broker may delegate authority, ultimately, the sponsoring broker is responsible for all activities.

Managing brokers

A **managing broker has taken additional courses and received a managing broker license.** A **sponsoring broker may also be the managing broker** of an office or may appoint a managing broker to serve as the managing broker of several branch offices, or **different managing brokers may be responsible for individual branch offices.** In any event, the **managing broker is responsible for the supervision of all real estate activities performed by affiliated licensees.**

Additionally, each **managing broker:**

- **is responsible for record keeping** as mandated by Rule 1450.180,
- **maintenance of the employment agreements** entered into with each sponsored licensee (Rule 1450.160), and
- if **escrow monies** are maintained, the managing broker must comply with each part of Rule 1450.155.

Sponsored licensees

Article 5, Section 5-26 of the Real Estate License Act of 2000 states that "no new salesperson licenses shall be issued after April 30, 2011, and all existing salesperson licenses shall terminate on May 1, 2012." After April 30, 2012, only two types of licenses will be issued: **broker and managing broker. Both brokers and managing brokers can work under the supervision of a sponsoring broker.** A sponsoring broker may assign supervisory responsibilities to an affiliated managing broker.

Independent contractor versus employee Every sponsoring broker who hires licensees or has an **independent contractor relationship** with a licensee must have a ***written employment agreement*** with each licensee. The agreement defines the employment or independent contractor relationship, including supervision, duties, compensation, and termination. The employment agreement must be dated and signed by both parties. Termination is not intended to indicate that a specific termination date is required but rather allows for negotiation as to the term of the employment agreement. An executed copy of the employment agreement must be provided to the sponsored licensees.

Independent Contractors:

- No Benefits
- No withholding of taxes
- What not how
    - Do not work employer-determined hours
    - Must be self-starters
    - Decide when and how to do their work
    - Paid only Commission; in some cases expenses are taken out of commission

Employees:

- Benefits
- Withholding of taxes
- How not What
    - Required work hours
    - Required attendance at sales meeting
    - Required training

A sponsoring broker's relationship with a sponsored licensee who is an **independent contractor** is very different.

A licensee must meet three specific criteria set out by the IRS in the Internal Revenue Code to be treated as an independent contractor for federal tax purposes, the following criteria must be met:

- Individual must hold an active real estate license
- Individual must agree in writing **not** to be treated as an employee for federal tax purposes; and
- At least 90 percent of the individual's income must be derived from sales rather than hours worked.

An employment agreement between the sponsoring broker and managing broker is also required even if the managing broker is the sole owner in the sponsoring brokerage (regardless of the business type: LLC, LLP, and so on).

A sponsoring broker's relationship with a licensee who is an independent contractor can be very different from the relationship with an employee. As the name implies, independent contractors usually have a more flexible work schedule than that of employees. A broker may determine what the independent contractors do (especially because the contractors represent the broker as the broker's agents) but cannot dictate how they do it. As such, a company can expect independent contractors to comply with its policies and procedures. An independent contractor's income is typically commission-based. Independent contractors are responsible for paying their own income taxes and Social Security taxes.

Teams of Brokers

Illinois real estate laws do not currently define the <u>concept of a team,</u> although the laws that define activities that require a real estate license in Illinois apply to them.

A licensed team member must have a **written employment contract/independent contractor agreement with the sponsoring broker.**

Unlicensed team members are regular employees. Either the sponsoring broker or a licensed team member might compensate them. The sponsoring broker will want to ensure that proper withholding requirements are met if a team member is compensating the regular employee.

Similarly, the use of an unlicensed personal assistant, whether or not a member of a team, must comply with the laws that determine who is an independent contractor. **By definition, the unlicensed personal assistant does not meet the safe harbor provisions of an independent contractor and would likely need to be paid as a regular employee.**

Managing Broker Responsibilities

The managing broker has **supervisory responsibilities for all licensees in one or, in the case of a multi office company, more than one office appointed by the sponsoring broker.** Sometimes, in the case of a sole proprietorship, the managing broker and the sponsoring broker are one and the same. If they are not the same, the sponsoring broker can delegate the issuance of sponsor cards to the managing broker.

Maintenance of licenses

Sponsoring brokers are required to notify IDFPR in writing of the names and license numbers of all managing brokers employed by the sponsoring broker and the office or branch offices for which each managing broker is responsible. The managing broker must have a current active managing broker's license.

Unexpected loss of managing broker

If a sponsoring and/or managing broker dies or a managing broker leaves a branch office unexpectedly, a request may be made **to 1DFPR within 15 days of this development to grant an extension** for continued office operations. The **extension may be granted for up to 60 days.** In the case of an owner's death, a representative of the estate could operate the office for up to 60 days. In most cases of loss of a sponsoring or managing broker, a licensed managing broker assumes the management of the office.

Death of self-sponsored broker

IDFPR will honor the order of a court of competent jurisdiction appointing a legal representative for the sole purpose of closing out the affairs of a deceased or disabled broker who was a sole proprietor. The court order is honored until the real estate brokerage operation is closed but does not allow the brokerage to actively engage in the brokerage business.

Renewals

When a managing broker receives renewal application form from IDFPR, the managing/sponsoring broker <u>must notify the licensee of the receipt in person within seven days</u> or <u>by registered or certified mail or some other form of signature delivery within ten days.</u> The notice will inform the licensee that any **undeliverable renewal form will be returned to IDFPR.** When a managing broker receives a renewal application form from IDFPR for a licensee not supervised or sponsored by the managing or sponsoring broker, the renewal form must be returned immediately to IDFPR.

Change of business address

All managing brokers must notify IDFPR on business letterhead of any change of business address for any of the offices they manage **<u>within 24 hours of any change.</u>** Change of address filing is required for all offices and branch offices.

Advertising

Effective May **1,** 2012, **all managing broker licensees who are** named as managing brokers with the Division **must indicate this status on all advertising that includes their name.** Those who **hold the managing broker license, but are not named as managing broker with the Division, are not required to include their names. They may not represent or indicate that they are managing brokers, <u>only brokers</u> affiliated with the sponsoring broker.**

Supervision
The Managing Broker supervises all brokers and also unlicensed personal assistants working in those offices managed by the managing broker. These supervisory duties include the following:

- Implementation of office policies and procedures established by the sponsoring broker
- Training of licensees or unlicensed assistants
- Assisting licensees as necessary in real estate transactions
- Supervising escrow accounts over which the sponsoring broker has delegated responsibility to the managing broker in order to ensure compliance with the escrow account provisions of the Act
- Supervising all advertising of any service for which a license is required
- Familiarizing sponsored licensees with the requirements of federal and state laws relating to the practice of real estate
- Compliance with the rules for licensees and offices under his supervision

The sponsoring broker is ultimately responsible for the actions of **all** sponsored licensees including those of managing brokers as well as proper maintenance of escrow funds.

Termination of Sponsorship
If a broker, leasing agent, or licensed personal assistant **terminates employment** with the sponsoring broker for any reason, the licensee must obtain his license from the sponsoring broker, or managing broker, if so designated by the sponsoring broker.

- The sponsoring broker signs and dates the license, which indicates that the relationship has been terminated.
- The sponsoring broker must send the Illinois Department of Financial and Professional Regulation (IDFPR) a copy of the terminated license **within two days** of the termination or be subject to discipline for failure to do so.
- The signed license automatically becomes inoperative, as does the licensee's ability to practice real estate, until a new sponsorship is designated.

If the licensee is simply changing brokers:

- The new sponsoring broker must immediately complete a sponsor card (45-day permit) for the licensee to carry until a new license and pocket card (with the new firm's name indicated as sponsor) arrives.
- The sponsoring broker prepares and sends a duplicate sponsor card to IDFPR for this transition period,
- The sponsoring broker also sends the original endorsed license from the previous sponsoring broker **within 24 hours of sponsorship along** with the required fee.

Planning
Planning is the most fundamental management activity. **Almost every business decision is guided by a business plan.** Planning takes time and money; however, the resources devoted to planning are relatively small in comparison to the benefits of a sound plan that is followed and reviewed often. It is useful for building credibility with others outside your company. For the plan to be effective, it must be flexible and measurable, but, most important, it must be achievable.

The development of the business plan begins with creating a **mission statement.** Everything else **in** the business plan supports the mission statement.

The mission statement identifies **specific objectives or goals** for accomplishing the mission. These are the end results to be achieved. Goals have several characteristics. They must :

- be specific or identifiable,
- be measurable,
- be attainable, and
- have beginning and ending dates.

Each of the goals is supported by **strategies** that prescribe the methodology used in accomplishing that specific goal. **Strategies include things needing to be done to overcome any obstacles or enhancement of resources.**

Preparing a Policy and Procedures Manual

A **policy and procedures manual** should be written and should serve as a risk management tool for the company.

