

ILLINOIS

BROKER MANAGEMENT SUPPLEMENT



Illinois **Real Estate**
Educational **Foundation**



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HUD-1

Good Faith Estimate

i n t r o d u c t i o n

This workbook has been designed to supplement the *Illinois Broker Management* textbook, written by Laurie S. MacDougal. The *Illinois Broker Management* textbook combined with this supplement will serve as a useful reference in preparing you for the responsibilities of operating a brokerage business and the supervision of employees.

This course was created as a result of Senate Bill 2887 (PA) 93-0957, which was signed into law in Illinois August 19, 2004.

This supplement is divided into two major sections: supplements to the textbook *Illinois Broker Management* and Case Studies focusing on the art of being an Illinois broker manager. This supplement is the result of the Illinois Real Estate Educational Foundation's and the Illinois Department of Financial and Professional Regulation's desire to provide the most accurate and authoritative information on the latest developments in Illinois' real estate industry.

Supplements to the textbook *Illinois Broker Management* are referenced by page number and heading. The case studies have been developed with the intent they will be used in group discussion; therefore, please keep in mind there might be several correct ways to answer the case study questions.

Our hope is you find this supplement to be a useful tool and reference in the success of your real estate career.

a c k n o w l e d g e m e n t s

The Illinois Real Estate Educational Foundation is grateful to the Illinois Department of Financial and Professional Regulation for their invaluable assistance and support in creating this course, and to all of those who contributed to the development of the case studies and reviewed the supplement in its development.

Broker Licensing and Responsibilities

■ Exempt Persons and Entities (page 2)

As the student studies about exemptions under the Illinois Real Estate License Act of 2000 (the Act), it is important to keep in mind that once a person does have a real estate license, that person cannot then be considered exempt under the Act for certain purposes, or be considered “partly licensed.” Consider the following example: A licensee is sponsored by a real estate brokerage company and this is the licensee’s full-time occupation. But, the licensee is trying to make ends meet so she agrees to work for an unlicensed local developer as a clerical assistant in the sales office. Pursuant to the Act and Rules under the Act, that licensee cannot perform licensed activities for anyone other than her sponsoring broker. Once she is licensed, anything she does that relates to real estate has to go through her one sponsoring broker. So, the question of fact in this example would be whether or not the clerical duties involve sales or rental “brokerage” of the developer’s properties. If not, she could likely work there. If so, she might be able to work for the developer but would need to be hired through and paid by her sponsoring broker. Conversely, if the developer is also a licensed real estate broker, she could not work there even if just performing clerical duties and would literally have to choose the one sponsoring broker for whom she would work and by whom she would be sponsored. See Section 10-20(a) and 1450.165(g). In addition, there would be no issue if the licensee were to work in a dentist’s office where no real estate business is involved.

■ **Unlicensed Practice**

[After *Civil Penalty for Unlicensed Practice*, page 3]

There are a couple of situations in which a managing broker should take care that his office is in compliance with the Act on the issue of unlicensed practice of real estate brokerage. Sometimes these instances arise more often in “high-inventory” or “troubled” real estate markets like ones that have been experienced lately. Questions arise as to whether a licensee can pay a fee or give compensation to an unlicensed person in exchange for a referral of real estate brokerage business. The “fee” might be in the form of a gift card or some other non-cash item. Keep in mind that compensation does not mean cash only, but can be anything of value. The problem in the preceding example is that, in making a real estate related referral in exchange for compensation, the unlicensed person is engaged in activities that require a license under the Act. Any licensee who compensates the unlicensed person making the real estate referral is abetting the unlicensed practice of real estate brokerage. As noted above, the unlicensed practice carries the possibility of hefty monetary fines for the person engaged in unlicensed practice; but could also subject the licensee, and the licensee’s sponsoring broker to discipline against their licenses and/or monetary fines.

Another watch area for brokers managing their offices is that they take care their unlicensed staff does not knowingly or unknowingly engage in activities that require a real estate license. There is a fairly comprehensive rule in the Administrative Rules under the Act, at section 1450.165 that describes the do’s and don’ts for unlicensed personnel in real estate brokerage offices.

■ **Place of Business** (page 6)

It is important to note that managing brokers will be held responsible for the reasonable supervision of the licensees who “primarily work” at the broker’s office location, whether it is the main office or a licensed branch office. If a sponsored licensee practices mainly from his car or from his “home” office, the managing broker will still be charged with oversight responsibility by the Illinois Department of Financial and Professional Regulation (IDFPR).

With regard to offices, the question comes from brokers as to whether they can maintain their office and satisfy the Section 5-45 (d) office requirement by using their own homes. This is possible so long as the broker can meet the sign requirement, the requirement to conspicuously display licenses and the requirement to comply with any applicable local ordinances including zoning, and any neighborhood or condominium association covenants or restrictions. In short, a main office based in the broker’s home must meet any private neighborhood or condominium restrictions, any applicable local regulation and the requirements set forth in the Act.

■ **License Renewals** (page 9)

A sponsoring broker must be careful to make sure all sponsored licensees renew their licenses in a timely manner. If licensees practice real estate brokerage and their licenses have not been renewed those licensees are engaged in the unlicensed practice of real estate brokerage and could be fined and disciplined accordingly. Depending on the specific facts, the managing/sponsoring broker might also be subject to discipline.

case study one

Larry and Nick are experienced real estate brokers who decided to partner and jointly buy a 15 office local real estate franchise from a national franchisor. They agree to a 7-year real estate franchise with the franchisor. Larry is licensed in California and Nick is licensed in Illinois.

Larry and Nick agree that Larry will be President and actively oversee all operations of the company and Nick will be Executive Vice President and branch sales manager of their largest and most profitable office. They both agree to hire Tom, an Illinois licensed broker, as Vice President and general sales manager for the firm. Larry, Nick, Tom and Gene, the in-house VP/CFO and Fred, the in-house VP/Legal Counsel, meet in weekly executive meetings to discuss and manage company issues. The only Illinois licensees on the executive team are Nick and Tom. Fred advises the executive team in one of its weekly meetings as to the following.

Which statement is true?

For Discussion

1. The company's broker's license is at risk because Larry is a California real estate broker and not an Illinois licensee.
2. The company's broker's license is at risk because Gene and Fred are not Illinois licensees.
3. Although Gene and Fred do not actively participate in the real estate activities of the company the company's broker's license is still at risk since they do not hold broker's licenses.
4. Gene and Fred must become Illinois real estate brokers.
5. Larry does not have to become an Illinois real estate broker because he has been an active California real estate broker in good standing for more than 2 years, the standards in California are substantially the same as in Illinois, and no complaints have ever been filed against him in California.

case study two

Morton Management and Leasing (MML) is a property management and leasing company that specializes in leasing, managing and developing Class A office buildings. The types of properties typically marketed and managed by MML require they establish a leasing and property management office in each building they manage.

Case Study Questions

1. The Act requires that every time MML opens a branch office they:
 - a. Make application for a branch office within 45 days of opening the office.
 - b. Do not need to obtain a branch office license as long as they do not employ any licensed salespeople at that office.
 - c. Cannot open the office until they have obtained a branch office license.
 - d. Can open the office but must have a branch office license before they collect any rent or fees.

2. MML is owned by one person, Becky. Becky was recently married and thought it would be best to give one half of the company to her new husband in case something was to happen to her and she was unable to manage the company on a day to day basis. Because MML is incorporated she should:
 - a. Notify IDFPR of the transfer of 50 percent of the shares of stock to her husband.
 - b. Have her attorney prepare an agreement so the transfer of stock is done correctly and not worry about IDFPR because he is not licensed.
 - c. Find somebody else because spouses seldom agree on business matters.
 - d. Have her husband obtain a brokers licensee before giving him half the company and notify IDFPR.

- 3.** As a method to attract new tenants for the office buildings MML manages, MML will frequently hold an open house/brokers tour. The event is marketed to other tenants in the area as well as other commercial brokers in the area. This event requires participation by the entire staff. The unlicensed members of the staff can:

 - a.** take brokers on a tour of the building.
 - b.** take potential tenants on a tour of the building.
 - c.** should not be allowed to discuss any aspects of the building with any of the attendees.
 - d.** provided they have a leasing agents license, do whatever needs to be done to generate business.

- 4.** Several of MML's agents have obtained designations through various councils, societies and institutes. One of the agents did not renew their membership in an organization from which they obtained a designation but continues to promote the designation on their business cards and other promotional materials.

 - a.** MML should not be overly concerned because it is not the company that dropped the membership, but the individual who did.
 - b.** This is an acceptable practice because the person was a member when they received the designation.
 - c.** MML and the individual are subject to disciplinary action by IDFPR.
 - d.** As long as the public doesn't know what the designation represents, IDFPR would not take issue with it.

- 5.** One of the buildings MML manages and leases was the site of a murder and suicide several years ago. It was determined there were no additional security measures that ownership of the building or MML could have taken to prevent this unfortunate incident. MML has an obligation to disclose this:

 - a.** Whenever someone looks at the building.
 - b.** Never.
 - c.** When showing the space where the murder occurred.
 - d.** Only if asked.

- 6.** MML offers in-house continuing education courses that satisfy IDFPFR requirements for continuing education. Several of the licensees have taken courses outside of the company program because the company courses are not of interest to them. The final responsibility to make sure the required hours are completed is:

 - a.** MML's.
 - b.** Licensee's.
 - c.** Not a concern if there have been unique significant time restraints over the last two years.
 - d.** Both a & b.

- 7.** MML has the opportunity to work with a college intern. The individual is a senior at the University of Illinois working towards a degree in real estate. She is interested in being involved in as many aspects of the business as is possible for the 3 months she will be interning. After she completes her degree she intends to get her real estate license and join the company. During her internship MML can allow her to do which of the following:

 - a.** Attend property showings and assist the salesperson she is working with.
 - b.** Ministerial acts.
 - c.** Only those things that are permitted as an unlicensed assistant.
 - d.** Because she has completed most of the course work she can do most everything.

