

454/20-15. Violations

§ 20-15. Violations. The commission of a single act prohibited by this Act or prohibited by the rules promulgated under this Act or a violation of a disciplinary order issued under this Act constitutes a violation of this Act. P.A. 91-245, Art. 20, § 20-15, eff. Dec. 31, 1999.

Repeal of Act

For repeal of Act, see note preceding 225 ILCS 454/1-1.

Historical and Statutory Notes**Prior Laws:**

P.A. 83-191, § 5.
P.A. 86-925, § 19.

Ill.Rev.Stat.1991, ch. 111, § 5805.
225 ILCS 455/5 (1998).

Library References

Brokers ⇐ 3.
Westlaw Topic No. 65.
C.J.S. Brokers §§ 17, 38 to 70.

Notes of Decisions**In general 1****1. In general, prior law**

Chapter 7 (11 U.S.C.A. § 701 et seq.) debtor, who was a licensed real estate broker, violated rules promulgated under the Real Estate Brokers and Salesmen License Act by depositing check for lease payment in personal account

and commingling funds with that money for purposes other than set forth in lease; hence, plaintiff, who had sought adjudication of non-dischargeability of debt on basis of alleged fraud, which was not established in adversary proceeding, was nonetheless entitled to reimbursement from the Illinois Department of Education and Registration. In re Konchan, Bkrcty.N.D.Ill.1984, 36 B.R. 393. Brokers ⇐ 4

454/20-20. Disciplinary actions; causes

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

(a) When the applicant or licensee has, by false or fraudulent representation, obtained or sought to obtain a license.

(b) When the applicant or licensee has been convicted of any crime, an essential element of which is dishonesty or fraud or larceny, embezzlement, or obtaining money, property, or credit by false pretenses or by means of a confidence game, has been convicted in this or another state of a crime that is a felony under the laws of this State, or has been convicted of a felony in a federal court.

(c) When the applicant or licensee has been adjudged to be a person under legal disability or subject to involuntary admission or to meet the standard for judicial admission as provided in the Mental Health and Developmental Disabilities Code.¹

(d) When the licensee performs or attempts to perform any act as a broker or salesperson in a retail sales establishment from an office, desk, or space that is

not separated from the main retail business by a separate and distinct area within the establishment.

(e) Discipline of a licensee by another state, the District of Columbia, a territory, a foreign nation, a governmental agency, or any other entity authorized to impose discipline if at least one of the grounds for that discipline is the same as or the equivalent of one of the grounds for discipline set forth in this Act, in which case the only issue will be whether one of the grounds for that discipline is the same or equivalent to one of the grounds for discipline under this Act.

(f) When the applicant or licensee has engaged in real estate activity without a license or after the licensee's license was expired or while the license was inoperative.

(g) When the applicant or licensee attempts to subvert or cheat on the Real Estate License Exam or continuing education exam or aids and abets an applicant to subvert or cheat on the Real Estate License Exam or continuing education exam administered pursuant to this Act.

(h) When the licensee in performing, attempting to perform, or pretending to perform any act as a broker, salesperson, or leasing agent or when the licensee in handling his or her own property, whether held by deed, option, or otherwise, is found guilty of:

(1) Making any substantial misrepresentation or untruthful advertising.

(2) Making any false promises of a character likely to influence, persuade, or induce.

(3) Pursuing a continued and flagrant course of misrepresentation or the making of false promises through licensees, employees, agents, advertising, or otherwise.

(4) Any misleading or untruthful advertising, or using any trade name or insignia of membership in any real estate organization of which the licensee is not a member.

(5) Acting for more than one party in a transaction without providing written notice to all parties for whom the licensee acts.

(6) Representing or attempting to represent a broker other than the sponsoring broker.

(7) Failure to account for or to remit any moneys or documents coming into his or her possession that belong to others.