Policies and procedures are extremely beneficial for the following reasons:

- Establishing a clear understanding of the relationship between broker and sponsored licensees as well as administrative functions versus staff functions
- Working to resolve conflicts before they come up
- Building confidence that everyone knows what the rules are and how the company is supposed to operate
- Giving guidance for many of the situations licensees face on a day-to-day basis

Keep in mind that the **policy and procedures manual is not a sales training manual..**

Safety Concerns: Appointments and Showings

Many real estate firms have responded to the violence by **incorporating safety procedures into their procedure manual** as a way to help keep their agents safe. Licensees can help minimize risks by implementing the following suggestions:

- Ask the customer for work, home, and cell phone numbers and a physical address. Verify the information by calling the customer at one or more of the numbers.
- Give someone in your office an itinerary of properties you plan to show and then check back in often by cell phone.
- Do not meet unknown customers at a property. Require that they meet you at your office. Make sure someone writes down their license plate number and the type of car they are driving.
- Never get into a car with someone you don't know. Use your vehicle for showings or ask your customer to follow you in another car.
- Program your cell phone to dial 911 at the touch of a button.
- Never work at a public open house by yourself.
- Do not show vacant properties by yourself unless you know your customers, and never show properties after dark.
- Keep pepper spray or Mace® handy.
- Always follow the customers into the property and let them enter while you stay by the door.

- Pay attention to exits.
- Ask someone else to accompany you to show or list property if you feel uncomfortable about the people with whom you are working.
- Don't assume that women are safer customers than men. Women are as just as capable of armed robbery and sometimes work with a partner who waits at the house for the two of you to arrive.

Business Planning
To stay on top of changes in the real estate industry and practice, as well as keeping up with emerging technologies, brokers should review and update policy manuals regularly.

The Real Estate License Act of 2000 Section 10-40 requires that "every brokerage company or entity, other than a sole proprietorship with no other sponsored licensees, shall adopt a company or office policy dealing with topics" such as:

- **the agency policy of the entity,**
- **fair housing, nondiscrimination, and harassment,**
- **confidentiality of client information, and**
- **advertising.**

Errors and Omissions Insurance
Sponsoring or managing brokers have an array of issues and options to consider when deciding to obtain an **errors and omissions insurance (E&O) policy.** In general, they need to determine what level of protection to seek in the policy and how to tailor the coverage to their sponsoring/managing practice. Because insurance policies and practices vary from company to company, the sponsoring or managing broker must be careful to review any specific policy intended for the office and should discuss coverage with more than one insurance provider before obtaining coverage.

The classes of services performed by licensees shape the types of liability claims most often filed against real estate licensees. Real estate licensees may represent buyers, sellers, lessors, and lessees. They coordinate a variety of services, such as insurance, title, loan origination, home inspection, and legal review of contracts. In addition, they often function as independent professionals managing their own offices, advertising campaigns, and other related business functions. In providing these services, licensees become vulnerable to potential liabilities.

Liability claims can also arise from a number of related services provided occasionally for a separate fee basis or are incidental to the transaction. These include property appraisal, property management, auctioneering, consulting, and handling earnest monies or security deposits.

The most common errors and omissions claims against real estate licensees include the following:

- Mishandling monies (earnest money or security deposits) during transactions
- Making misstatements about material facts regarding the property, such as the presence of lead-based paint, asbestos, or radon
- Misrepresenting the property dimensions or failure to measure property dimensions accurately
- Disclosure of confidential information without authorization from the client
- Undisclosed dual agency
- Failure to identify the real or personal property correctly in the contract

- Mistakes regarding the property tax identification number (PIN) for the subject property or failure to provide an adequate legal description of the property
- Misrepresentations about financing arrangements
- Failure to disclose a financial interest in the customer who is negotiating with the client
- Failure to disclose financial relationships compensating the licensee in the transaction
- Violations of the federal Fair Housing Act and the Illinois Human Rights Act
- Breaching the terms of the listing or buyer agreement or the property management agreement

Policy Protection and Covered Services

A real estate licensee needs insurance protection from claims made by clients, customers, and consumers related to the provision of real estate activities, referred to as professional services by the insurance industry. The sponsoring/managing broker must determine whether the errors and omissions policy adequately addresses what :

- services are covered,
- person(s) is(are) covered,
- damages are covered,
- defenses are covered, and
- territory is covered.

Real estate licensees should know whether the services they provide constitute professional services and are, thus, insurable under the policy. They should also be aware that professional services are defined differently in each insurer's policy.

Professional real estate services typically refer to services that require a person to have an Illinois real estate license in order to perform those services on behalf of clients, customers, and consumers. As a prerequisite for coverage, the **licensee must possess all valid necessary licenses or certifications at the time of the act or omission giving rise to the claim and must be acting within the scope of the employment agreement,** either written or oral. Sometimes insurance companies will include coverage for ancillary professional real estate services rendered by the insured for others, such as a notary public's duties.

Covered Defense Costs

Errors and omission policies may sometimes pay the costs involved in investigating, defending, and settling claims. These costs primarily involve attorney's fees but also include related expenses required by the claim settlement process. The sponsoring broker should determine whether defense costs are covered by the policy or in addition to the policy limits. If defense costs are covered within the policy limits, then as the legal fees increase, the limits of the coverage of the policy are proportionately reduced.

Excluded Coverage

Most **E&O** policies **exclude certain ancillary real estate related activities.** These exclusions include a licensee's involvement in areas that do not require an Illinois real estate license, such as property development and insurance agency operations.

Depending on the insurer, coverage for such services may be bought back for an additional premium, if an insured's operations require such coverage. A real estate licensee who wants coverage for such services may obtain it by paying an additional premium or, depending on the limitations of the policy, by obtaining a separate policy. **The sponsoring or managing broker should also be aware that violations of fair housing laws, some civil sanctions, and criminal act are not covered by E&O policies.** Some policies will cover the legal defense for certain issues, such as discrimination, but not the damages awarded.

Other possible exclusions from coverage under E&O policies include the following:

- Bankruptcy of the insured
- Violation of securities law
- Wrongful termination
- Employee Retirement Income Security Act (ERISA) violations
- Claims by or against related entities
- Workers' compensation claims
- Claims arising from usage of vehicles, aircraft and watercraft
- Environmental issues, such as mold and asbestos
- Real estate owned by the insured
- Commission disputes

Covered Persons

E&O policies are intended to **cover those licensees whose licenses are held by the sponsoring broker, as well as office staff and unlicensed assistants in an insured real estate broker's office who may be involved in a transaction—even if their function does not involve professional activities.** Where the sponsoring broker is a business entity, such as a partnership, corporation, or limited liability company (LLC), these policies can include coverage for past and present partners, officers, directors, and regular employees.

Independent Contractors

Most real estate offices that sell residential real estate will sponsor licensees who are treated as independent contractors. Therefore, it is **important that the E&O policies cover those independent contractors.** The sponsoring/managing broker must keep in mind that unlicensed assistants cannot be treated as independent contractors because it is a violation of federal tax law. Therefore, the sponsoring/managing broker must be certain that the E&O policy is written to cover unlicensed assistants. A sponsoring broker must also address liability arising from predecessor firm issues.

Because there can be coverage gaps between *E&O* policies and commercial general liability (CGL) policies, the sponsoring/managing broker should ensure that excluded coverage for bodily injury, property damage, and personal injury are covered by CGL policies or by special endorsement. Potential gap coverage between E&O policies and CGL policies should be discussed by the sponsoring broker with the insurer to best customize the coverage to the brokerage firm.

Covered Territory

Most E&O policies cover claims resulting from anywhere in the world, provided the claim and concomitant litigation is brought in the United States, its territories or possessions, or Canada. Actions conducted outside the United States will likely require additional coverage or a separate policy. The **licensee should be aware that use of Web sites with their worldwide exposure might lead to claims and litigation outside the United States; a licensee would need a policy with unrestricted territorial coverage to address this issue.**

Other Policy Issues

The sponsoring or managing broker should be aware of additional issues that might affect E&O coverage. The insurance claims process varies from insurer to insurer. Therefore, licensees need to understand the procedures of their provider. Some policy issues to be aware of include the following:

- Most E&O policies have **liability caps** that set a payment limit per claim and an aggregate payment limit; the licensee should obtain coverage that matches the licensee's liability exposure.
- There are two basic types of deductible provisions. One type of **deductible applies to each error committed,** and the **other type applies to each claim filed.**
- **Most E&O policies have provisions that limit payment to the amount offered in a settlement offer.**
- **All E&O policies have some additional conditions that are essential elements of the policy's coverage.**
- **Problems may arise when one insured sues another insured.**
- **Although most insurers limit coverage to the inception date of the policy, some insurers will consider providing first-time insurance buyers coverage for prior acts (for an additional premium).**

It is the duty of the sponsoring broker to determine what level of E&.0 insurance is necessary to meet the needs of the brokerage office.

Personal Assistants

A **personal assistant,** also known as a ***real estate assistant*** **or** ***professional assistant,*** is often a **combination office manager, marketer, organizer, and facilitator with** a fundamental understanding of the real estate industry. While an **assistant does not need to have a real estate license, she is allowed to perform many more duties if holding a real estate license.** ***(In Illinois, there is no specific assistant's license, so licensed Personal Assistants have to obtain a Broker's License.)***

An **unlicensed assistant's duties might include:**

- clerical functions,
- secretarial functions,
- answering phones.

A licensed assistant can:

- set up and host open houses,
- deal more extensively with clients,
- actively show houses,
- assist in all aspects of a real estate transaction.

In other words, a licensed assistant can perform any activity that any licensee is permitted to perform.

Section 1450.165 of the administrative rules specifies the permitted activities in which an unlicensed real estate assistant may engage.

The Real Estate License Act of 2000 requires that *licensed personal assistants* must *have an employment agreement with the sponsoring broker* of the firm in which they are working, even though they are, in practice, working for an affiliate licensee. The sponsoring broker must pay licensed personal assistants.