Agency Agreements and Issues

■ **Dual Agency** (pages 19-20)

[Before *Treatment of Customers versus Clients*, page 20]

As discussed, disclosed dual agency is permitted in certain circumstances where disclosure about the dual agent's limited role is made to the clients and informed consent for the licensee to continue in this limited role is given by the clients. Brokers must keep in mind there are situations where a licensee may not act as a disclosed dual agent even if the parties are willing to consent. One example of this is where the licensee has or will have a financial interest in the property being sold, purchased or leased. See Section 1450.215 in the Administrative Rules under the Act. It is fairly easy to understand why this is prohibited when you take a moment to think it through. For instance, under the Act, a disclosed dual agent has the duty to keep confidential information of the opposing parties to herself. If she **is** one of the parties (or a financial interest holder in one of the parties) this is really impossible to do. In addition, managing brokers and/or broker-owners of small offices should assess whether they could have one of their sponsored licensees represent the other party if the small office managing broker or broker-owner has a financial interest in the property that is the subject of the transaction. If a transaction falls through, how will it appear to the non-broker-owner party when the question of unfair or partial treatment arises? Sometimes brokers should consider that if a situation appears problematic, the broker

should treat it as if it **is** a problem and adopt an office policy to avoid issues like this.

In addition, brokers might consider best practice principles and disallow certain instances of dual agency even if the Act would permit dual agency in the situation. The following are a couple of examples: Consider when the listing agent represents the seller in a short sale transaction. In other words, the seller owes more money on his loan than he will likely realize in the sale of the property on the market. Seller's lender will need to approve the transaction, or at least give the parties a dollar amount the lender would take to let the seller out of his debt (with or without a deficiency judgment for the balance). In this scenario, the listing agent is or has been working with a distressed seller. When a buyer comes along, the buyer may be looking for a "bargain" in the distressed market. The disclosed dual agent could not counsel either client about what to accept or what to offer. Furthermore, buyers may need to try to negotiate specialized language into the contract to deal with lengthy delays (which tend to occur in short sale transactions). This is one situation where managing brokers might consider adopting an office policy prohibiting disclosed dual agency.

One more scenario in which managing brokers might consider prohibiting dual agency would be where a licensee is related to the client but has no financial interest at all. Specifically, assume the listing agent represents his uncle who is the seller. The listing agent would like to represent his uncle and the prospective buyer as a disclosed dual agent. Then, something happens and there is tension between the parties to the transaction. Won't the buyer be inclined to believe the disclosed dual agent will favor his uncle over the buyer the agent only recently met? Keep this rule in mind; if it looks bad, it is

bad. Prudent brokers anticipate and avoid these situations and create office policies to deal with them.

■ **Required Minimum Services** (pages 25-26)

[Add to *Questions Frequently Asked About Minimum Services*, page 26]

10. *Do the minimum services requirements apply if there is an exclusive brokerage agreement with a buyer client?*

- Yes. A buyer client who has signed an exclusive buyer brokerage agreement would be entitled to the minimum services required under Section 15-75 of the Act and summarized on page 24 of the textbook.

Final Thoughts on Agency (page 26)

[Before *Duties after Termination of Brokerage Agreement*]

In today's markets, brokers would be wise to educate and inform licensees on some very basic agency issues. One question to encourage licensees to consider is, "Who is my client?" This can differ significantly depending on the facts. For instance, in a short sale situation, the listing agent's client is the seller who effectively holds title to the property, but the lender(s) may assert a heavy influence. If the agent is unclear about who her client is, she could get herself into trouble. On the other hand, if the property has been through the foreclosure process and the judicial sale has taken place then the lender is likely the owner and could thus be the listing agent's client. It is important for brokers to have policies and procedures in their offices that remind agents to follow the lawful direction of the clients (not those who may have influence over their clients). Having said that, brokers will want to be tuned in to the direction of their clients and also that the direction is lawful. If a client suggests doing something an agent is not comfortable with, like accepting an offer

from a short sale buyer where the seller will get money back while not disclosing this to the lender who must approve the deal, the agent should be encouraged to come to the broker for counsel. Also, the client should be directed to his attorney.

Further note: Managing brokers should review forms used in their offices to make sure the forms include authority, for example, to hire experts for consulting purposes or to use social networking tools for marketing purposes. If there is a need to hire expert consultants and the broker has authority from the client to do so, make sure the experts are credible and are truly experts in their field. There are many scams in the marketplace these days. If brokers and their sponsored licensees are going to venture into new markets or disciplines, education on these subjects is crucial.

case study one

XYZ Real Estate is being examined by the Illinois Department of Financial and Professional Regulation (IDFPR). The examiner from IDFPR requests copies of all agency disclosure documents from XYZ for the past twelve (12) months. The managing broker provides copies of all listing agreements for the past twelve (12) months to the examiner. The IDFPR examiner requests copies of agency disclosures made to buyer clients. The managing broker explains to the IDFPR examiner that there are no brokerage agreements with buyer clients of XYZ so there are no written agency disclosure documents.

For Discussion

1. Is agency disclosure required under Illinois law? If so, when?
2. Will XYZ providing copies of listing agreements be sufficient evidence of agency disclosure?
3. Is the managing broker of XYZ accurate when he stated that XYZ does not have brokerage agreements with its buyer clients? Why or why not?
4. Is XYZ required to retain copies of agency disclosures to buyer clients? If so, discuss how that might best be accomplished.
5. Does a buyer client have a right to sue XYZ for failure to make the agency disclosure?

case study two

Managing Broker Jones was conducting his weekly meeting with the company's sponsored licensees. A new salesperson asked the managing broker about the agency relationship under the Real Estate License Act. Managing Broker Jones explained that the Act abolished the traditional agency relationship and established a new agency relationship in Section 15-10 called designated agency.

As a managing broker how would you answer the following questions from the new salesperson?

For Discussion

1. Does the Act allow you to establish an agency relationship other than designated agency? Would fiduciary duties apply to that "other" relationship?
2. Do fiduciary duties apply to designated agency? If not, what are the duties owed by the designated agent?
3. If you establish an agency relationship other than designated agency what impact would there be on the dual agency permitted by Article 15? Would the presumption of informed consent provided by Article 15 apply to the "other" relationship?

case study three

Chuck is a sales associate in John's branch sales office where John is branch sales manager. Chuck meets one evening with Mary, a potential client-seller at her home, to do a listing presentation in hopes of securing the listing.

Chuck is told by the 87 year-old potential client that her home must be immediately sold to provide the necessary money for her to buy into a local nursing/retirement home community. Chuck advises Mary that

economic conditions are not favorable for a quick sale without substantial pricing concessions. Chuck further advises Mary that his BPO shows a home value of about \$1,000,000.

In light of Chuck's fine presentation and advice, Mary tells Chuck to list her home for \$700,000 in order to secure a quick sale. Despite Chuck's insistence that her suggested list price is too low, Mary stands firm and signs the listing with Chuck for \$700,000.

Upon return to his office later that evening, Chuck determines Mary's home is such a great deal he must buy it himself as an investment. As such, he immediately calls Mary to tell her the good news and that he is coming right over with his signed offer. Upon arrival at Mary's home, Chuck secures signed written consent from Mary and makes all required disclosures to act as a dual agent in the transaction.

After closing, Mary's eldest son from Dallas, Texas calls Chuck and wants to know the details surrounding Mary's sale of the family home to Chuck for \$700,000.

Which of the following statements are true?

Case Study Questions

- 1.** Chuck had every legal right to buy Mary's home.
- 2.** Chuck did not have to expose Mary's listing to the open market before he made an offer to buy it from Mary.
- 3.** Chuck has violated Article 20 of the Act by engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud, or harm the public.
- 4.** Chuck has violated Section 1450.215 of the rules by serving as a dual agent in a transaction where he was a party to the transaction.
- 5.** All of the above are true.

case study four

Brian is real estate broker and branch sales manager in a two-office, independent real estate firm. Brian has just interviewed and hired Kathy, a newly licensed sales associate.

Kathy is excited about her new association with Brian's office. During her interview with Brian, Kathy expressed her desire to specialize and represent buyers instead of sellers in real estate transactions. Kathy told Brian that since she is also a mortgage broker, affiliated with a large nationally recognized mortgage broker, she will also be able to help her buyers with their financing needs.

Which of the following questions is true?

Case Study Questions

1. Kathy may represent her buyers as a licensee in their purchase of a home and also represent them as a mortgage broker in securing a mortgage for them in the same transaction and be paid for both services in the same transaction with appropriate written disclosures.
2. Kathy may not represent her buyers as a licensee in their purchase of a home and also represent them as a mortgage broker in securing a mortgage for them in the same transaction and cannot be paid for both services in the same transaction, despite appropriate written disclosures, if Kathy's independent contractor agreement with her broker prohibits such activity.
3. Kathy may represent sellers in the sale of their property and buyers in their purchase of the same property as a dual agent and also represent the buyers as a mortgage broker in securing a mortgage for them in the same transaction and be paid for all services in the same transaction with written consent and appropriate written disclosures made to all.
4. All of the above are true.

case study five

The owners of Acme Brokerage have opened an office in Illinois, obtained the necessary license and retained a managing broker. The owners are discussing with the managing broker what Illinois specific requirements exist for Illinois real estate brokerage companies. The discussion turns to designated agency and the managing broker explains the concept and the requirement for the sponsoring broker to take ordinary and necessary care to protect confidential information (Section 15-50). Acme has decided to adopt a company policy providing for disclosed dual agency and allowing sponsored licensees to establish teams. The managing broker advises the owners that establishing a written policy emphasizing the necessity of confidentiality should be sufficient to satisfy the requirements of Section 15-50.