(8) Failure to maintain and deposit in a special account, separate and apart from personal and other business accounts, all escrow moneys belonging to others entrusted to a licensee while acting as a real estate broker, escrow agent, or temporary custodian of the funds of others or failure to maintain all escrow moneys on deposit in the account until the transactions are consummated or terminated, except to the extent that the moneys, or any part thereof, shall be disbursed prior to the consummation or termination in accordance with (i) the written direction of the principals to the transaction or their duly authorized agents, (ii) directions providing for the release, payment, or distribution of escrow moneys contained in any written contract signed by the principals to the transaction or their duly authorized agents, or (iii) pursuant to an order of a court of competent jurisdiction. The account

shall be noninterest bearing, unless the character of the deposit is such that payment of interest thereon is otherwise required by law or unless the principals to the transaction specifically require, in writing, that the deposit be placed in an interest bearing account.

(9) Failure to make available to the real estate enforcement personnel of OBRE during normal business hours all escrow records and related documents maintained in connection with the practice of real estate within 24 hours of a request for those documents by OBRE personnel.

(10) Failing to furnish copies upon request of all documents relating to a real estate transaction to all parties executing them.

(11) Failure of a sponsoring broker to timely provide information, sponsor cards, or termination of licenses to OBRE.

(12) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public.

(13) Commingling the money or property of others with his or her own.

(14) Employing any person on a purely temporary or single deal basis as a means of evading the law regarding payment of commission to nonlicensees on some contemplated transactions.

(15) Permitting the use of his or her license as a broker to enable a salesperson or unlicensed person to operate a real estate business without actual participation therein and control thereof by the broker.

(16) Any other conduct, whether of the same or a different character from that specified in this Section, that constitutes dishonest dealing.

(17) Displaying a "for rent" or "for sale" sign on any property without the written consent of an owner or his or her duly authorized agent or advertising by any means that any property is for sale or for rent without the written consent of the owner or his or her authorized agent.

(18) Failing to provide information requested by OBRE, within 30 days of the request, either as the result of a formal or informal complaint to OBRE or as a result of a random audit conducted by OBRE, which would indicate a violation of this Act.

(19) Advertising by means of a blind advertisement, except as otherwise permitted in Section 10-30 of this Act.

(20) Offering guaranteed sales plans, as defined in clause (A) of this subdivision (20), except to the extent hereinafter set forth:

(A) A "guaranteed sales plan" is any real estate purchase or sales plan whereby a licensee enters into a conditional or unconditional written contract with a seller by the terms of which a licensee agrees to purchase a property of the seller within a specified period of time at a specific price in the event the property is not sold in accordance with the terms of a listing contract between the sponsoring broker and the seller or on other terms acceptable to the seller.

(B) A licensee offering a guaranteed sales plan shall provide the details and conditions of the plan in writing to the party to whom the plan is offered.

(C) A licensee offering a guaranteed sales plan shall provide to the party to whom the plan is offered evidence of sufficient financial resources to satisfy the commitment to purchase undertaken by the broker in the plan.

(D) Any licensee offering a guaranteed sales plan shall undertake to market the property of the seller subject to the plan in the same manner in which the broker would market any other property, unless the agreement with the seller provides otherwise.

(E) Any licensee who fails to perform on a guaranteed sales plan in strict accordance with its terms shall be subject to all the penalties provided in this Act for violations thereof and, in addition, shall be subject to a civil fine payable to the party injured by the default in an amount of up to \$25,000.

(21) Influencing or attempting to influence, by any words or acts, a prospective seller, purchaser, occupant, landlord, or tenant of real estate, in connection with viewing, buying, or leasing real estate, so as to promote or tend to promote the continuance or maintenance of racially and religiously segregated housing or so as to retard, obstruct, or discourage racially integrated housing on or in any street, block, neighborhood, or community.

(22) Engaging in any act that constitutes a violation of any provision of Article 3 of the Illinois Human Rights Act,² whether or not a complaint has been filed with or adjudicated by the Human Rights Commission.

(23) Inducing any party to a contract of sale or lease or brokerage agreement to break the contract of sale or lease or brokerage agreement for the purpose of substituting, in lieu thereof, a new contract for sale or lease or brokerage agreement with a third party.

(24) Negotiating a sale, exchange, or lease of real estate directly with any person if the licensee knows that the person has a written exclusive brokerage agreement with another broker, unless specifically authorized by that broker.

(25) When a licensee is also an attorney, acting as the attorney for either the buyer or the seller in the same transaction in which the licensee is acting or has acted as a broker or salesperson.