Sponsoring Broker Compensation - Commission
The sponsoring broker's compensation is **specified in the contract with the client.**

The amount of a broker's commission is **negotiable in every case.** Even subtle **attempts to impose uniform commission rates are clearly a violation of antitrust laws.** A sponsoring broker, however, may set the minimum commission rate acceptable for his own company.

Commissions

Only a licensed managing or sponsoring broker may collect a commission in Illinois.

The managing or sponsoring broker then may share it with any licensees who are directly involved in or responsible for a given transaction.

To collect a commission on a real estate transaction, the agent must have been "hired" by way of an agreement in which the principal (seller or buyer) agreed to pay a specified commission for services.

The percentage of sales price or dollar amount of commission must have been expressed clearly in the agreement.

If another real estate office "brought in" the buyer, the concept of cooperative commission allows the seller *broker to* pay the *buyer* broker the amount of *cooperative commission* advertised in advance on the multiple listing service (MLS) listing.

This commission check is issued by the listing broker's office to his own office and also to the buyer broker's office.

Checks then are cut by each of these sponsoring brokers to any respective salespersons (or other brokers working within the firm) who were directly involved in the transaction.

A commission is usually considered earned when the work for which the real estate broker was hired has been accomplished - seller and buyer have signed a sales contract.

Although commissions are earned when the sales contract is signed, they are usually paid at closing.

Most sales commissions are payable when the sale is consummated by *delivery of the seller's deed.* This provision is generally included in the listing agreement. When the sales or listing agreement specifies no time for the payment of the broker's commission, the commission is usually earned when:

- a completed sales contract has been executed by a ready, willing, and able buyer,
- the contract has been accepted and executed by the seller, and

- copies of the contract are in possession by all parties.

To be entitled to a sales commission, an individual
- must be a licensed real estate broker,
- the procuring cause of the sale, and
- employed by the buyer or the seller under a valid contract.

To be considered the **procuring cause of a sale,** the broker must have started or **caused a chain of events that resulted in the sale.**

A broker who causes or **completes such an action without a contract** or without having been promised payment **is a *volunteer* and may not legally claim compensation.**

A ready, willing, and able buyer is one who :
- *is prepared to buy on the seller's terms*
- *ready to take positive steps toward consummation of the transaction.*

Once a seller accepts an offer from a ready, willing, and able buyer, the real estate broker is entitled to a commission.

If the buyer or seller breach the contract, the real estate broker may still be entitled to a commission:
- if the seller had a change of mind and refused to sell,
- has a spouse who refused to sign the deed,
- had a title with uncorrected defects,
- committed fraud with respect to the transaction,
- was unable to deliver possession within a reasonable time,
- insisted on terms not in the listing (e.g., the right to restrict the use of the property),
- had a mutual agreement with the buyer to cancel the transaction.

In Illinois, the closing of the sale is the usual proof in a court of law that the broker has produced a buyer and earned a commission.

Sales Force Compensation

The **amount of compensation a licensee receives** from a sale is **set by mutual agreement between the affiliated licensees and their sponsoring brokers.** This **compensation agreement is included in the employment agreement.** Some sponsoring brokers require that **licensees pay all or part of the expenses of advertising listed properties;** this may be subtracted from commissions by agreement or be billed separately to the licensee.

In many states, including Illinois, it is illegal for a sponsoring broker to pay a commission to anyone *other than:*
- **a licensees under that same sponsoring broker; or**
- **another firm's sponsoring broker (cooperative commission) who then pays his own sponsored licensees involved.**

Fees, commissions, or other compensation cannot be paid to unlicensed persons for services that legally require a real estate license. "Other compensation" includes certain items of personal property, such as a new television, or other premiums, such as vacations, given to non-licensed persons to perhaps acquire names of "leads." This is not to be confused with **referral fees** paid between managing or sponsoring brokers for "leads," which are legal as long as the individuals are licensed.

Sponsoring brokers may pay their sponsored licensees their commissions directly.

Under the Act, a licensee may form a *solely owned corporation* for the purpose of receiving compensation. That one-shareholder corporation cannot be licensed by the IDFPR. **However, the licensee must file a copy of the certificate of incorporation issued by the Secretary of State with IDFPR.** The corporation **can receive compensation earned by that licensee only,** both from real estate and non-real estate related activities. The **corporation cannot be licensed** and **cannot be used by the licensee to perform real estate activities, sponsor or employ other licensees, or advertise itself to the public in the corporation's name.**

Commissions and disclosures The sponsoring broker's compensation and policy with cooperating brokers who represent other parties in a transaction must always be disclosed. If there is compensation from **two parties** to a transaction from both the buyer and the seller **that needs to be disclosed in writing as well.**

If a licensee refers the client to another source for services related to the transaction and the licensee has an interest greater than 1 percent in that source, it must be disclosed. In addition, a licensee must disclose to a client all sources of compensation related to the transaction received by the licensee from a third party.

Commission Structures

Commission "splits" earned by sponsored licensees vary. Some firms have adopted a 100 percent commission plan. Sponsored licensees in these offices pay a monthly service charge or desk fee to their sponsoring brokers to cover the costs of office space, telephones, and supervision in return for keeping 100 percent of the commissions from the sales they negotiate. The 100 percent commission sponsored licensee pays all of his own expenses.

Other companies offer graduated commission splits based on a sponsored licensee's achieving specified production goals. No matter how the licensee's compensation package is structured, *only the sponsoring broker can pay it.*

In **cooperating transactions** (usually stated as "co-op: X% on the MLS sheet), the **commission is paid by the sponsoring broker of the "seller side" to the sponsoring broker of the "buyer side".**

If a sponsored licensee had earned a commission but his employment had been terminated prior to the payment of the commission, the former sponsoring broker may pay the commission directly to the former associate, even if that former associate has a new sponsoring broker.

Legal Rights and Obligations of the Seller and Buyer

As each contract is prepared for signature during a real estate transaction, the licensee should advise the parties of the desirability of securing legal counsel to protect their interests. **Only *a lawyer can offer legal advice.* Licensees are prohibited from practicing law.**

Technology and Brokerage of the Future

Social networking sites such as Facebook, LinkedIn, YouTube, and Twitter are becoming increasingly useful in business and the real estate industry is no different.

Recognizing the value and pervasiveness of these sites, sponsoring brokers should set out clear guidelines in policy manuals and brokerage agreements to permit and guide the use of these technologies by licensees.

Sponsoring brokers must also learn about the potential risks and liabilities of these sites for instance, recognizing that communication through these sites establishes a permanent record of sorts and should incorporate this understanding into the policies and guidelines they establish for licensees on the use of social networking in their businesses.

Antitrust violations include:

- price-fixing,
- group boycotting,
- allocation of customers,
- allocation of markets, and
- tie-in agreements (tying).

Price-Fixing

Price-fixing is the **practice of setting prices for products or services rather than letting competition in the open market establish those prices. In real estate, price-fixing occurs when competing real estate companies agree to set standard sales commissions, fees, or management rates or if they attempt illegal tying arrangements.**

Price-fixing is illegal. Real estate companies must **independently determine any minimum commission rates or minimum fees.** These decisions must be based on a company's business judgment and revenue requirements without input from other real estate companies.

MLSs, Boards of REALTORS®, and other professional organizations may not set fees or commission splits. They cannot deny membership to licensees based on the fees the licensees charge.

The challenge for real estate licensees is to avoid even the impression of price-fixing. Hinting to prospective clients that there is a "going rate" of commission or a "normal" fee also implies that rates are, in fact, standardized, which must be avoided. The licensee must make it clear to clients that any stated minimum is **only the firm's minimum.** The specific commission is negotiable in a fair market.

Group Boycotting

Group boycotting occurs when two or more businesses conspire against another business or agree to **withhold their patronage to reduce competition.** Group boycotting is illegal under the antitrust laws.

Allocation of Customers or Markets
Allocation of customers or markets involves an agreement among real estate companies **to divide their markets and refrain from competing for each other's business.** Allocations may be made on a geographic basis, with real estate companies agreeing to specific territories within which they will operate exclusively. The division also may occur by markets, such as by price range or category of housing. These agreements result in reduced competition.

Tie-in Agreements
Tie-in agreements, also known as tying *agreements,* are **agreements to sell one product only if the buyer purchases another product as well.** The sale of the first (desired) product is "tied" to the purchase of a second, less desirable, product.

Penalties
The penalties for violating antitrust laws are severe. For instance, under the *Sherman Antitrust* Act, people who fix prices or allocate markets may be subject to a maximum $1 million fine and up to ten years in prison. For corporations, the penalty may be as high as $100 million.

OTHER CONSUMER PROTECTION MEASURES

National Do Not Call Registry
In 2003, the Federal Communications Commission (FCC) **established the National Do Not Call Registry.** The registry is a **list of phone numbers of consumers who do not want to be contacted by commercial telemarketers.** It is managed by the FTC and is enforced by the FTC, the FCC, and **state officials.** The registry applies to any plan, program, or campaign to sell goods or services through interstate phone calls.

The registry does not limit calls by:

- political organizations,
- charities,
- collection agencies
- telephone surveyors.

Fortunately, the law establishes specific guidelines for when licensees may contact consumers, even when they are listed in the National Do Not Call Registry.

Licensees are permitted to call consumers with whom they have an established business relationship up to 18 months following the consumer's last payment, purchase, or delivery. With consumers on the registry who have **submitted applications or made inquiries,** licensees are allowed additional contact for up to three months after the fact.