For Discussion

1. Do you agree with the advice of the managing broker? Why or why not?
2. Would your answer be different if the company prohibited disclosed dual agency as a matter of company policy?
3. Does the company need to establish a means of protecting confidential information for its teams or should the teams establish their own policies and protections?
4. Can the sponsoring broker be sued under Article 15 if it does not take ordinary and necessary care to protect confidential information? Is the answer different if teams are involved?

case study six

All World Realty is an international commercial, industrial and investment brokerage company with four offices in Illinois. The number of licensees in each office varies from 18 to 43. Many of the licensees have specialized in certain types of properties (office, industrial, etc.). Two of the offices have the same managing broker who also lists and sells in addition to his other responsibilities. Two of the licensees in the Westville office have listed an office building for sale.

Case Study Questions

1. A licensee from the Northgate office has shown the property to a prospective investor. The licensee working with the buyer should:
 - a. Have the dual agency agreement signed and acknowledged by both the buyer and the seller.
 - b. Prior to showing the building, or as soon as possible, discuss with buyer the agency relationship that will be established with the buyer.
 - c. Make sure that the agency disclosure form required by Section 15-35 is signed prior to closing.

2. If one of the listing licensees were to secure a prospective purchaser for the building which of the following would be the appropriate step:
 - a. Have the other listing licensee handle all of the negotiation on behalf of the seller to avoid a dual agency situation.
 - b. Inform the seller that the licensee is representing the buyer.
 - c. Only do ministerial acts for the buyer.
 - d. Obtain written approval from both parties to act as a dual agent.

- 3.** The managing broker of the office is representing the owner of a multi-tenant industrial building that is for lease. One of the licensees in the managing broker's office has a client interested in the building but who has some very unique circumstances. The licensee comes to the managing broker asking for some advice on how to prepare a letter of intent to lease one of the spaces in the building. How should the managing broker respond?

 - a.** Have the licensee get advice and direction from another managing broker or one of the more experienced licensees in the office.
 - b.** Provide the supervision required by the Act but don't disclose to the owner of the property any confidential information the managing broker may have obtained.
 - c.** Help the licensee prepare a letter of intent that the managing broker knows the owner is likely to accept.
 - d.** Due to market conditions do what needs to be done to get the lease signed.

- 4.** A licensee in one of the company offices has a very small ownership interest in a retail center she is representing for lease. All the negotiations are directed to and negotiated by the managing partner of the investment. The licensee has no authority to approve or disapprove any lease terms.

 - a.** The licensee must have a dual agency agreement signed by any prospective tenant.
 - b.** Because she does not control the negotiations nothing out of the ordinary is required.
 - c.** Provided the licensee discloses on any brochure that she has an ownership interest she will have given adequate notice to the tenant.
 - d.** The licensee cannot represent the tenant.

5. A licensee at All World Realty is negotiating a lease renewal on behalf of a tenant for a property where All World also serves as the property manager. At the time the original lease was signed the licensee had obtained a dual agency agreement with both the lessee and the representative (property manager) of the lessor. To avoid any potential agency issues the licensee should do which of the following?
 - a. Have a new dual agency disclosure signed.
 - b. Have the tenant sign a notice of no agency agreement along with the lease renewal.
 - c. Have the tenant sign a notice of ministerial acts before he signs the lease renewal.
 - d. Have someone else in the office negotiate the lease and collect the commission.

6. One of the licensees in All World Realty works with several investors. Many of these investors have indicated that if the licensee finds a good property they would buy it. As a result, the licensee from All World solicits the owners of investment properties indicating that he has several investors interested in purchasing their property. The licensee should:
 - a. Have a representation agreement with the investors.
 - b. Have a written agreement with the seller establishing the agency agreement with the seller.
 - c. Represent the party who agrees to pay the commission.
 - d. Both a & b.

- 7.** Sam Sell, one of the licensees at All World, received an inquiry from the area manager of the International Zoom Corporation about locating a 20,000 sq. ft. office space for their Midwest regional headquarters. Sam met with the area manager to discuss their requirements and asked the area manager to sign an exclusive right to represent agreement outlining the requirements they had discussed. The area manager signed the agreement and Sam went to work locating properties that could meet Zoom's requirement. The area manager told Sam that he would need to submit all the properties to his supervisor and would get back to Sam as to which properties were of interest. When Sam realized the area manager did not have the authority to make the decision to acquire a space Sam should:

 - a.** Notify all of the properties or the agents of the properties he submitted to Zoom that he has an exclusive with Zoom.
 - b.** Try to go around the area manager and talk directly to the decision maker.
 - c.** Have another exclusive right to represent agreement signed by the area manager's supervisor or whoever the decision maker is.
 - d.** File a lien if Zoom works through another broker and leases a property that Sam first introduced them to.

- 8.** Several large investment companies have properties in the market All World Realty services. As a result of their size these investment companies work not only with several different brokerage companies, but frequently with different sales people in the same office. To provide the maximum service and to maintain the confidentiality of the investment companies All World Realty should:

 - a.** Establish and enforce a strict policy within their office regarding access to and discussion among the licensees about their mutual clients' transactions.
 - b.** Engage in and solicit information from other real estate offices that do business with the investment companies about how they do business with them which could be of assistance in furthering the objectives of the investment companies.
 - c.** Share forms and contracts within the office that the investment companies have used in the past.
 - d.** Maintain good communications with everyone so there is no confusion among the different licensees.

Office Management and Escrow

■ **Broker-Sponsored Licensee Relationship** (pages 32-33)

Independent Contractors

[After *Independent Contractors* before *Real Estate Teams in a Brokerage Office*, page 33]

Classification of sponsored licensees as independent contractors or employees continues to be a major area of concern for sponsoring brokers. The Act requires a written agreement (employment or independent contractor) between the sponsoring broker and the sponsored licensee. If a sponsored licensee's agreement is that of independent contractor for federal income tax purposes the licensee must meet criteria established by the Internal Revenue Service (IRS) to qualify as an independent contractor, be classified as a "statutory independent contractor," or be classified as a "statutory non-employee" under the following test:

1. Person is licensed salesperson or broker;
2. Person receives substantial portion of compensation from sales-based commissions; and
3. Person must have a written agreement with sponsoring broker that provides that licensee will file and pay his own taxes.

It is so important for sponsoring brokers to be mindful that these tests apply only to a sponsored licensee's classification for federal income tax purposes. In fact, under some Illinois state laws, a sponsored licensee may well be an employee and not an independent contractor.

Consider Illinois' workers' compensation laws. Salespersons and brokers are only exempt from Illinois' workers' compensation laws if they receive all of their income from commissions. Under Illinois unemployment tax laws, unless a sponsored licensee receives all of the compensation from commissions the sponsored licensee must meet the three-part test under that law in order to be considered an independent contractor. So, while a sponsored licensee may be treated as an independent contractor under federal income tax laws, the sponsoring broker may be responsible in Illinois to secure workers' compensation coverage for sponsored licensees and pay Illinois unemployment taxes.

Consider yet one more independent contractor versus employee issue that seems to come from IDFPR office examinations. In a number of situations, an IDFPR examiner finds there is either no written agreement between the sponsoring broker (which might be a corporation, LLC or some other legal entity) and the managing broker; or the examiner finds an independent contractor agreement between the managing broker and the sponsoring brokerage company. On these facts it is probable that an independent contractor agreement would not be appropriate, but that the proper written contract between the managing broker and the entity that is the sponsoring broker would be an employment contract. An employment contract would be required even if the managing broker is the only owner in the sponsoring brokerage company (whether corporation, LLC, Ltd. partnership, etc.) The sponsoring broker would be well-advised to seek legal advice about how to properly classify sponsored licensees, including managing brokers, as employees or independent contractors.

■ **Managing Broker Responsibilities** (pages 41-46)

Preparing a Policy and Procedures Manual (pages 45-46) [Before *Sales Force Training*, page 46]

A written policy and procedures manual is imperative for any responsible sponsoring broker. Not only must the sponsoring broker have a written policy manual, but the prudent sponsoring broker will conduct periodic training and review on the policy manual. This can help the broker reduce and manage risks. Policy manuals will need to evolve as the business environment and practices change and as new technologies become available.

One example of technological change involves the use of social networking via the Internet by real estate agents. The managing broker should determine how agents are already using social networking methods (i.e. Facebook[®], YouTube[®], MySpace[®], Twitter[®] or “blogging” to name a few) as part of their business practices. The broker will need to address agents’ business uses of social networking in their office policies and procedures. It will be important for brokers to educate themselves about how these social networking tools work.

Also, on the subject of social networking, if agents are using these methods to market properties, not only must the broker’s office policies and procedures address these issues, but the company brokerage agreements should contain language that gives the agent the authority to employ these methods in their practices. Clients must be informed and, depending on the client, educated about how social networking works. Consider that third parties might be able to comment on properties being marketed via social networking. Brokers should ensure that agents are discussing these issues with their clients, that they have proper authority to employ these methods and that their

clients set parameters for their use. For instance, a seller client may wish to limit third party comment if that is possible or to pursue different marketing methods if social networking is not acceptable to them.

Yet another concern for the managing broker related to the use of social networking or “blogging” is content posted on the Internet by the sponsored licensees. There are certainly danger zones to consider which include on-line discussion that could be considered anti-competitive, or discussions that could be defamatory of others to illustrate just two potential problems with social networking. Not only is this potentially dangerous, but the user is making a record that might well be used as evidence in future proceedings against the agent and his broker.

Finally, consider that information is needed to populate Web sites, “blogs” and social networking sites. Therefore, it is imperative office policies prohibit the unauthorized use of material that is copyrighted by someone else. This would be true for information used on the company Web site too. The managing broker should be sure licensees have the authority to use company material on their own sites, and that the sponsored licensees are not “lifting” protected information from other sites without proper authorization or consent.