(26) Advertising or offering merchandise or services as free if any conditions or obligations necessary for receiving the merchandise or services are not disclosed in the same advertisement or offer. These conditions or obligations include without limitation the requirement that the recipient attend a promotional activity or visit a real estate site. As used in this subdivision (26), "free" includes terms such as "award", "prize", "no charge", "free of charge", "without charge", and similar words or phrases that reasonably lead a person to believe that he or she may receive or has been selected to receive something of value, without any conditions or obligations on the part of the recipient.

(27) Disregarding or violating any provision of the Land Sales Registration Act of 1989,³ the Illinois Real Estate Time-Share Act,⁴ or the published rules promulgated by OBRE to enforce those Acts.

(28) Violating the terms of a disciplinary order issued by OBRE.

(29) Paying compensation in violation of Article 10⁵ of this Act.

(30) Requiring a party to a transaction who is not a client of the licensee to allow the licensee to retain a portion of the escrow moneys for payment of the licensee's commission or expenses as a condition for release of the escrow moneys to that party.

(31) Disregarding or violating any provision of this Act or the published rules promulgated by OBRE to enforce this Act or aiding or abetting any individual, partnership, registered limited liability partnership, limited liability company, or corporation in disregarding any provision of this Act or the published rules promulgated by OBRE to enforce this Act.

(32) Failing to provide the minimum services required by Section 15-75 of this Act when acting under an exclusive brokerage agreement.

P.A. 91-245, Art. 20, § 20-20, eff. Dec. 31, 1999. Amended by P.A. 93-957, § 5, eff. Aug. 19, 2004.

¹ 405 ILCS 5/1-100 et seq.

² 775 ILCS 5/3-101 et seq.

³ 765 ILCS 85/1 et seq.

⁴ 765 ILCS 100/1 et seq. (repealed).

⁵ 225 ILCS 454/10-5 et seq.

Repeal of Act

For repeal of Act, see note preceding 225 ILCS 454/1-1.

Historical and Statutory Notes

P.A. 93-957, § 5, added subd. (h)(32).

Library References

Brokers \Leftrightarrow 3.

Westlaw Topic No. 65.

C.J.S. Brokers §§ 17, 38 to 70.

Research References

Encyclopedias

Illinois Law and Practice Brokers § 10, Disciplinary Actions Relative to Real Estate Licenses.

Illinois Law and Practice Brokers § 38, Persons Entitled to Receive Compensation.

Forms

Illinois Civil Practice Forms § 69:8, Purchaser Against Real Estate Broker for Misrepresentation.

Illinois Civil Practice Forms § 118:40, Sale or Conveyance of Real Estate—House—Misrepresentation of Condition by Sellers, Realtor, and Extremist.

Treatises and Practice Aids

14 Illinois Practice Series § 3:99, Earnest Money and Down Payment — Earnest Money Escrow Account.

Notes of Decisions

Due process 1

1. Due process

Real estate broker's § 1983 action against Illinois Department of Professional Regulation (DPR), DPR officials, private real estate agencies and brokers, and court clerk, alleging due process violations growing out of license suspension, was not barred by *Rooker-Feldman* doctrine, even though many of factual issues alleged were addressed in proceedings regarding license suspension in state court, which broker unsuccessfully appealed, where broker was not challenging state-court judgment, nothing in complaint asked district court to review final decisions of state circuit or appellate courts, and broker alleged injury resulting from conspiracy between DPR officials and private defendants leading to administrative decision to

suspend license. *Madsen v. Department of Professional Regulation*, C.A.7 (Ill.)2001, 12 Fed. Appx. 382, 2001 WL 674615, Unreported. Courts \Leftrightarrow 509

Alleged failure of Department of Professional Regulation (DPR) and DPR officials to comply with state rules pertaining to DPR hearings and disciplinary proceedings was not federal due process violation, even though real estate broker had liberty interest in pursuing profession; due process in disciplinary proceeding required only notice and hearing at which broker could be present, both of which real estate broker received, and allegations that certain state procedures were not followed did not raise any federal constitutional concern. *Madsen v. Department of Professional Regulation*, C.A.7 (Ill.)2001, 12 Fed.Appx. 382, 2001 WL 674615, Unreported. Brokers \Leftrightarrow 3; Constitutional Law \Leftrightarrow 4293