Accessing the National Do Not Call Registry
Sellers, telemarketers, and other service providers **must register to access the registry.** The do-not-call registry may not be used for any purpose other than preventing telemarketing calls to the telephone numbers on the registry.

Regulators say that **brokerage companies must have a do-not-call policy even if they do not engage in cold calling.** A company that is a seller or telemarketer could be in violation of the law for placing any telemarketing calls (even to numbers not on the do-not-call registry) if the company does not have a **policy for access to the registry.** Violators may be subject to fines for each call placed.

To successfully avoid penalties ("safe harbor"), the seller or telemarketer must demonstrate the following:

- It has written procedures to comply with the do-not-call requirements.
- It trains its personnel in those procedures.
- It monitors and enforces compliance with these procedures.
- It maintains a company-specific list of telephone numbers it may not call.
- It accesses the national registry every 31 days before calling any consumer and maintains records documenting this process.
- It must show that any call made in violation of the do-not-call rules was the result of an error.

The best source of information about complying with the do-not-call rules is the FTC's Web sites: *www.donotcall.gov* and *www.ftc.gov.* They include business information about the registry.

The CAN-SPAM Act

The CAN-SPAM Act of 2003 (Controlling the Assault of Non-Solicited Pornography and Marketing Act) establishes requirements:

- for sending commercial e-mail,
- spells out penalties for those that don't comply, not just "spammers",
- gives consumers the right to have e-mailers stop e-mailing them.

The act **does not apply to "transactional or relationship content,"** that is, those messages meant to facilitate or alter existing customer agreements (for instance, by giving a customer additional information about an existing agreement or conducting business as part of an existing agreement); however, these e-mails must not explicitly or implicitly operate for the purposes of advertising or promotion, as this would be in violation of the law.

Briefly, the CAN-SPAM Act requires the following:

- *False* or *misleading header information is banned.* An e-mail's "From," "To," and routing information- including the original domain name and e-mail address must be accurate and identify the person who initiated the e-mail.
- *Deceptive subject lines are prohibited.* The subject line cannot mislead the recipient about the contents or subject matter of the message.
- E-mail *recipients* must have an opt-out method. You must provide a return e-mail address or another Internet-based response mechanism that allows a recipient to ask you not to send future e-mail messages to that e-mail address and requests must be honored.

Each violation is subject to fines. Deceptive commercial e-mails are also subject to laws banning false or misleading advertising. Additional fines are provided for commercial e-mailers who violate the rules and do any of the following:

- "Harvest" e-mail addresses from Web sites or Web services that have published a notice prohibiting the transfer of e-mail addresses for the purpose of sending e-mail
- Generate e-mail addresses using a "dictionary attack" combining names, letters, or numbers into multiple permutations
- Use scripts or other automated ways to register for multiple e-mail or user accounts to send commercial e-mail
- Relay e-mails through a computer or network without permission for example, taking advantage of open relays or open proxies without notification.

Licensees in Illinois should be aware that they are subject to additional regulation in their use of commercial e-mail, per the Illinois Electronic Mail Act. The use of e-mail communication and Web advertising is also restricted as laid out in "Rules" Section 1450.145.

The Junk Fax Prevention Act

The Junk Fax Prevention Act of 2005 does **not legalize unsolicited fax advertisements** or solicitations but does **allow for an established business relationship exception.** As a general rule, a real estate licensee could not legally send an unsolicited commercial fax message without express written consent or without an established business relationship with the recipient.

Following are the provisions of the fax law:

Sets out guidelines for what constitutes an established business relationship (EBR) and reaffirms that EBR when customers pose exceptions to the ban on unsolicited commercial faxes:

- Does not place time limitations on EBRs
- Requires companies to offer a free method by which fax recipients may opt out of receiving future fax communications. The opt-out method must be available at any time of day, every day, and the opt-out information must be made available on the first page of the fax.
- Requires businesses to receive customer's written or oral consent to send fax advertising, or in the case of new business relationships, to send only to those customers who have provided their fax numbers willingly to some other source with permission for such use by other parties (including the sender)
- Permits businesses to send faxes to numbers that they had access to via an EBR prior to July 9, 2005, when the act became law.
- Requires businesses to receive direct consent from EBR customers for whom they did not already have fax numbers prior to the effective date of the legislation, or to obtain these numbers via some other source to which the EBR customer willingly provided them with permission for such use by other parties (including the sender)

STATE LICENSE LAWS

All 50 states, the District of Columbia, and all Canadian provinces **license and regulate the activities of real estate professionals. While the laws share a common purpose, the details vary from state to state.**

Real estate license laws have been enacted to protect *the public* by ensuring a standard of competence and professionalism in the real estate industry. The laws achieve this goal by:

- **establishing** basic requirements for obtaining a real estate license and, in many cases, requiring continuing education to keep a license,
- **defining** which activities require licensing,
- **describing** the acceptable standards of conduct and practice for licensees, and
- **enforcing** those standards through a disciplinary system.

The purpose of these laws is not merely to regulate the real estate industry. Their main objective is to **make sure that the rights of purchasers, sellers, tenants, and owners are protected from unscrupulous or sloppy practices.** However, by establishing minimum levels of competency and limits of permitted behavior, laws can make the marketplace safer and more honest.

BROKERAGE AGREEMENTS

Brokerage agreements are employment *contracts* for the personal professional services of the sponsoring broker, not for the transfer of real estate. The various types of brokerage agreements establish the basic relationship between the parties and provide different levels of rights and responsibilities for the sponsoring broker. Perhaps most important, brokerage agreements address the essential questions of exclusivity and compensation.

A listing agreement is an employment contract between a sponsoring broker and a seller; a buyer representation agreement is an employment contract as well because it establishes the rights and responsibilities of the sponsoring broker as agent for the buyer.

A management contract sets up the relationship between the sponsoring broker and the owner of a rental property.

In Illinois, per Section 1450.195, a brokerage agreement is either a written or oral agreement between a sponsoring broker and a client for licensed real estate activities to be provided to a client 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 sponsoring broker and the sponsoring broker's client depending upon the content of the brokerage agreement. All exclusive brokerage agreements must be in writing.

Also in Illinois, each broker agreement must clearly state that it is illegal for either the owner or

the sponsoring broker to refuse to display or sell to any person because of one's membership in a protected class (e.g., race, color, religion, national origin, sex, ancestry, age, marital status, physical or mental handicap, familial status, or any other class protected by Article 3 of the Illinois Human Rights Act). Employment contracts with buyers and sellers create special agency relationships between the principal/client (the person who is being represented by the sponsoring broker) and the sponsoring broker (the agent). As agent, the sponsoring broker is authorized to represent the principal/client to third parties.

Under both the law of agency and most state license laws, only a sponsoring broker can act as the legal agent to list, sell, rent, or purchase another person's real estate and provide other services to a principal.

All sponsored licensees of a sponsoring broker may perform these acts in the name of and under the supervision of the sponsoring broker only (Designated Buyer or Seller Agent).

TYPES OF LISTING AGREEMENTS

Exclusive-right-to-sell listing agreements

In an exclusive-right-to-sell listing, **one broker is appointed as the seller's sole agent.** The listing broker is given the exclusive right, or *authorization,* to market the seller's property. **If the property is sold while the listing is in effect, the seller must pay the broker a commission *regardless of who sells the* property:** the listing broker, another broker, or even if the seller finds a buyer without the broker's assistance. Sellers benefit from this form of agreement because the broker feels freer to spend time and money actively marketing the property, making a timely and profitable sale more likely. From the broker's perspective, an exclusive-right-to-sell listing offers the greatest opportunity to receive a commission. **The majority of residential listing agreements in Illinois are exclusive-right-to-sell listing agreements.**

Exclusive-agency listing agreements

In an exclusive-agency listing, **one broker is authorized to act as the exclusive agent of the seller-principal.** However, the **seller retains the right to sell the property without obligation to the broker.** The seller retains the right to sell the property without financial obligation to the listing broker.

Open listing agreement

In an open listing (known in some areas as a *nonexclusive listing),* the **seller retains the right to employ any number of brokers as agents.** The brokers can act simultaneously, and the seller is financially obligated only to that broker who successfully produces a ready, willing, and able buyer. If the seller personally sells the property without the aid of any of the brokers, the seller is not obligated to pay a commission.

Negotiated terms of an open listing agreement should be in writing to protect the broker's ability to collect an agreed-on fee from the seller. Written terms may be in the form of a listing agreement (if the broker represents the seller) or a fee agreement (if the broker represents the buyer or the seller does not wish to be represented). However, many Open Listing Agreements are oral.

Net listing
A net listing provision specifies that the **seller will receive a net amount of money from any sale, with the excess going to the listing broker as commission.** The broker is free to offer the property at any price greater than the net amount the seller wants; the difference is the broker's fee. Because a **net listing can create a clear conflict of interest between the broker's fiduciary responsibility to the seller and the broker's profit motive, net listings are legal in Illinois but not recommended due to the potential for fraud.**

Guaranteed Sale
Sometimes, **brokers and sellers enter into *guaranteed sale agreements,* in which the broker agrees to buy the listed property if it fails to sell before the end of the listing period.** Typically, these guarantees are made to the seller as an **inducement to list the property with the broker.**

In Illinois, any exclusive listing agreement must be in writing and is subject to other legal requirements, noted in detail in the Illinois Real Estate License Act of 2000.