Having said all of the above, it seems inevitable these methods will gain widespread use which makes it so important for the sponsoring broker to have written policies and procedures prohibiting inappropriate uses. Once again, constant training will be the key to the responsible use of social networking methods by licensees. In addition, be familiar with the Act and Rules that govern advertising and Internet usage. Specifically, Rules Section 1450.140 and

1450.145 will apply. There is very specific information that must be included if licensees are using Internet advertising methods and electronic communications in their practices. There will be more discussion later about federal CAN-SPAM laws and regulations, but if electronic messages over a social networking site are employed, CAN-SPAM requirements will likely apply to these messages.

■ **Escrow Accounts** (pages 49-52)

Time of Deposit or Disbursement

[Add to *Time of Deposit or Disbursement* (page 50)]

Questions have arisen with regard to time for deposit of earnest money in the context of short sales and foreclosures. Generally speaking, the timing is likely different for short sales as opposed to foreclosures. The managing broker and sponsored licensees will need to pay attention to specialized contract language that may exist to change the general rule. However, the general rule for time of deposit is as follows:

- For short sales, where the seller is still the title holder, earnest money received by the broker must be deposited to the escrow account no later than the next business day following the transaction. The transaction in the short sale is when seller and buyer have signed the purchase contract which contains the contingency that the lender(s) must approve the sale price.
- For foreclosures, the lender has taken title so will be a party to the purchase contract. In these cases, the general rule would be that earnest money would not be deposited until the lender/owner signs the purchase contract. Sometimes this takes quite awhile. So, if earnest money is given by the buyer to the broker, it would be held in a locked secure location, but would be deposited no

later than the next business day following the lender/owner signing the purchase contract, or returned to the buyer.

Regarding disbursement of escrow moneys, managing brokers must be aware of important new legislation that, in certain cases, shortens the length of time in which unclaimed escrow deposits will be considered abandoned. The new language became effective on January 1, 2009 and can be found in Section 20-20 (h) (8) of the Act. The time period defining abandonment has been shortened from 5 years under the Illinois Unclaimed Property Act to 6 months in some instances. Now a managing broker who is holding unclaimed or disputed funds in escrow may transfer the “abandoned” funds over to the Illinois Treasurers Office, Division of Unclaimed Property (UCP) following the abbreviated time frame if the facts allow.

If the managing broker/escrow agent has received a written demand for the release of the funds from one of the principals (or their duly authorized agent which can include their attorney at law); the escrow agent may consider the funds abandoned if they remain on deposit at the expiration of six months from the date of receipt of that written demand. Therefore, when the escrow agent receives a written demand, the escrow agent should calendar ahead six months. After the expiration of that time period if there has been no joint written release signed by both parties, and no court order or lawsuit pending, the escrow agent should include this unclaimed property in the next annual report to the State Treasurer’s Office and turn the funds over to UCP following the procedures established by the State Treasurer’s Office. This is not an option for the escrow agent as the unclaimed property statute requires that the escrow agent turn over unclaimed property to UCP. Note that if there is litigation pending the escrow agent should

continue holding the funds pending a court order regarding the disposition of the funds.

case study one

Zero Brokerage has seven offices and each of those offices has at least one team. Several of the teams have members in more than one office of Zero. The teams have both sponsored licensees and non-licensees as members. Some of the licensed team members are paid only based on commissions and others receive a flat amount per month plus a percentage of the commissions. Each team has a licensed broker in charge of the team.

For Discussion

1. Can Zero Brokerage name each of the brokers responsible for a team as the managing broker for the team but not for an office?
2. Can licensees receiving a base salary plus commissions be independent contractors? Why or why not?
3. Will Zero Brokerage need to provide workers' compensation coverage for the sponsored licensees who receive a salary plus commissions?
4. Must Zero Brokerage have written agreements with all sponsored licensee members of teams?
5. Is Zero Brokerage required to supervise all licensee members of teams? Will those members be required to follow the company policy of Zero Brokerage or can they follow the team policy established by the broker in charge of the team?
6. What kind of agreement should Zero Brokerage have with the broker in charge of each team?

case study two

New Brokerage is in the process of developing a company policy. The managing broker of New Brokerage is unsure what to include in a company policy. The managing broker asks the managing brokers of the other local brokerage companies for a copy of their company policy to review to ensure that New's policy covers the correct items. The managing broker also contacts IDFPR and his local REALTOR® association for examples of company policies and required items to include.

For Discussion

1. Is there a list of required items to be included in a company policy? List the kinds of items to include in a company policy.
2. What is IDFPR's major reason for requiring a company policy?
3. Does the managing broker of New Brokerage follow the right procedures in developing New's policy? Why or why not?

case study three

Annie is an experienced real estate broker who once owned her own one-office firm. Annie has been recruited to be a branch sales manager in a progressive and automated seven-office local real estate franchise. Annie is to manage the largest of the seven offices and has two full-time secretaries and administrative assistants on her staff to support the 70 licensees in her office. The policies and procedures she previously employed in managing her one-office operation are different than those in her new multi-office progressive company.

Annie now uses a "check-list" on each office transaction "deal file" to ensure her staff completes all paperwork required by the corporate office to which she sends all records relating to the transaction, including the earnest money check, signed contracts, dual agency

authorizations, disclosures and closing statement. To also ensure complete, accurate and safe record keeping company policies and procedures require all paperwork on all active transactions be centralized at the corporate office for processing and not be kept at the branch sales office.

Annie is unsure about her new company's policies and procedures on record keeping and transaction processing but believes the rules for multi-office real estate companies must be different for companies with only one sales office. In this regard, which of the following statements is true?

For Discussion

1. Because of company policy, Annie is not required to retain copies of each deal file transaction in her new office as she used to do when she owned her own company.
2. For security reasons, Annie must not retain copies of escrow records and records relating to the payment of compensation at her new office location.
3. Company policies and procedures require all escrow records be maintained at the corporate office for seven years.
4. Annie must ensure that copies of escrow records for the immediate prior two-year period are maintained in her office.
5. The Act prohibits sponsored licensees from maintaining duplicate transaction records.

case study four

Chris and Mike are a husband and wife real estate broker team who associate with a highly respected multi-office, local independent real estate brokerage firm that has clearly defined and stated policies and procedures all licensees must follow.

Chris and Mike's company has specific policies and procedures that relate to earnest money deposits and accounts. Which of the following statements relating to earnest money deposits and accounts is true?

For Discussion

1. Chris and Mike's company does not have to accept earnest money deposits.
2. Chris and Mike's company must not place any earnest money deposit into an interest bearing account unless directed in writing by the principals in the transaction.
3. Chris and Mike's company may require that any such earnest money deposit they accept be at least \$10,000.
4. Chris and Mike's company may require that if they are to accept earnest money deposits, all interest earned on any such earnest money deposit shall be payable to the licensees involved in the transaction.

case study five

Commercial Consultants Realty (CCR) is a midsize company of about 25 licensees that have been doing business in several towns along the river. Most of the licensees have been in the business for many years and are on a first name basis with most of the other commercial brokerage companies in the market. Most of the licensees belong to one or more of the several real estate related trade associations, societies, councils or chapters.

Case Study Questions

1. CCR has taken a listing on a parcel of vacant property for an owner that lives out of state. The property is about 112 miles outside of town. At the time CCR took the listing they spent \$565 to have a very attractive four-foot-by-eight-foot sign installed on the property. The owner has indicated that when the current listing expires he does not intend to renew it. The owner does not plan on listing with CCR or any other company but would sell the property if the right offer came along. Because the owner is not going to list with another broker, CCR may:
 - a. Leave the sign on the property until the owner lists with another company.
 - b. Continue to advertise the property in hopes of finding a buyer.
 - c. Disclose confidential information they have learned from the seller.
 - d. Do only those things the seller gives them permission to do.

- 2.** CCR is working with a purchaser interested in a property listed with Old Towne Investments. CCR does not know what the cooperative commission is but they have worked with Old Towne many times before and are confident the cooperative commission will be fair. The Letter of Intent (LOI) CCR prepares should include in addition to the business terms of the transaction a paragraph regarding commission that should indicate:

 - a.** “To be Determined.”
 - b.** Standard commission.
 - c.** An exact amount or percentage.
 - d.** Don’t put it in the LOI. Rather, the commission should be in a side or separate agreement.

- 3.** CCR has a listing agreement on a 181-unit apartment complex. There is a new start-up company in the market place that is a competitor of CCR and really doesn’t understand the friendly relationship all of the commercial brokers in the market have had for years. The new company has a buyer for the property but is not sure that CCR has an Exclusive Right to Sell listing and wants to make sure they will get paid by the seller so they ask CCR for a copy of the Exclusive Agreement between CCR and the seller. CCR should:

 - a.** Provide a copy within 10 days after proper notice.
 - b.** Tell them it is none of their business
 - c.** If CCR doesn’t have an exclusive hurry up and get one.
 - d.** Tell Old Towne they will provide a copy of the agreement once there is a signed contract between the buyer and the seller.

- 4.** CCR has obtained a Letter of Intent (LOI) from Clay Ton, Inc. a maker of large flower pots for a property CCR has listed for lease. Clay Ton is a long standing client of CCR and they have worked together for years. As has always been the case Clay Ton gives CCR an earnest money check made payable to CCR in amount equal to the first month's rent and security deposit. What is CCR required to do with the check.

 - a.** Keep the check in the file until the LOI is accepted and then deposit it in CCR's earnest money account within 24 hours.
 - b.** Deposit the earnest money in the CCR earnest money account by the close of the next day of business after receipt of the earnest money.
 - c.** Sign the earnest money check over to the Lessor upon the acceptance of the LOI by the Lessor.
 - d.** Deposit the earnest money in their escrow account by the close of the next business day after a binding agreement has been entered into.