Special Listing Provisions

Multiple listing A *multiple listing* clause may be included in an exclusive listing. It is used by licensees who are members of a multiple listing service (MLS). **An MLS is an information/ marketing organization whose members make their listings available for showing and sale through all the other member licensees.**

An MLS offers advantages to licensees, sellers, and buyers. Licensees develop a sizable inventory of properties to be sold and are assured a portion of the commission if they list property or participate in the sale of another licensee's listing. Sellers gain because the property is exposed to a much larger market. Buyers gain because of the variety of properties on the market.

The contractual obligations among the member licensees of an MLS vary widely. Most MLSs require that a licensees, **turn over new listings to the service within a specific, fairly short period of time after the licensee obtains the listing.** The length of time during which the listing licensee can offer a property to the public on her own without involving the MLS varies. Of course, sellers must be informed and give their written consent for any delay in notifying the MLS. This gives the listing company a strong chance to sell its own listing.

Under the provisions of most MLSs, a participating licensee makes a **unilateral offer of cooperation and compensation to other member licensees, when the listing enters the MLS.** The licensee must have the **written consent of the seller to include the property in an MLS.**

Under Illinois law, a licensee working with a buyer is not considered to be a subagent of the seller. No offer *of subagency can be made through an* MLS *in Illinois* today. Illinois law states that a buyer is represented as a client by the licensee with whom she is working unless that consumer *chooses* not to be. This approach makes it clear to all parties who is represented by whom.

While a few buyers choose to remain as customers without representation, **even that lack of agency is now subject to disclosure.** Generally, a **notice of no agency would be provided.** *If nothing is said about agency, licensees are considered to be representing the consumer with whom they are* working, *either as a* ***designated agent for the consumer*** *(unless there is a written agreement to the contrary) or as a* ***licensee if performing only ministerial acts.***

In spite of these relatively clear lines with regard to whose agent is whose, sellers often still pay the fees for both agents in a transaction. These fees are called ***cooperative commissions.*** In an Illinois MLS listing data sheet, this is typically stated as "coop: X% or as a flat fee." ***Paying someone a commission does not create agency in Illinois.***

TERMINATION OF LISTING AGREEMENTS

Because the licensee's services are unique, a brokerage agreement **cannot be assigned to another licensee without the principal's written consent.** The property owner cannot force the licensee to perform, but the **licensee's failure to work diligently toward fulfilling the contract's terms constitutes a breach of the listing agreement.** If the licensee cancels the listing, the seller may be entitled to sue the licensee for damages.

On the other hand, a **property owner could be liable for damages to the licensee by refusing to cooperate with the licensee's reasonable requests,** such as allowing the licensee to show the property to prospective buyers or refusing to proceed with a complete sales contract.

Listing agreements may be terminated for the following reasons:

- When the agreement's purpose is fulfilled, such as when a ready, willing, and able buyer has been found
- When the agreement's term expires
- If the property is destroyed or its use is changed by some force outside the owner's control, such as a zoning change or condemnation by eminent domain
- If title to the property is transferred by operation of law, as in the case of the owner's bankruptcy or foreclosure
- If the sponsoring broker and the seller mutually agree to cancel the brokerage agreement
- If either the sponsoring broker or seller dies or becomes incapacitated. **If the sponsored licensee dies or becomes incapacitated, the brokerage agreement is still valid.**

Expiration of Brokerage Agreement

All exclusive brokerage agreements should specify a definite period during which the broker is to be employed. In Illinois, as in most states, failing to specify a definite termination date in a listing is grounds for the suspension or revocation of a real estate license.

Automatic Extension

Pursuant to Section 10-25 of the Illinois Real Estate License Act of 2000, **no licensee shall obtain any written brokerage agreement containing a clause automatically extending the period of the contract.**

SAFETY CLAUSE

This is a clause in the listing agreement which provides the listing broker a commission if, within a specified time period after the listing agreement expires, the owner transfers property title to someone who saw the property while it was listed with the broker. The Safety clause protects brokers from losing a commission on a sale involving buyers who saw the property while it was listed and to **discourage others from trying to reach private arrangements with sellers.**

Safety Clause Features

- The length of time for a Safety clause is set by agreement.
- Any new buyers the seller might procure on her own after expiration of the listing are not affected.
- This clause cannot be enforced if the property is relisted under a new contract with another brokerage firm.

Each brokerage agreement for a residential property of four units or less that provides for a protection period subsequent to its termination date shall also provide that no commission or fee will be due and owing pursuant to the terms of the brokerage agreement if, during the protection period, a valid, written brokerage agreement is entered into with another licensed real estate broker.

THE LISTING PROCESS

Pricing the Property

While it is the responsibility of the broker to advise and assist, it is the seller who must determine the listing price for the property. Because the average seller does not have the skills needed to determine a market-based listing price, brokers must be prepared to offer their knowledge and expertise.

Brokers can help sellers determine a listing price for the property by using a **comparative market analysis (CMA). A CMA analyzes properties similar to the subject property in size, location, and amenities.** It is distinctly different from an appraisal report offered by a licensed appraiser that is based only on an analysis of properties that have actually sold.

The CMA is based on :

- recently closed properties (solds),
- properties currently on the market (competition for the subject property), and
- properties that did not sell (expired listings in the area).

Sold prices represent what buyers have been willing to pay for similar properties in the neighborhood. Very often, the expired listing prices are those prices that buyers have not been willing to pay for a property similar to the subject property.

Market Value

Market *value* is the most probable price a property would bring in an arm's-length transaction under normal conditions on *the* open market.

Current asking prices of current, similar properties on the market indicate the trend: asking prices lower than the "solds" indicate a slow or declining market. An optimistic market is indicated when the asking prices are higher than the "solds."

Although a CMA is not viewed as a formal appraisal, the **broker uses many of the appraiser's methods and techniques in arriving at a reasonable value range.**

The figure sought in both CMAs and appraisals is the **property's market value. Market value is *the most probable price* a property *would bring in an arm's-length transaction* under normal conditions on *the open market.*** A CMA estimates market value as likely to fall within a range of values (e.g., $335,000 to $340,000).

While it is the property owner's privilege to set whatever listing price he chooses, **a broker should consider rejecting any listing in which the price is substantially exaggerated or severely out of line with the indications of the CMA or appraisal.** These tools provide the best indications of what a buyer will likely pay for the property. **An unrealistic listing price will make it difficult for the broker to properly market the seller's property within the agreed upon listing period.** Furthermore, a buyer may have difficulty obtaining financing because the property did not appraise for the sale price.

Information Needed for Listing Agreements
Once the broker and the owner agree on a listing price, the broker must **obtain specific, detailed information about the property.** Obtaining as many facts as possible ensures that most contingencies can be anticipated. This is particularly important when the listing will be shared with other licensees through an MLS, and the other licensees must rely on the information taken by the listing broker.

THE LISTING AGREEMENT

In Illinois, the listing contracts most commonly in use are prepared by local REALTOR® associations and their attorneys. These forms may vary slightly from area to area.

Illinois law requires that the following disclosures be included with listing contracts.

- **Disclosure of material facts** A broker must not withhold material facts concerning a property of which she has knowledge from any purchaser, prospective purchaser, seller, lessee, lessor, or other party to the transaction. ***Material facts* are any facts on which a reasonable person would base a contractual decision.**
- **Disclosure of interest A broker must disclose in writing to the parties to the transaction her status as a broker and any direct or indirect interest she has or may have in the subject property.** For example, if the buyer or seller is a licensed broker, this must be clearly stated in the contract.
- **Disclosure of special compensation** A **broker is prohibited from accepting "any finder fees, commissions, discounts, kickbacks, or other compensation from any financial institution, title insurance company, or any other person other than another licensee, without full disclosure in writing of such receipt to all parties to the transaction."** Sponsored licensees **receive any such compensation <u>only</u> through their respective sponsoring brokers.**
- **Earnest money and purchaser default** When any written listing includes a provision that the seller will not receive the earnest money deposit if the purchaser defaults, this fact must appear **emphasized in letters larger than those otherwise used in the listing agreement.**
- **Disclosure of property condition Seller disclosure of property conditions is required by law in Illinois. These disclosures normally cover a wide range of structural, mechanical, and other conditions that a prospective purchaser should know about to make an informed decision.**

- **A Property Disclosure Report must be given to the buyer before an offer is made and accepted or the buyer will have three days in which to rescind the contract, based on any negative disclosures.** In addition, a **lead paint disclosure is required on any property built before 1978, and a radon disclosure is required of the seller.**

Once a long-lasting agreement has been finalized and signed by the broker and seller, Illinois law prohibits the broker from making any addition to, deletion from, or alteration of the written listing without the written consent of the principal. **The broker must return a true copy of the listing agreement, signed by the seller and by the sponsoring broker or managing broker, to the principal within 24 hours of execution.**

Listing Agreement Content

There is no required state form for any real estate contract in Illinois. However, all written exclusive listing agreements must include;

- **the list price of the property,**
- **the agreed-upon amount of commission and the time of payment,**
- **the duration of the agreement, with a definite termination date clearly set forth,**
- **the names of the broker and seller,**
- **signatures of both broker and seller,**
- **the identification of the property involved (address or legal description),**
- **the duties of the listing broker,**
- **a statement of nondiscrimination, and**
- **a statement regarding antitrust.**

Licensees may not permit blank spaces on their signed brokerage agreements. Where no information is to be inserted into the blank space, the Licensee should insert NA or draw a line through the blank space.

Type of listing agreement
The contract may be an exclusive-right-to-sell listing (the most common type), an exclusive-agency listing, an open listing, or a net listing (the last not recommended). The type of listing agreement determines the extent of a broker's authority to act on the principal's behalf. Most MLSs do not permit open listings to be posted in their systems.

Broker's authority and responsibilities
The contract should **specify whether the broker may place a sign on the property and advertise and market the property or utilize social networking through Facebook or other similar sites.**

Another new major consideration, since the inception of Buyer Broker Representation in Illinois, is whether the broker is permitted to authorize buyers' broker's marketing efforts through an MLS and the Internet.

It should also address whether or not the broker may accept earnest money on behalf of the seller and the responsibilities for holding the funds.

Names of all parties to the contract
Anyone who has an ownership interest in the property must be identified and must sign the listing to validate it. If the property is owned under some form of co-ownership, that fact should be clearly established.

If a married couple is living in the listed property, both spouses must sign the listing, even if only one owns the property, in order to release homestead rights. If the property is in the possession of a tenant, that should be disclosed and instructions given on how the property is to be shown to a prospective buyer.

Brokerage firm
The brokerage company name, the sponsoring broker, and the *designated agent* of the sponsoring broker must all be identified.

Evidence of ownership
A warranty deed, title insurance policy, or abstract of title with an attorney's opinion can be used for proof of title.

Listing price
This is the proposed gross sales price. The seller's proceeds will be reduced by unpaid real estate taxes, special assessments, mortgage or trust deed debts, and any other outstanding obligations.

Real property and personal property
Any real property to be removed from the premises by the seller and any personal property to be included in the sale for the buyer should be noted and be explicitly identified in the subsequent purchase contract. Some items that may later become points of negotiation might include major appliances, swimming pool and spa equipment, fireplace accessories, storage sheds, window treatments, stacked firewood, and stored heating oil.

Leased equipment
It must be determined if leased equipment security systems, cable television boxes, water softeners, special antennas will be left with the property. If so, the seller is responsible for notifying the equipment's lessor of the change of property ownership.

Description of the premises
In addition to the street address, the legal description, lot size, and tax parcel number (property index number or PIN) may be required for future insertion into a purchase offer.

The street address of the property (street address and unit number for a condo) is sufficient for listing agreements to be valid and enforceable under Illinois law. However, it is advisable to include the parcel number (or property index number, or PIN), and most listing agreements include a blank for it. This number can be acquired from the tax database.

Proposed dates for the closing and the buyer's possession
These dates should be based on an anticipated closing date. The listing agreement should allow adequate time for the paperwork involved (including the buyer's qualification for any financing) and the physical moves to be arranged by the seller and the buyer.

The closing

An attorney, title company, or escrow company should be considered and retained as soon as possible. A designated party will be needed to complete the settlement statements, disburse the funds, and file the proper forms, such as documents to be recorded and documents to be sent to the IRS.

In Illinois, the attorney, title company, and lender dominate closing issues.

Encumbrances

All liens must be paid by the seller or be assumed by the buyer at the closing. Identify as much information as possible about existing loans, such as the name and address of each lender, the type of loan, the loan number, the loan balance, the interest rate, the monthly payment, and if the loan can be prepaid without penalty. Determine if the buyer can assume the present loan, and if so, under what circumstances and if there is any possibility of seller financing.

Physical encroachments on the property (such as a fence) and their legal implications are questions best referred to an attorney, even if they were noted in the listing file.

Zoning

Identify current zoning for the property.

Property taxes

Ask about current (or most recent year's) property taxes and determine the amount of any outstanding special assessments and whether they will be paid by the seller or assumed by the buyer.

Home warranty program

In some situations, it may be advisable to offer a "home warranty" with the property. Skillful brokers are able to explain these warranties that often benefit both the seller and the buyer.

Commission

The circumstances under which a commission will be paid must be specifically stated in the contract. Negotiation of commission is a key discussion point in creating a listing contract. The **commission amount is fully negotiable between parties.**

By Illinois law, written listing agreements in Illinois must state that no change in the amount of the commission or time of payment will be valid or binding unless the change is made in writing and signed by all parties.

Antitrust wording

Any assertion that a "set" or "standard" commission exists violates antitrust laws. Any **sponsoring broker is free to set a *minimum* commission that will be accepted within a given office,** but there is ***no such thing as a standard commission***. The contract should indicate that all commissions have been negotiated between the seller and the broker. **It is illegal for commissions to be set by any regulatory agency, trade association, or other industry organization.**

Termination of the contract

A contract should provide **some way for the parties to end it and** under what circumstances will the contract terminate?

In Illinois, if a listing agreement provides that, in the event of a default by a buyer, the broker's full commission or fees will be paid out of an earnest money deposit, with the remainder of the earnest money to be paid to the seller, the provision shall appear in the listing agreement in letters larger than those generally used in the listing agreement.

Broker protection ("carryover") clause
Brokers are well advised to protect their interests against possible fraud or a reluctant buyer's change of heart. There are various circumstances under which a broker is entitled to a commission, for a specified amount of time, after an agreement terminated.

Warranties by the owner
The owner is responsible for certain assurances and disclosures that are vital to the agent's ability to market the property successfully.

Indemnification ("hold harmless") wording
The seller and the broker may agree to hold each other harmless (i.e., not to sue one another) for any incorrect information supplied by one to the other. Indemnification may be offered regardless of whether the inaccuracies are intentional or unintentional.

A client shall not be vicariously liable in Illinois, for the acts or omissions of a licensee in providing brokerage services for or on behalf of the client.

Nondiscrimination (equal opportunity) wording
The seller must understand that **the property will be shown and offered without regard to the race, color, creed, or religious preference, national origin, family status, sex, age, or disability of the prospective buyer.** Federal, state, and local fair housing laws protect a variety of different groups and individuals. For instance, on the state and local level, sexual orientation and source of finances are also often protected.

All Illinois written listing agreements must clearly state that it is illegal for either the owner or the broker to refuse to sell or show property to any person because of race, color, religion, national origin, sex, familial status, ancestry, citizenship status, age 40 and over, marital status, physical or mental disability, military service, unfavorable military discharge, sexual orientation, and order of protected status.

Minimum Services

All exclusive brokerage agreements must specify that the sponsoring broker, through its sponsored licensees, must provide the following required minimum services:

- **Accept delivery of and present to the client all offers and counteroffers to buy, sell, or lease the client's property or the property the client seeks to purchase or lease**
- **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**
- **Answer the client's questions relating to the offers, counteroffers, notices, and contingencies**

This applies to listing (seller) agreements as well as buyer agency agreements

The signatures of the parties
All parties identified in the listing contract must sign the contract, including all individuals who have a legal interest in the property.

The date the contract is signed
This date may differ from the date the contract actually becomes effective (e.g., if a sponsored licensee takes the listing and then must have the sponsoring broker sign the contract to accept employment under its terms).

Additional information
Although not required on the listing agreement, the listing broker should also obtain any additional information that would make the property more appealing and marketable, such as neighborhood amenities. Such amenities might include information about schools, parks and recreational areas, places of worship, and public transportation.

BUYER AGENCY AGREEMENTS

Like a listing agreement, a buyer agency agreement is an employment contract. In this case, **the broker is employed as the buyer's agent.** The **buyer, rather than the seller, is the principal.** The purpose of the agreement is to find a suitable property. **A buyer agency agreement gives the buyer a degree of representation possible only in a fiduciary relationship.** A buyer's broker must protect the buyer's interests at all points in the transaction.

Types of Buyer Agency Agreements

Three basic types of buyer agency agreements exist:

Exclusive buyer agency agreement (Like an Exclusive Right to Sell Agreement for a Seller)
Also known as *an exclusive right to represent,* this is a **true exclusive agency agreement. The buyer is legally bound to compensate the broker whenever the buyer purchases a property of the type described in the contract.**

The broker is entitled to payment regardless of whether she or the buyer locates the property and signs a sales contract.

Exclusive-agency buyer agency agreement (Like an Exclusive Agency Agreement for a Seller)
Like an exclusive buyer agency agreement, this is an **exclusive contract between the buyer and the broker. The buyer retains the right to locate and buy property without paying a commission to the broker.** Buyer brokers end up "educating" buyers about the process and show many homes only to find that the buyers avoid compensation by working directly with an unlisted property owner, (For Sale By Owner FSBO).

Open buyer agency agreement (Like an open Listing Agreement with a Seller)
This agreement is a **nonexclusive buyer representation agreement between a broker and a buyer.**

It permits the buyer to enter into similar agreements with an unlimited number of brokers. The buyer is obligated to compensate only the broker who locates the property the buyer ultimately purchases.

Buyer Representation Issues

A broker and a buyer must discuss a number of issues after entering into a written buyer agency agreement. The broker should conduct a counseling session with the buyer to determine the **buyer's needs and goals, financial capabilities, and motivation.** This session gives the broker the ability to **educate the buyer on the buying process and market conditions and to formulate a strategy for finding the right property.** In addition, compensation needs to be addressed and negotiated in the event there is no offer of cooperative compensation from the listing broker to the buyer's broker.

The broker should make the same disclosures to the buyer that the broker would make in a listing agreement. The broker should **explain the forms of agency available and the parties' rights and responsibilities under each type of agreement.** The specific services provided to a buyer-client need to be clearly explained.

A buyer's broker may be compensated by either the buyer or the seller. Compensation is always negotiable.