- 5.** Old Towne Investments represented a buyer on a property that CCR had listed. The buyer and the seller were casual acquaintances through the local country club. The contract had been signed, earnest money deposited and the buyer was completing the necessary due diligence when something unforeseen came up and the buyer wanted to cancel the contract. Since they were members of the same social circles the buyer felt an obligation to explain the circumstance to the seller so there would not be any hard feelings. They both agreed to the cancellation and contacted their respective brokers. With that Old Towne Investments requested the return of the earnest money. CCR was aware of the agreement to cancel the contract. Which of the following was the appropriate action at CCR?

 - a.** Return the earnest money to Old Towne Investments less one half of the commission.
 - b.** Return the earnest money to the buyer.
 - c.** Before returning the earnest money require a signed agreement from the buyer and the seller authorizing CCR to release the earnest money.
 - d.** Give the money to the seller and let him return it to the buyer so the buyer will know there are no hard feelings.

6. CCR represented the owner of a property that was about to go into foreclosure. Muga Real Estate had submitted a contract for the purchase subject to financing along with an earnest money check for 10 percent of the purchase price. During the contingency period the buyer experienced a great deal of difficulty in securing a mortgage in part due to their poor credit history. Simultaneously, the seller's attorney was unable to get the seller's lender to agree to a partial payoff of the existing loan (short sale). While all of this was going on, Muga Real Estate had their phones shut off and the licensee with Muga that was working with the buyer left the brokerage business. CCR attempted to reach the buyer several times with no response from the buyer or the buyer's attorney. After several months the seller's attorney sent a letter to CCR saying that the deal was dead and to return the earnest money to the buyer. CCR should:

 - a. Return the earnest money so the property can get back on the market.
 - b. Give the earnest money back to the buyer.
 - c. Give the earnest money to the seller's attorney.
 - d. Require an agreement between the parties authorizing the release of the earnest money.

7. In CCR's market is a one man company, Marine Realty, who works out of his house boat which is docked at one of the piers on the river. The broker of Marine Realty is for the most part retired and spends most of his time fishing. Every once in awhile he gets a listing and attempts to market the property. He usually gets the listing because he is a low overhead company and does not provide many of the frills that a company like CCR might offer. Due to the number of transactions Marine Realty is involved in he does not maintain an escrow account. If Marine Realty were to receive earnest money he should:

 - a. Open up an escrow account and deposit the earnest money in it.
 - b. With so few transactions his business account does not see a lot of activity so the earnest money could be put in there for a short period of time and if it looks like the transaction is going to work out open up an escrow account prior to closing.
 - c. Make sure there is no earnest money involved in the transaction.
 - d. Hold on to the check and if there is a problem then open escrow account and deposit the money.

- 8.** CCR's bookkeeper Julie has been with the company for over 40 years and knows everything that is going on with the operating account, the escrow account and all of the funds received and distributed for the properties CCR manages. The principals of CCR have told Julie on several occasions that she needs to keep written records current and up to date. Julie has never been very computer literate. Due to the volume of work, Julie balances all of the accounts once a quarter and they have always balanced. Based upon the above:
- a.** Julie is meeting the intent of the Act regarding escrow accounts.
 - b.** The principals of CCR could be found in violation of the Act.
 - c.** Escrow records must be reconciled on a computer.
 - d.** As long as the money is there no one should really be concerned.

Risk Reduction

■ **Introduction** (page 67)

[At end of *Introduction* before *Understanding Antitrust* (page 68)]

Based on conversations with an insurance broker for a large errors and omissions insurer, a fairly straightforward list of key points emerged for brokers to follow to help reduce and control their risks:

1. Make sure agents in your offices have all applicable disclosure forms completed, provided to the buyer, and copies kept in your file. These can include the Residential Real Property disclosure form, the Lead-Based Paint form and the Radon Awareness Act disclosure form.
2. The buyer should have a home inspection completed.
3. The buyer should purchase a home warranty or seller should provide a home warranty.
4. You should take care that your agents are using the proper purchase contract forms for your marketplace or, in other words, the forms that are commonly used in your community and that those forms are properly completed.

■ **Internet Usage/Social Networking and Antitrust Concerns** (page 70)
[After *Illinois Antitrust Law* (page 69) before *Antitrust Compliance* (page 70)]

Another key area of concern for brokers who are trying to reduce and manage their risks may involve the potential for anticompetitive discussions or agent behaviors while using the Internet and social networking sites or tools. Part of the risk associated with social networking might even be attributed to the informal nature of discussions among competitors who communicate by using the Internet. For example, if an agent is discussing business with another agent from a competing firm on Facebook[®] they must take care not to discuss their respective business practices or pricing. All laws and regulations will continue to apply to agents wherever they are having these discussions, whether they are on-line over Facebook[®] or whether they are at the pool for a neighbor's swimming party. The broker needs to have specific written policies and procedures regarding these behaviors and constant periodic training for the broker's sponsored licensees. In today's society, training will be necessary at frequent intervals since the environment and methods of communication seem to be changing so rapidly. Also, consider that any electronic communication is establishing a record.

■ **Lead-Based Paint Disclosure** (pages 72-74)

Inspection and Record Keeping (page 74)
[Second paragraph before *Property Disclosure*]

The Illinois Real Estate License Act of 2000 requires records to be kept for five years even though federal regulations only require a copy of the Lead-Based Paint disclosure form to be kept for three years.

■ **Property Disclosure** (pages 74-77)

Radon Awareness Act

[Before *Stigmatized Property Disclosure*, page 76]

The Illinois Radon Awareness Act became effective on January 1, 2008. Brokers should have a general knowledge about the existence of the Radon Awareness Act and that the provisions impose duties on sellers of real property. In short, before a buyer becomes bound on a contract to purchase real estate the seller is required to provide a pamphlet entitled “Radon Testing Guidelines for Real Estate Transactions” and the Illinois Disclosure of Information on Radon Hazards. The language of the latter is set forth by statute. The pamphlet is provided by the Illinois Emergency Management Agency Division of Nuclear Safety and can be found on that agency’s Web site, <http://www.radon.illinois.gov>.

Nothing in the Act requires a seller to test for radon or to engage in “mitigation activities.” The Act excludes certain types of transactions, which are summarized as follows: transfers made pursuant to court order, transfers resulting from foreclosure, transfers by fiduciaries of estates, transfers among co-owners, transfers pursuant to estate or interstate succession, transfers made to a spouse or other “lineal” blood relative, transfers made by relocation companies (if the relocation company has the required documents from the original seller) and transfers to or from a governmental entity. Brokers need to be aware of this required disclosure so their sponsored licensees can inform their seller and buyer clients.

■ **The CAN-SPAM Act** (pages 80-81)

Updates Regarding CAN-SPAM

CAN-SPAM rules were updated in July 2008 and some clarifications have been made with regard to these rules.

First, it is a helpful reminder that all commercial e-mails must contain the following:

1. legitimate return e-mail and physical postal address;
2. a clear and conspicuous notice of the recipient's opportunity to "opt-out" or decline to receive any further messages;
3. an opt-out mechanism active for at least 30 days after message transmission; and
4. a clear and conspicuous notice that the message is an advertisement or solicitation.

There are some additional requirements that brokers need to know about. They are as follows:

1. If a recipient wants to opt-out of receiving future commercial e-mail messages from a sender, the sender cannot require the recipient to give personal information or pay any kind of fee in order to exercise the opt-out right.
2. There are also provisions that clarify the definition of sender. Brokers should be aware of this and make sure they are in compliance with opt-out options even if there are multiple senders of the commercial e-mail message.

3. The CAN-SPAM rules require the sender to provide a physical postal address. Now, a post office box address will satisfy the address requirement.

See: <http://www2.ftc.gov/opa/2008/05/canspam.shtm>,
<http://www.fcc.gov/cgb/policy/canspam.html>

■ **The Junk Fax Prevention Act** (pages 81-82) [Before *Summary*, page 82]

In short, the Junk Fax Prevention Act prohibited unsolicited faxing of ads or solicitations unless the recipient gave express consent or unless there was an “established business relationship” (EBR) between the sender and the recipient. See text at pages 81-82 for discussion about EBR. In 2008, The FCC issued some clarifications to the Junk Fax rules. There were three main areas of clarification. First, under the existing rule a recipient would be deemed to have given “consent” to receive faxes by publishing the recipient’s fax number, for instance by giving a sender a card with the fax number included or even by publishing a fax number in the phone book. The FCC has further clarified to say that if a sender of solicitation or advertising buys a list of fax numbers that have been previously published by a “compiler” of this information and the companies obtained the numbers from published sources, this would meet the consent requirement. However, the sender should be aware that the sender could be liable for any errors in the list.

Second, a sender of advertising or solicitation faxes must take “reasonable steps” to verify the recipient’s consent. The FCC has stated that verbal consent to authorize/receive faxing could suffice but the sender would have the burden of proving the authorization.

Third, opt-out requests for the recipient can be accomplished by sending the recipient to a Web site but it must be obvious and easy or, in other words, “a clear and conspicuous notice of a cost-free mechanism for transmitting opt-out requests.”

See: <http://www.fcc.gov/cgb/policy/faxadvertising.html>

■ **State Laws** (page 82)

[After *The Junk Fax Prevention Act* before *Summary*]

Brokers should also be aware Illinois has the Electronic Mail Act, 815 ILCS 511/1 et seq., that may impose additional requirements upon senders of commercial e-mail messages over and above those required under the federal CAN-SPAM rules. Also remember that Rules Section 1450.145 imposes specific requirements for real estate licensees when advertising on Web sites or when using electronic communications.

All of these requirements may apply when licensees are using social networking tools to market real property for sale, purchase or rent. For instance, licensees may need to be sure they have included the information required under federal CAN-SPAM, the Illinois Electronic Mail Act and Rules Section 1450.145 when sending a commercial e-mail message via Facebook[®], MySpace[®], Twitter[®] or a blog, for example.

Finally, with regard to faxing, it is important to know that in Illinois, sending an unsolicited advertising or fundraising fax without permission can be a crime punishable by a \$500 fine.

■ **Update on New State and Federal Laws and Rules Affecting Real Estate Brokers** (page 82)

[After *State Laws* before *Summary* (page 82)]

1. Illinois Radon Awareness Act [420 ILCS 46]. Sellers are required to make disclosure regarding any previous or existing radon defects or testing. This applies to purchase transactions and not rentals.
2. Federal FDIC limits have been at least temporarily increased (through 12/31/09) to \$250,000 per account from \$100,000 for coverage. Also, it is important for brokers holding escrow moneys to title escrow accounts appropriately and indicate the fiduciary nature of the account in order to assure coverage up to \$250,000 per transaction in the escrow and not the escrow account as a whole. In addition, the escrow agent's records should accurately and carefully reflect that the escrow account holds moneys for different and distinct holders in order to maximize coverage where the escrow agent is acting in this fiduciary capacity.
3. Smoke Free Illinois Act [410 ILCS 82/1]. This Act applies to places of employment and affects most real estate brokerage offices in Illinois. Home offices for real estate brokers using this as their main office location might fall under this Act if it is open to the public, which it must be under the License Act if it is the broker's only physical office location.

See: <http://www.smokefreeillinois.org/>

4. Predatory Lending Law [815 ILCS 137]. Portions of this legislation became effective June 1, 2008 and change the relationship between mortgage brokers and borrowers to an agency

relationship. It places limits on pre-payment penalties and requires timely notice about material changes to loan terms.

See: <http://www.idfpr.com/FAQ/BRE/toggleBREpredlending.asp>

5. Mortgage Rescue Fraud Act [765 ILCS 940]. This legislation has been around since January 1, 2007 but imposes certain requirements and limits on “distressed property consultants.” Real estate licensees are exempt when they are performing brokerage services, but brokers should be aware if their sponsored licensees are engaged in this consulting business aside from or in addition to the brokerage business, and charging fees for this service. Brokers should create policies for their offices regarding these practices. To the extent these consultants could be advising on terms of loan contracts, there could be potential unauthorized practice of law issues here.
6. Lead-Based Paint Rules for Rehabbers/Renovators. On December 22, 2008 rules regarding additional lead-based paint disclosures became effective for people who rehab or renovate property built before 1978. The rehabber must provide the required pamphlet to owners and occupants of these properties. Brokers should be aware of this rule for themselves if they rehab or renovate or if their sponsored licensees do this.
7. New federal RESPA rules became effective on January 16, 2009 with new forms being required to be used on January 1, 2010. There is still much to learn regarding the new RESPA rules. But, for now, brokers should be aware that there will be new forms used for Good Faith Estimates (GFEs) and the HUD-1 Settlement Statement (HUD-1). Brokers may start to see lenders using the

new forms before 2010. Copies of the new GFE and HUD-1 Forms are included with this supplement.

See: <http://www.hud.gov/offices/hsg/sfh/res/gfestimate.pdf>,
<http://www.hud.gov/offices/hsg/sfh/res/hud1.pdf>

8. Federal Identity Theft Regulation. Federal rules became effective in November 2008 that require certain entities that use credit reports to develop policies and procedures to identify certain “red flags” to help stem identity theft. Real estate agents who use credit reports in their businesses to help clients obtain financing or manage rental properties will be covered by these rules and will have to be aware of identity theft “red flags.” One example of an identity theft red flag could be a discrepancy in address given by a consumer between the “application documents” and other records, like a government issued identification card. For more information on these rules go to the FTC Bureau of Consumer Protection, Division of Privacy and Identity Protection; (202) 326-2252.

See: www.ftc.gov/idtheft

case study one

ABC Realty is a large and influential multi-office independent real estate firm highly respected and recognized by its competitors and the public in the local real estate community. ABC has determined that in order to stimulate its business and increase its profits it must lower the commission it charges to its clients and lower the commission split it offers to cooperating brokerage companies with which it does business. As such, it places print advertising in the local media and sends letters by mail to all the cooperating firms with which it does business advising of its change in commission policy.

Sherman Realty notices the ABC ads in the local media and receives a letter from ABC advising of its change in commission policy. Believing such policy changes are necessary and warranted by economic conditions, Sherman takes immediate action as ABC has done and places identical print advertising in the local media and sends identical letters by mail to all the cooperating firms with which it does business advising of its change in commission policy.

What violations of the law has Sherman Realty committed?

Case Study Questions

1. Sherman has violated the Sherman Antitrust Act.
2. Sherman has violated the Clayton Act.
3. Sherman has violated the Federal Trade Commission Act.
4. Sherman has violated the Robinson-Patman Act.
5. Sherman has violated all of the above.
6. Sherman has violated no law.

case study two

An Illinois licensed real estate broker has always been interested in title insurance services. After completing all of the requirements and education the broker recently received a state license to act as a title insurance agent. While the broker has not acted in this capacity, the broker has developed a strong relationship with a local title company. The title company is not affiliated with the broker's business. The broker believes this title company is the best deal in town.

The broker has agreed to refer the broker's clients to the title company for their title insurance services. When a client is ready to sell or purchase a home the broker refers the client to the title company by simply sending the client's application to the title company. The broker makes all required written disclosures to the client and informs them they are not required to use the recommended title company. Except for occasionally filling out the application, the broker does not perform any title services in connection with the issuance of a title insurance policy. After the client has received a title insurance policy the title company pays the broker a percentage of the insurance premium as a commission.

For Discussion

1. Does this transaction violate RESPA? Why or why not?
2. What if the payment to the broker came directly from the purchaser, that is, the broker's client?

case study three

An Illinois licensed broker owns an interest in Title Company A. The amount of stock the broker owns in Title Company A varies based upon a predetermined formula. This formula takes into account the number of referrals the broker actually makes and the amount the broker is projected to refer as compared to the other stock holders. Title Company A is the title insurance agent for a major title insurance company, Title Company B.

Title Company A determines applicants' insurability, performs title searches, clears the underwriting process, issues the commitment, and title insurance policies on behalf of Title Company B. Title Company A receives a fee from Title Company B for the work it performs. Title Company A pays annual dividends to its shareholders.

For Discussion

1. Does this arrangement violate RESPA? Why or why not?
2. Assume the broker owns 4 percent of Title Company A, which is not dependent on the amount of referrals the broker makes. How is the situation changed? Is the transaction now compliant with RESPA?

case study four

The broker owner of a real estate brokerage firm and the owner of a title company meet at a local restaurant. The two discuss future marketing opportunities and also the future of their business relationship. The owner of the title company believes the broker would make more referrals to the title company if the process was streamlined. The owner of the title company offers to place a fax machine in the broker's office so the broker can quickly send information to the title company. The fax machine can only be used to send information between the brokerage firm and the title company.

The owner of the title company also informs the broker that each time a client is referred to the title company the referring broker will be entered into a monthly drawing. Each month a name will be randomly chosen to receive Cubs tickets, a dinner for two and other prizes. At the end of the year the broker who has referred the most business will receive a weekend vacation package.

The owner of the title company pays for the dinner.

For Discussion

1. Assume the fax machine can be used both in the real estate brokerage's general business and with the title company. Would this create a violation of RESPA?
2. Can the owner of the title company pay for dinner?
3. Are other RESPA violations disclosed? If so, what are they?

case study five

A real estate agent refers a buyer client to a lender for pre-approval on a loan. The lender has supplied the real estate agent with desk calendars, pens, and notepads promoting the lender's services. The lender orders a credit report, which costs the lender \$20. The lender charges the prospective buyer \$30 for the credit report. The lender then pays \$5 to the real estate agent for the referral and keeps \$5 for themselves.

After weeks of looking at homes the buyer finally signs a contract for purchase. The buyer's real estate agent then delivers the completed contract for purchase to the lender. The buyer's agent charges the lender a \$15 "courier fee." The lender then charges the buyer a fee of \$25 for the courier service. The lender keeps the remaining \$10 for use in future marketing.

For Discussion

1. Under RESPA can fees be up-charged? If so, when?
2. Under RESPA is it allowable to split a fee between two or more people in these situations?

case study six

Suzie Salesperson has developed a niche for herself with regards to short sale properties. Suzie has learned from experience that short sales are difficult transactions to close and that there are a number of sellers and home owners in need of advice that may not be able to or are unwilling to use a short sale. Seeing an opportunity to develop another business opportunity, Suzie begins to advertise in a local newspaper and over the Internet that she is available to be hired to consult with and provide advice to owners in regards to dealing with lenders and how to do a workout with an existing lender. Suzie sees this as a natural spin-off of her short sale brokerage business.

For Discussion

1. Can Suzie Salesperson engage in these activities under Illinois law based upon licenses of a real estate salesperson in the state of Illinois? Why or why not?
2. Is there a way for Suzie to engage in this new business venture based upon a real estate brokerage license?
3. Suzie discusses this business venture with her managing broker who indicates to her that she cannot engage in this activity on her own but certainly can do it through the sponsoring broker. Is this advice correct? Why or why not?

Disciplinary Actions

■ Causes for Discipline (page 87)

As of August 2008, these are the subject matters for disciplinary actions from IDFPR edited in order of incidence:

- 1) Unlicensed Practice,
- 2) Continuing Education Audit Findings,
- 3) Misrepresentation,
- 4) Unprofessional Conduct and Self-Dealing,
- 5) Escrow Issues,
- 6) Agency/Dual Agency Problems,
- 7) Advertising Issues,
- 8) Disclosure, and
- 9) Failure or Refusal to Furnish Documents.

These are provided to give managing brokers an idea about areas for discipline at IDFPR and where brokers should take care to avoid issues.

case study one

Jim is a highly respected branch sales manager in a large multi-office multi-county real estate franchise. Because of his company's high profile and reputation, Jim stresses the necessity of compliance with the Act by all of his sales associates and he regularly monitors and supervises all of their activities.

Jamie is a sales associate in Jim's office. Jamie believes that marketing and advertising of herself as much as possible to other competitors and to the general public is the key to her continued success.

After being in the real estate business for several years, Jamie feels that it is time for her to move up and move on in her career as more of an independent. As such, Jamie asks Jim to sign off on her real estate license so that she can join a competitor who will give her not only a better commission split but more flexibility in her advertising and marketing activities without constant supervision and monitoring by her manager.

A month or so after leaving Jim's office, Jim notices that Jamie's advertisements and marketing pieces are still being circulated in his company's name. Despite Jim's calls to Jamie to remove and cancel the advertising and marketing, Jim continues to get no response from Jamie. Which of the following best describes what Jim should do?

For Discussion

1. Jim should do nothing since the advertising is not his and not his problem and, in any event, is a cost effective means to continue promoting the name of his company.
2. Jim should file a lawsuit for an injunction to prevent Jamie from further advertising and marketing herself when she is no longer in Jim's employ.

3. Jim should file a complaint with IDFPR on the grounds that Jamie has violated Illinois license law (the Act).

case study two

Larry is broker-owner and branch sales manager of a local real estate firm in a market where sales associates in his office and those of competitors typically use licensed and unlicensed personal assistants in their individual businesses.

Sally is a top-producer in Larry's office who uses both licensed and unlicensed personal assistants in her business.

Larry feels that Sally may need certain written contracts for her personal assistants for her protection and his. Which of the following statements should Larry make to Sally or what does Larry need to do in this situation with Sally?

For Discussion

1. Larry needs to tell Sally that she cannot sponsor any licensed personal assistant.
2. Larry needs to have a written employment or independent contractor agreement for each licensee he sponsors who works for Sally which describes the relationship and includes provisions with respect to supervision, duties, compensation, duration and termination process.
3. Larry needs to tell Sally that she can hire both licensed and unlicensed personal assistants but needs to have a written contract with each of them which describes the relationship and contains provisions with respect to supervision, duties, compensation, duration and termination process.
4. Larry needs to have a written agreement with Sally which describes the relationship between himself, Sally and her licensed and unlicensed personal assistants and includes provisions with respect to supervision, duties, compensation, duration and termination process.

case study three

Albin Street Commercial Advisors is a very large office with over 300 agents. They have one location in the heart of the commercial market. The owner and principal of the office is Mr. Wayne. They market their services over a 12 county area and have been successful in recruiting salespeople in all of the 12 counties. A portion of their business model is to have associates that specialize either in a particular county or a particular type of property, sometimes both. Because of the distance from their market place to the office, many of the sales associates do not come into the office on a regular basis and work for the most part out of their homes. The company provides a highly qualified support staff so the sales associates can spend more time in the field.

Case Study Questions

1. Mr. Wayne has elected to establish an independent contractor relationship with his sales associates. Because they are independent contractors which of the following can Mr. Wayne require of his associates?
 - a. Attend training programs.
 - b. Use forms and contracts provide by the company.
 - c. Adhere to the company fee structure.
 - d. All of the above.

- 2.** The company has created a Policy and Procedures Manual for use by all of the associates and to satisfy the Illinois Department of Financial and Professional Regulation's requirement. When a new sales associate joins the company Mr. Wayne's secretary provides a Welcome Aboard package that includes a copy of the Policy and Procedures Manual. Mr. Wayne's best course of action would be to:

 - a.** Give it to them personally because he is the principal broker.
 - b.** Have them read it and sign a copy of it.
 - c.** Discuss with them the content.
 - d.** Have them acknowledge receipt and understanding of the Manual and put the acknowledgment in their personnel file.
- 3.** If a sales associate of Albin Street Commercial Advisors violates a provision of the Policy and Procedures Manual that is also a violation of the Act, Mr. Wayne:

 - a.** Could not be charged with a violation of the Act.
 - b.** Would probably not be charged (but could) with a violation of the Act because the Policy and Procedures Manual provided direction otherwise.
 - c.** Would be less likely to be charged if he didn't know about the violation.
 - d.** He would not be charged with a violation of the Act if he made sure that the deal closed in order to protect the public and then terminated the associate.
- 4.** One of the procedures of Albin Street Commercial Advisors is to make sure all inquiries receive a quick response. Because most of the associates are not in the office many of the calls are handled by unlicensed administrative assistants or marketing specialists. These administrative assistants or marketing specialists are allowed to do which of the following:

 - a.** Discuss the features and benefits of the property so as to judge the interest of the inquiry before passing it onto the sales associate.
 - b.** Fax and e-mail information about the property prepared by the sales associate provided they have approval to do that.
 - c.** Discuss the terms and conditions of a proposed contract with a buyer/seller or landlord/tenant.
 - d.** Do nothing more than get a name and phone number and give to the appropriate licensee.

5. Mr. Wayne has a winter home where he typically resides from January till the end of April. Mr. Wayne calls the office a couple of times a week and talks with his secretary to see if there are any problems or issues. His secretary has been with the company for a long time so Mr. Wayne feels comfortable in allowing her to handle the routine day-to-day management of the office. Mr. Wayne could be in violation of the Act because:
 - a. The secretary is not recognized by the IDFPR as the managing broker.
 - b. Mr. Wayne is responsible for the day to day supervision of the licensees.
 - c. He is not licensed in the state where he has his winter home.
 - d. Both a & b.
6. Albin Street Commercial Advisors provides an advertising budget for every listing at the time the listing is taken. This budget is influenced by the amount the sales associate has received for advertising from the owner/landlord as part of the listing agreement. The advertising specialist in the office assists the listing sales associate with writing and placing the ads. The final responsibility for all advertising is:
 - a. The advertising specialists, because that is their area of expertise.
 - b. The listing sales associate, because who knows the property better than the person that listed it.
 - c. There is no need to be concerned about advertising issues in commercial and investment real estate.
 - d. Mr. Wayne's, the principal broker.
7. Many commercial listings provide incentives for previewing the property or showing the property. On occasion sellers or landlords will offer free vacations for the right transaction. Unless provided for in the Albin Street Commercial Advisors' Policy Manual these incentives go to:
 - a. The sales associates.
 - b. The tenant or buyer as the case may be.
 - c. Albin Street Commercial Advisors.
 - d. Mr. Wayne can collect them directly and share them with the associates on a case by case basis.

- 8.** One of Albin Street Commercial Advisors' sister companies is a property management company which is also owned by Mr. Wayne. The companies have always referred business to one another and paid a referral fee to the referring company. As long as they do not charge the referred client any more or less than they would anybody else:
 - a.** There is no disclosure of the common ownership required.
 - b.** It doesn't impact the client one way or the other.
 - c.** The common ownership and the referral fee need to be disclosed.
 - d.** If the company getting the referral gives the client a break on the fees no notification is needed.

appendix

**HUD-1
Good Faith Estimate**



A. Settlement Statement (HUD-1)

B. Type of Loan					
1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> RHS	3. <input type="checkbox"/> Conv. Unins.	6. File Number:	7. Loan Number:	8. Mortgage Insurance Case Number:
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.				
C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.					
D. Name & Address of Borrower:		E. Name & Address of Seller:		F. Name & Address of Lender:	
G. Property Location:		H. Settlement Agent:		I. Settlement Date:	
		Place of Settlement:			

J. Summary of Borrower's Transaction	
100. Gross Amount Due from Borrower	
101. Contract sales price	
102. Personal property	
103. Settlement charges to borrower (line 1400)	
104.	
105.	
Adjustment for items paid by seller in advance	
106. City/town taxes to	
107. County taxes to	
108. Assessments to	
109.	
110.	
111.	
112.	
120. Gross Amount Due from Borrower	
200. Amounts Paid by or in Behalf of Borrower	
201. Deposit or earnest money	
202. Principal amount of new loan(s)	
203. Existing loan(s) taken subject to	
204.	
205.	
206.	
207.	
208.	
209.	
Adjustments for items unpaid by seller	
210. City/town taxes to	
211. County taxes to	
212. Assessments to	
213.	
214.	
215.	
216.	
217.	
218.	
219.	
220. Total Paid by/for Borrower	
300. Cash at Settlement from/to Borrower	
301. Gross amount due from borrower (line 120)	
302. Less amounts paid by/for borrower (line 220) ()	
303. Cash <input type="checkbox"/> From <input type="checkbox"/> To Borrower	

K. Summary of Seller's Transaction	
400. Gross Amount Due to Seller	
401. Contract sales price	
402. Personal property	
403.	
404.	
405.	
Adjustments for items paid by seller in advance	
406. City/town taxes to	
407. County taxes to	
408. Assessments to	
409.	
410.	
411.	
412.	
420. Gross Amount Due to Seller	
500. Reductions in Amount Due to Seller	
501. Excess deposit (see instructions)	
502. Settlement charges to seller (line 1400)	
503. Existing loan(s) taken subject to	
504. Payoff of first mortgage loan	
505. Payoff of second mortgage loan	
506.	
507.	
508.	
509.	
Adjustments for items unpaid by seller	
510. City/town taxes to	
511. County taxes to	
512. Assessments to	
513.	
514.	
515.	
516.	
517.	
518.	
519.	
520. Total Reduction Amount Due Seller	
600. Cash at Settlement to/from Seller	
601. Gross amount due to seller (line 420)	
602. Less reductions in amount due seller (line 520) ()	
603. Cash <input type="checkbox"/> To <input type="checkbox"/> From Seller	

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

L. Settlement Charges					Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
700. Total Real Estate Broker Fees						
Division of commission (line 700) as follows:						
701.	\$		to			
702.	\$		to			
703.	Commission paid at settlement					
704.						
800. Items Payable in Connection with Loan						
801.	Our origination charge		\$	(from GFE #1)		
802.	Your credit or charge (points) for the specific interest rate chosen		\$	(from GFE #2)		
803.	Your adjusted origination charges			(from GFE A)		
804.	Appraisal fee to			(from GFE #3)		
805.	Credit report to			(from GFE #3)		
806.	Tax service to			(from GFE #3)		
807.	Flood certification			(from GFE #3)		
808.						
900. Items Required by Lender to Be Paid in Advance						
901.	Daily interest charges from	to	@ \$	/day (from GFE #10)		
902.	Mortgage insurance premium	for	months to	(from GFE #3)		
903.	Homeowner's insurance	for	years to	(from GFE #11)		
904.						
1000. Reserves Deposited with Lender						
1001.	Initial deposit for your escrow account			(from GFE #9)		
1002.	Homeowner's insurance	months @ \$	per month	\$		
1003.	Mortgage insurance	months @ \$	per month	\$		
1004.	Property taxes	months @ \$	per month	\$		
1005.		months @ \$	per month	\$		
1006.		months @ \$	per month	\$		
1007.	Aggregate Adjustment			-\$		
1100. Title Charges						
1101.	Title services and lender's title insurance			(from GFE #4)		
1102.	Settlement or closing fee			\$		
1103.	Owner's title insurance			(from GFE #5)		
1104.	Lender's title insurance			\$		
1105.	Lender's title policy limit			\$		
1106.	Owner's title policy limit			\$		
1107.	Agent's portion of the total title insurance premium			\$		
1108.	Underwriter's portion of the total title insurance premium			\$		
1200. Government Recording and Transfer Charges						
1201.	Government recording charges			(from GFE #7)		
1202.	Deed \$	Mortgage \$	Releases \$			
1203.	Transfer taxes			(from GFE #8)		
1204.	City/County tax/stamps	Deed \$	Mortgage \$			
1205.	State tax/stamps	Deed \$	Mortgage \$			
1206.						
1300. Additional Settlement Charges						
1301.	Required services that you can shop for			(from GFE #6)		
1302.				\$		
1303.				\$		
1304.						
1305.						
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)						



Good Faith Estimate (GFE)

Name of Originator	Borrower
Originator Address	Property Address
Originator Phone Number	
Originator Email	Date of GFE

Purpose

This GFE gives you an estimate of your settlement charges and loan terms if you are approved for this loan. For more information, see HUD's *Special Information Booklet* on settlement charges, your *Truth-in-Lending Disclosures*, and other consumer information at www.hud.gov/respa. If you decide you would like to proceed with this loan, contact us.

Shopping for your loan

Only you can shop for the best loan for you. Compare this GFE with other loan offers, so you can find the best loan. Use the shopping chart on page 3 to compare all the offers you receive.

Important dates

- The interest rate for this GFE is available through []. After this time, the interest rate, some of your loan Origination Charges, and the monthly payment shown below can change until you lock your interest rate.
- This estimate for all other settlement charges is available through [].
- After you lock your interest rate, you must go to settlement within [] days (your rate lock period) to receive the locked interest rate.
- You must lock the interest rate at least [] days before settlement.

Summary of your loan

Your initial loan amount is	\$
Your loan term is	years
Your initial interest rate is	%
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	\$ per month
Can your interest rate rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, it can rise to a maximum of % The first change will be in .
Even if you make payments on time, can your loan balance rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, it can rise to a maximum of \$
Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, the first increase can be in and the monthly amount owed can rise to \$. The maximum it can ever rise to is \$.
Does your loan have a prepayment penalty?	<input type="checkbox"/> No <input type="checkbox"/> Yes, your maximum prepayment penalty is \$.
Does your loan have a balloon payment?	<input type="checkbox"/> No <input type="checkbox"/> Yes, you have a balloon payment of \$ due in years.

Escrow account information

Some lenders require an escrow account to hold funds for paying property taxes or other property-related charges in addition to your monthly amount owed of \$ [] .

Do we require you to have an escrow account for your loan?

No, you do not have an escrow account. You must pay these charges directly when due.

Yes, you have an escrow account. It may or may not cover all of these charges. Ask us.

Summary of your settlement charges

A	Your Adjusted Origination Charges (See page 2.)	\$
B	Your Charges for All Other Settlement Services (See page 2.)	\$
A + B	Total Estimated Settlement Charges	\$

Understanding your estimated settlement charges

Some of these charges can change at settlement. See the top of page 3 for more information.

Your Adjusted Origination Charges										
1. Our origination charge This charge is for getting this loan for you.										
2. Your credit or charge (points) for the specific interest rate chosen <input type="checkbox"/> The credit or charge for the interest rate of [] % is included in "Our origination charge." (See item 1 above.) <input type="checkbox"/> You receive a credit of \$ [] for this interest rate of [] %. This credit reduces your settlement charges. <input type="checkbox"/> You pay a charge of \$ [] for this interest rate of [] %. This charge (points) increases your total settlement charges. The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.										
A	Your Adjusted Origination Charges	\$								
Your Charges for All Other Settlement Services										
3. Required services that we select These charges are for services we require to complete your settlement. We will choose the providers of these services. <table border="1"> <thead> <tr> <th>Service</th> <th>Charge</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>		Service	Charge							
Service	Charge									
4. Title services and lender's title insurance This charge includes the services of a title or settlement agent, for example, and title insurance to protect the lender, if required.										
5. Owner's title insurance You may purchase an owner's title insurance policy to protect your interest in the property.										
6. Required services that you can shop for These charges are for other services that are required to complete your settlement. We can identify providers of these services or you can shop for them yourself. Our estimates for providing these services are below. <table border="1"> <thead> <tr> <th>Service</th> <th>Charge</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>		Service	Charge							
Service	Charge									
7. Government recording charges These charges are for state and local fees to record your loan and title documents.										
8. Transfer taxes These charges are for state and local fees on mortgages and home sales.										
9. Initial deposit for your escrow account This charge is held in an escrow account to pay future recurring charges on your property and includes <input type="checkbox"/> all property taxes, <input type="checkbox"/> all insurance, and <input type="checkbox"/> other [].										
10. Daily interest charges This charge is for the daily interest on your loan from the day of your settlement until the first day of the next month or the first day of your normal mortgage payment cycle. This amount is \$ [] per day for [] days (if your settlement is []).										
11. Homeowner's insurance This charge is for the insurance you must buy for the property to protect from a loss, such as fire. <table border="1"> <thead> <tr> <th>Policy</th> <th>Charge</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>		Policy	Charge							
Policy	Charge									
B	Your Charges for All Other Settlement Services	\$								
A + B	Total Estimated Settlement Charges	\$								



Instructions

Understanding which charges can change at settlement

This GFE estimates your settlement charges. At your settlement, you will receive a HUD-1, a form that lists your actual costs. Compare the charges on the HUD-1 with the charges on this GFE. Charges can change if you select your own provider and do not use the companies we identify. (See below for details.)

These charges cannot increase at settlement:	The total of these charges can increase up to 10% at settlement:	These charges can change at settlement:
<ul style="list-style-type: none"> Our origination charge Your credit or charge (points) for the specific interest rate chosen (after you lock in your interest rate) Your adjusted origination charges (after you lock in your interest rate) Transfer taxes 	<ul style="list-style-type: none"> Required services that we select Title services and lender's title insurance (if we select them or you use companies we identify) Owner's title insurance (if you use companies we identify) Required services that you can shop for (if you use companies we identify) Government recording charges 	<ul style="list-style-type: none"> Required services that you can shop for (if you do not use companies we identify) Title services and lender's title insurance (if you do not use companies we identify) Owner's title insurance (if you do not use companies we identify) Initial deposit for your escrow account Daily interest charges Homeowner's insurance

Using the tradeoff table

In this GFE, we offered you this loan with a particular interest rate and estimated settlement charges. However:

- If you want to choose this same loan with **lower settlement charges**, then you will have a **higher interest rate**.
- If you want to choose this same loan with a **lower interest rate**, then you will have **higher settlement charges**.

If you would like to choose an available option, you must ask us for a new GFE.

Loan originators have the option to complete this table. Please ask for additional information if the table is not completed.

	The loan in this GFE	The same loan with lower settlement charges	The same loan with a lower interest rate
Your initial loan amount	\$	\$	\$
Your initial interest rate ¹	%	%	%
Your initial monthly amount owed	\$	\$	\$
Change in the monthly amount owed from this GFE	No change	You will pay \$ more every month	You will pay \$ less every month
Change in the amount you will pay at settlement with this interest rate	No change	Your settlement charges will be reduced by \$	Your settlement charges will increase by \$
How much your total estimated settlement charges will be	\$	\$	\$

¹ For an adjustable rate loan, the comparisons above are for the initial interest rate before adjustments are made.

Using the shopping chart

Use this chart to compare GFEs from different loan originators. Fill in the information by using a different column for each GFE you receive. By comparing loan offers, you can shop for the best loan.

	This loan	Loan 2	Loan 3	Loan 4
Loan originator name				
Initial loan amount				
Loan term				
Initial interest rate				
Initial monthly amount owed				
Rate lock period				
Can interest rate rise?				
Can loan balance rise?				
Can monthly amount owed rise?				
Prepayment penalty?				
Balloon payment?				
Total Estimated Settlement Charges				

If your loan is sold in the future

Some lenders may sell your loan after settlement. Any fees lenders receive in the future cannot change the loan you receive or the charges you paid at settlement.