In Illinois, it is common for the listing broker to split the listing fee with the buyer's broker. Note that this is a clear case where commission does not equate to agency or representation. Discussions regarding a commission or fee provided by the buyer may still take place. A broker is free to negotiate for compensation from any buyer for whom service was provided in an agency capacity. However, if the broker receives compensation from more than one source in a transaction, it always needs to be disclosed in writing to the involved parties.

A buyer agent's duties include:

- **using the broker's best efforts to identify properties listed in the MLS and in other databases that meet buyer's criteria,**
- **arrange for property inspections identified by buyer as potentially appropriate for purchase,**
- **advise buyer as to the pricing of comparable properties,**
- **assist buyer in the negotiation of a sales contract acceptable to buyer, and**
- **to provide confidentiality on any information that buyer discloses to the broker.**

Services Provided by a Buyer Broker

The buyer's broker provides the following services throughout the real estate transaction:

- **Needs assessment-** Determine and evaluate the needs and wants of the buyer.
- **Property selection - Locate** the best property for the buyer by notifying buyers of new listings and for-sale-by-owner properties. Remember, property selection need not be limited by price. In today's market, list prices can often be negotiated down.
- **Viewing properties -** Provide an objective evaluation of the property and show buyers how to compare properties. Disclose material facts that are pertinent to the property.
- **Negotiate -** Strategize with the buyer, suggesting techniques that strengthen the buyer's position. Then, implement those strategies on the buyer's behalf. Disclose any prior unsuccessful negotiations.

- **Price -** Provide price counseling and prepare a comparative market analysis (CMA) on the property the buyer is considering.
- **Follow-up -** Resolve any issues that could prevent a closing from occurring. Provide ongoing communications with the client, preferably by e-mail for maintaining records.
- **Short Sale – Explain the operation of a short sale, the time frame for a decision from the Seller's lender, and other aspects of a Short Sale. Ask the Buyer's Lender for a possible extension of the Commitment Letter is a Short Sale takes longer than anticipated.**

THE BUYING PROCESS

When the buyers have found the right property, the next step is to prepare and negotiate an offer that will lead to a signed sales contract between the seller and the buyer. The buyer's broker must prepare a CMA to establish a price for the buyer to offer. Factors to take into consideration include:

- **Property condition -** Does the property need a lot of repairs?
- **Length of time on the market -** This indicates the selling pace of the market, the level of inventory, or a potential problem with the property.
- **Supply and demand -** Essentially, when supply increases and demand remains stable, prices go down; when demand increases and supply remains stable, prices go up.
- **Sellers motivation -** Is the property in distress, pre-foreclosure, or requiring a short sale?
- **Terms and contingencies -** The fewer the contingencies, the stronger the offer, making it more attractive to the seller or bank (if property is bank owned or requires bank approval for a short sale).

When buyer brokers are working with two or more clients who are seeking similar properties in the same price range, the buyer's broker is permitted to show alternative properties to any prospective buyer or tenant.

Specifically, the buyer's broker does not breach a duty or obligation to the client :

- by showing alternative properties to other prospective buyers or tenants,
- by showing properties in which the client is interested to other prospective buyers or tenants,
- by making or preparing contemporaneous offers or contracts to purchase or lease the same property.

However, brokers must provide written disclosure to all clients for whom the licensee is preparing or making contemporaneous offers or contracts to purchase or lease the same property and shall refer to another designated agent any client that requests such referral.

TERMINATION OF BROKER EMPLOYMENT AGREEMENTS

A broker employment agreement is a contract between a broker and a seller or buyer. Its success depends on the broker's personal and professional efforts.

Because broker services are unique, a broker cannot turn over the contract to another broker without the principal's written consent. The client cannot force the broker to perform, but the broker's **failure to work diligently toward fulfilling the contract's terms constitutes abandonment** of the contract. In the event the contract is abandoned or revoked by the broker, the principal is entitled to sue the broker for damages.

On the other hand, the principal might fail to fulfill the terms of the agreement. For instance, a property owner who refuses to cooperate with the broker's reasonable requests, such as allowing the broker to show the property to prospective buyers or refusing to proceed with a completed sales contract, could be liable for damages to the broker. If either party cancels the contract, one party may be liable for damages to the other.

An employment agreement may be canceled for the following reasons:

- When the agreement's purpose is fulfilled
- When the agreement's term expires without a successful transfer
- If the property is destroyed or its use is changed by some force outside the client's control, such as a zoning change or condemnation by eminent domain
- If title to the property is transferred by operation of law, as in the case of the client's bankruptcy or Foreclosure sale:
- If the broker and client mutually agree to end the agreement
- If either the broker or the client dies or becomes incapacitated
- If either the broker or client breaches the contract, the agreement is terminated and the breaching or canceling party may be liable to the other for damages.

In Illinois, 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:

- **to account for all monies and property relating to the transaction,**
- **to keep confidential all confidential information received during the course of the brokerage agreement.**

Notes:

CHAPTER 13 - QUESTIONS

1. A sponsoring broker's Licensee lists a unit for sale in a condominium building. The Licensee in this transaction:
   A. Has a direct contractual relationship with the owners of the unit
   B. Acts on behalf of the sponsoring broker
   C. Acts on behalf of the condominium association
   D. Must find a buyer for the unit to obtain a share of the commission

2. A real estate sponsoring broker was responsible for a chain of events that resulted in the sale of one of his client's properties. This is referred to as a:
   A. Pro forma
   B. Procuring cause
   C. Private offering
   D. Proffered offer

3. A Licensee may advertise a property for sale only if he or she:
   A. Personally listed the property
   B. Uses the employing sponsoring broker's name in the advertisement
   C. Personally pays the advertisement
   D. Is a member of the local real estate board

4. Wilia is a Licensee working for Sponsoring broker Vic. Willa sells a $150,000 home listed by Vic's office. The listed commission is 6.5 percent of the selling price. Sponsoring broker Vic and Willa agreed that Willa would receive 55 percent of any commission that she generated for the office. Willa is entitled to receive:
   A. $2,632.50
   B. $5,362.50
   C. $3,412.50
   D. $5,850.00

5. To be entitled to collect a real estate commission, a sponsoring broker must be able to prove all of the following EXCEPT that he or she:
   A. Had a valid real estate sponsoring broker’s license
   B. Was a procuring cause
   C. Was employed to perform certain acts
   D. Belonged to a real estate board

6. A Licensee may not receive compensation or commission from anyone EXCEPT:
   A. His/her sponsoring broker
   B. From the principal
   C. From any sponsoring broker
   D. From a landlord

7. Which of the following is NOT prohibited under the antitrust laws?
   A. Property management companies standardizing management fees
   B. Sponsoring brokers allocating markets based on the value of homes
   C. Real estate companies agreeing NOT to cooperate with a sponsoring broker because of the fees that sponsoring broker charges
   D. A sponsoring broker deciding whether to join a MLS

8. A property owner signed a 90-day listing agreement with a sponsoring broker. The owner was killed in an accident before the listing expired. Now the listing is:
   A. Binding on the owner's spouse for the remainder of the 90 days
   B. Still in effect as the owner's intention was dearly defined
   C. Binding only if the sponsoring broker can produce offers to purchase the property
   D. Terminated automatically upon the death of the principal

9. The type of listing agreement that provides for the payment of a commission to the sponsoring broker even though the owner makes the sale without the aid of the sponsoring broker is called an:
   A. Exclusive-right-to-sell listing
   B. Open listing
   C. Exclusive-agency listing
   D. Option listing

10. Under which of the following listing agreements can the owner of listed property sell the property on his or her own without having to pay the listing sponsoring broker a commission?
   A. Exclusive right-to-sell listing only
   B. Exclusive agency listing only
   C. open listing and exclusive agency listing
   D. Open listing only

11. An owner lists her property for sale with a sponsoring broker. Another sponsoring broker, however, finds a buyer for the house. The listing sponsoring broker did not receive a commission from the sale. The type of listing contract between the owner and the sponsoring broker could have been a(n):
   A. Exclusive right-to-sell
   B. Exclusive agency
   C. Open listing
   D. Multiple listing

12. Sponsoring broker Juanita was accused of violating antitrust laws. She was probably accused of:
    A. not having an equal housing opportunity sign in her office window.
    B. undisclosed dual agencies.
    C. allocation of customers or price fixing
    D. dealing in unlicensed exchange services.

13. While an agent was showing a house to a potential buyer, the agent said, "I don't think there's a better view in the city!" Was this statement by the agent permissible?
    A. Yes, and it can be best described giving facts related to the property.
    B. Yes, and it can be best described as puffing.
    C. No, because state law does not allow an agent to give opinions.
    D. No, because the sponsoring broker does not allow an agent to give opinions.

14. Unless some other written agreement has been made, the sponsoring broker will usually receive the sales commission from the seller when:
    A. the purchaser takes possession of the property.
    B. the seller lists the property with the sponsoring broker.
    C. the transaction is closed.
    D. an offer is procured from a ready, willing, and able buyer.

15. A real estate agent who is an independent contractor receives:
    A. a monthly salary or hourly wage.
    B. company-provided health insurance.
    C. a company-provided automobile.
    D. negotiated commissions on transactions.

16. In a typical agency relationship between the sponsoring broker and the client, the sponsoring broker's commission is determined by:
    A. state law.
    B. the local real estate board.
    C. mutual agreement.
    D. minimums based on the property type.

17. A sponsoring broker lists a property for sale at $200,000 with a 5 percent commission, and he later obtains a verbal offer to purchase the property from a prospective buyer. The seller indicates to the sponsoring broker that the offer would be acceptable if it were submitted in writing. Before it can be put in writing, the buyer backs out and revokes the verbal offer. In this situation, the sponsoring broker would be entitled to:
    A. a commission of $10,000.
    B. only a partial commission.
    C. no commission.
    D. the normal rate of commission.

18. The type of buyer agency agreement that best protects the buyer.
    A. Open buyer agency agreement.
    B. Exclusive buyer agency agreement.
    C. Non exclusive buyer agency agreement.
    D. Buyer's net agreement.

19. The Illinois court decision in Chicago Bar Association et al. v. Quinlan and Tyson, Inc., held that:
    A. licensees have no duty to search for undisclosed latent material defects in a property.
    B. real estate licensees may complete preprinted forms, but not draft legal documents.
    C. multiple-listing services may not establish commission rates.
    D. a sponsoring broker may not pay a commission to another sponsoring broker.

20. A listing agreement may be terminated for any of the following reasons EXCEPT the:
    A. sale of the property.
    B. death of the broker working for the sponsoring broker.
    C. agreement of the parties.
    D. destruction of the premises.

21. By executing a listing agreement with a seller, a real estate sponsoring broker has become:
    A. a procuring cause.
    B. obligated to open a special trust account.
    C. an agent of the seller.
    D. responsible for sharing commissions.

22. The provision in a listing agreement that gives additional authority to the sponsoring broker and obligates the sponsoring broker to distribute the listing to other sponsoring brokers is a(n):
    A. joint listing clause.
    B. multiple listing clause.
    C. net listing clause.
    D. open listing clause.

23. Sponsoring broker Wayne took a listing on a property and shortly thereafter discovered that his client had been previously declared incompetent by the court. The listing now is:
    A. binding as the sponsoring broker was acting in good faith.
    B. still valid.
    C. the basis for commission if the sponsoring broker produces a buyer.
    D. void.

24. A property owner lists his property for sale with a sponsoring broker. During the negotiations, the owner told the sponsoring broker that the owner wanted $238,000 for the property, and anything above that amount the sponsoring broker could keep as his commission. The listing with this type of provisions is known as a:
    A. gross listing.
    B. net listing.
    C. open listing.
    D. non-exclusive listing.

25. A listing contract in which the sponsoring broker's commission is contingent on the sponsoring broker being able to produce a buyer before the property is sold by the owner or another sponsoring broker is called a(n):
    A. open listing.
    B. net listing.
    C. exclusive-right-to-sell listing.
    D. exclusive-agency listing.

26. A sponsoring broker who represents a seller under an exclusive listing receives two offers for the property at the same time, one from one of his agents and one from an agent of a cooperating sponsoring broker. What should the sponsoring broker do?
    A. Submit the offer from his agent first
    B. Submit the offer from the other agent first
    C. Submit the higher offer first
    D. Submit both offers at the same time

27. Sponsoring broker Paul listed the Kennedy's property for sale under an exclusive-right-to-sell agreement. One of Paul's agents, Tanya, obtained an offer to purchase the property along with a certified check for 5 percent of the purchase price as earnest money. What should Tanya do with the earnest money check?
    A. Give it to the Kennedy's
    B. Hold it until the closing
    C. Deposit the money in her trust account
    D. Give the money to Paul for deposit in his trust account

28. All of the following are typical provisions of a listing agreement EXCEPT the:
    A. price the seller is asking for the property.
    B. date the sponsoring broker will schedule an open house.
    C. commission rate to be paid to the listing sponsoring broker.
    D. responsibilities of the sponsoring broker.

29. The type of listing agreement that provides the least protection for the listing sponsoring broker is the:
    A. exclusive-right-to-sell listing.
    B. exclusive-agency listing.
    C. open listing.
    D. net listing.

30. A seller refused to pay a commission to the sponsoring broker even though there was a valid listing agreement and the sponsoring broker procured a buyer for the property. What can the sponsoring broker do?
    A. Sue the seller in court for the commission
    B. File a lien on the seller's property for the amount of the commission
    C. Obtain an injunction to stop the transaction until the commission is paid
    D. Collect the commission from the buyer

31. Under an exclusive agency listing, the listing sponsoring broker would NOT be entitled to a commission if:
    A. the sponsoring broker presents a full price offer from a qualified buyer.
    B. the property is sold through another sponsoring broker.
    C. the property is sold through the multiple-listing service.
    D. the seller exchanges the property with a neighbor across the street who liar property listed with another sponsoring broker.

32. All of the following are types of listing contracts EXCEPT a(n):
    A. open listing.
    B. exclusive agency.
    C. exclusive right-to-sell.
    D. MILS mediation agreement.

33. A listing agreement may be terminated by all of the following EXCEPT:
    A. by mutual agreement.
    B. by operation of law.
    C. because the seller can't find another house to buy.
    D. because of impossibility of performance.

34. The sponsoring broker enters into a listing agreement with a seller in which the seller will receive $12,000 from the sale of a lot and the sponsoring broker will receive any sale proceeds over this amount. This type of listing is a(n):
    A. gross listing.
    B. legal and ethical way to ensure that the sponsoring broker is compensated.
    C. exclusive agency.
    D. net listing.

35. An owner who is interested in selling his house is usually concerned about how much money he can get when it sells. A comparative market analysis may help the seller determine a realistic listing price. Which of the following is true?
    A. A comparative market analysis is the same as an appraisal.
    B. A sponsoring broker is the only one who is permitted to prepare a comparative market analysis.
    C. A comparative market analysis is prepared by a certified real estate appraiser.
    D. A comparative market analysis contains a compilation of other similar properties that have sold

36. Two different sponsoring brokerage companies claimed they were entitled to a commission from the sale of a property that was listed by one of the firms under an open listing agreement. The sponsoring broker who is entitled to the commission is the one who:
    A. listed the property.
    B. advertised the property.
    C. obtained the first offer.
    D. was the procuring cause of the sale.

37. In Illinois, if a sponsoring broker is taking a listing and asks the seller to complete a disclosure of property conditions, which of the following statements is true?
    A. The disclosures are optional, and the seller may avoid liability by refusing to make any disclosures about the condition of the property.
    B. The standard disclosures cover a narrow range of structural conditions only.
    C. An agent should give the seller advice regarding which property conditions to disclose and which to ignore.
    D. Seller disclosure of property conditions is required by Illinois statute.

38. 614 Stevenson Street in Peoria is owned by Walter. Walter lives in Chicago, and the house in Peoria is occupied by married couple, Chris and Debbie. If Walter wants to sell the property, who is required by law to sign the listing agreement?
    A. Walter and Chris and Debbie, because they are a married couple
    B. Walter only
    C. Walter as owner and Chris and Debbie as tenants in possession regardless of their marital status
    D. Chris and Debbie only, because of their marital homestead interest

39. All of the following must appear in a written Illinois listing agreement EXCEPT:
    A. a statement that the property must be shown to all prospective buyers regardless of race, color, religion, national origin, sex, handicap or familial status.
    B. the complete legal description of the property being sold.
    C. the time duration of the listing.
    D. the proposed gross sales price of the property.

40. Kendra is an Illinois real estate licensee and the listing agent for a home. After one month of the three-month listing has gone by without any offers on the property, Kendra becomes concerned. At the time the listing agreement was signed, Kendra and the sellers orally agreed that if no offers were received after one month, the price of the property would be reduced by ten percent. Because the sellers are out of town, Kendra crosses out the old listing price, writes in the new one, and then updates the information on the computerized listing service. Three days later, a prospective buyer comes into Kendra's office to make an offer on the property. Based on these facts, which of the following statements is true?
    A. Illinois licensees are prohibited by law from making any addition to, deletion from or other alteration of a written listing agreement without the written consent of the principal.
    B. While alteration of a written listing agreement is usually prohibited by Illinois law, Kendra acted properly in this situation because the sellers were out of town.
    C. Changing the listing price of a property is a matter of professional discretion, and Illinois licensees are permitted to make alterations to that aspect of a listing agreement only without the written consent of the principal.
    D. While alteration of a written listing agreement is usually prohibited by Illinois law, Kendra acted properly in this situation because of the prior oral agreement with the sellers.

41. Which of the following is true of listing agreements in Illinois?
    A. All listing agreements must be in writing to be legal.
    B. All exclusive listing agreements must be in writing to be enforceable.
    C. Open listing agreements are illegal.
    D. Net listings are not legal in Illinois.

42. Which of the following constitutes grounds for the suspension or revocation of a real estate license?
    A. Failure to specify a termination date in a listing agreement
    B. Inclusion of a multiple-listing clause in a listing agreement
    C. Entering into a guaranteed sales agreement
    D. Encouraging a seller to agree to a net listing

CHAPTER 13 - QUESTIONS **ANSWER KEY**

1. - B
2. - B
3. - B
4. - B
5. - D
6. - A
7. - D
8. - D
9. - A
10. - C
11. - C
12. - C
13. - B
14. - C
15. - D
16. - C
17. - C
18. - B
19. - B
20. - B
21. - C
22. - B
23. - D
24. - B
25. - A
26. - D
27. - D
28. - B
29. - C
30. - A
31. - D
32. - D
33. - C
34. - D
35. - D
36. - D
37. - D
38. - B
39. - B
40. - A
41. - B
42. - A

Notes: