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Leasing Agent Rentals and Responsibilities

Fifth Edition

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LEASING AGENT RENTALS AND RESPONSIBILITIES

FIFTH EDITION

AN
ILLINOIS REAL ESTATE CONTINUING EDUCATION
PROGRAM

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LEASING AGENT RENTALS AND RESPONSIBILITIES

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FAIR HOUSING

A brief study of the history of civil rights in the United States goes a long way toward increasing a real estate professional's understanding of the problem of housing discrimination. When licensees have a better understanding of the problem, they can do more to help correct it.

HISTORY OF FAIR HOUSING IN THE UNITED STATES

Not surprisingly, the beginning of housing discrimination in America can be traced to the first colonial settlements. Even in the early 1600s, in the Jamestown Colony, there were differences in the treatment of black and white indentured servants. As the colonies grew, slavery of people of African descent became increasingly common. For the most part, slavery was not considered immoral by society.

Neither the Declaration of Independence nor the American Revolution produced any rights or freedom for black Americans. Even Article I of the U.S. Constitution treated slaves as "three-fifths" of a person for purposes of determining a state's population for representation in Congress.

Prior to the Civil War, the courts refused to recognize any rights for persons of African descent, whether they were slaves or free. The federal government did nothing to prohibit discrimination, and even those states that had abolished slavery treated blacks as inferior. The ideology of the time is well illustrated in the 1857 U.S. Supreme Court case *Dred Scott v. Sanford*, in which the court held that persons of African descent were not "citizens" of the United States and therefore not entitled to any rights. According to the court, black people had no rights that white people were bound to respect. The court stated that this principle applied to all black persons, slaves or free.

Shortly before the Civil War, the abolitionist movement gained strength. Abraham Lincoln's Emancipation Proclamation (at least on paper) marked the end of slavery, although it did little to advance modern-day civil rights. At the end of the Civil War, the Thirteenth Amendment was enacted to abolish slavery and to give Congress authority to enact appropriate legislation to enforce the abolition of slavery. In 1866, Congress passed the Civil Rights Act of 1866, which guaranteed property rights to all citizens regardless of race. The act specifically provides that all citizens shall have the same rights to inherit, purchase, and sell real and personal property. State governmental discrimination was prohibited by the Fourteenth Amendment (enacted in 1868), and the Fifth Amendment's due process clause was newly interpreted to prevent racial discrimination by the federal government.

But soon thereafter, the nation's commitment to civil rights deteriorated. In retrospect, the 1866 Civil Rights Act's guarantee of equal rights to all races was an empty promise. For over a century, the courts prohibited racial discrimination only with regard to "state" (governmental) discrimination, such as racial zoning or the court enforcement of racially restrictive covenants governing real property. Therefore, the 1866 Act was essentially ineffective in combating private discrimination.

The first major setback to the legal rights of black Americans came in the U.S. Supreme Court's decision in the *Civil Rights Cases* (1883). In its decision, the court held that the equal protection clause of the U.S. Constitution (i.e., the Fourteenth Amendment) did not prohibit private acts of discrimination; rather, it merely prohibited discrimination that was the product of government action. A few years later, the U.S. Supreme Court made its infamous ruling in *Plessy v. Ferguson* (1896), which held that the enforcement of racial segregation of private or public facilities did not violate the U.S. Constitution as long as the separate facilities were "equal." This ruling permitted institutionalized segregation in the United States. The *Plessy* case was not overruled until 1954, almost six decades later.

Despite this trend toward sanctioned discrimination, some of the more blatant forms of racial discrimination by the government were outlawed. In 1917, in *Buchanan v. Warley*, the U.S. Supreme Court struck down a local zoning law that limited black Americans and other minorities to specific areas of town. The court held that governmental zoning laws that discriminate based upon race violate the equal protection clause of the Fourteenth Amendment. This court case did not, however, ban any form of private discrimination. Again, private persons were free to discriminate based upon race.

In 1948, in *Shelley v. Kraemer*, the U.S. Supreme Court held that state court enforcement of a private racially restrictive covenant constituted sufficient "government involvement" so as to violate the equal protection clause of the Fourteenth Amendment. Therefore, persons could not use the court system to enforce racial deed restrictions.

Although some states and municipalities enacted fair housing laws, the federal government neglected to pass any laws to prevent housing discrimination. In fact, to a certain extent, the federal government was counterproductive in efforts to defeat segregation. For example, the Federal Housing Administration (FHA) instructed its staff and appraisers to consider the racial makeup of a neighborhood. It is important to note that discrimination in housing was certainly not limited to black Americans. Other minorities and religious groups were commonly discriminated against, as were women.

Finally, in 1954, the U.S. Supreme Court rendered its landmark decision in *Brown v. Board of Education*, reversing the "separate but equal" decision in *Plessy*. The *Brown* case outlawed segregation in schools and marked the beginning of the end of the era of legalized segregation.

In November 1962, President Kennedy signed an executive order entitled "Equal Opportunity in Housing," prohibiting discrimination in housing that is owned, operated, or assisted by the federal government. The order required federal agencies to take action to prevent discrimination based upon race, color, creed, or national origin. Although the executive order was the first federal anti-discrimination initiative of the 20th century, it had limited impact on the housing market.

Two years later, Congress enacted Title VI of the Civil Rights Act of 1964, which prohibited racial discrimination in programs receiving federal financial assistance. Once again, this law had little effect since it did not prohibit discrimination in the private housing market.

The real change in fair housing came in 1968, a year that is considered the birth of modern fair housing. In addition to the assassination of Rev. Martin Luther King, Jr., two historic events occurred that year which forever changed the housing market.

First, in April, Congress enacted the Fair Housing Act (Title VIII of the Civil Rights Act of 1968). This law banned discrimination on the basis of race, color, religion, or national origin in most types of housing transactions. The act also contains a variety of remedies to attack housing discrimination, including private discrimination. Second, in June, the U.S. Supreme Court rendered its decision in *Jones v. Alfred H. Mayer Co*. and held that the Civil Rights Act of 1866 banned private, as well as governmental, racial discrimination in housing. Thus the Civil Rights Act of 1866 was given new life and could be used to fight racial discrimination.

The Fair Housing Act outlaws a variety of private discriminatory acts, including refusal to rent or sell, discrimination in the terms of sales or rentals, blockbusting, and discrimination in advertising real estate services. In 1974, the Fair Housing Act was expanded to include prohibition of gender discrimination, and Section 8 low-income housing programs were created. In the same year, Congress passed the Equal Credit Opportunity Act, which prohibited credit discrimination in housing on the basis of race, color, religion, national origin, gender, marital status, or age.

In the 1970s, various federal laws were enacted to prohibit discrimination in federal programs and to include additional protected classes. Congress enacted Section 504 of the Rehabilitation Act of 1973, prohibiting discrimination against disabled persons in all federally assisted programs, including housing. Later, Congress enacted the Age Discrimination Act of 1975, which prohibited

discrimination on the basis of age in programs receiving federal financial assistance. In 1980, President Carter expanded President Kennedy's 1962 executive order to include gender-based discrimination and to grant the Department of Housing and Urban Development (HUD) additional authority to issue regulations to further fair housing in federal programs.

After the enactment of the Fair Housing Act, the U.S. Supreme Court rendered several important decisions that attacked housing discrimination. In 1972, the court held in *Trafficante v. Metropolitan Life Insurance Co*. that the Fair Housing Act should be broadly construed, and that HUD's interpretation of the act should be given great weight. As a matter of tremendous practical importance, the court also upheld the right of housing organizations and other residents to sue persons or municipalities that violated the Fair Housing Act. In 1982, the court rendered an important decision entitled *Havens Realty Corp. v. Coleman*, which permitted housing organizations and “testers” to sue in racial steering cases. These court cases enable private and public organizations to investigate fair housing violations and to file actions for civil penalties and damages.

On September 13, 1988, President Ronald Reagan signed the Fair Housing Amendments Act of 1988. The amendment went into effect March 12, 1989. The 1988 amendment was enacted to expand the coverage of the Fair Housing Act and to enhance enforcement of the act.

The 1988 amendment made major changes to Title VIII, including adding two protected classes to the Fair Housing Act: (1) families with children and (2) disabled persons. The amendment also modified the administrative process for HUD complaints and essentially provides that HUD has a higher degree of authority to enforce the Fair Housing Act. The amendment removed the cap on punitive damages and increased the available damages and civil penalties. The amendment also extended Title VIII to other discriminatory practices relating to real estate loans for repairs and improvements, certain secondary market activities, and real estate appraisals.

TITLE VIII

The current law of the land is the Fair Housing Act passed in 1968, together with amendments passed in 1974 and 1988.

SUMMARY OF PROHIBITED ACTS

The Fair Housing Act, including the 1988 amendment, provides that it is unlawful to do the following acts:

1. Refuse to sell or rent a dwelling after a bona fide offer has been made, or to refuse to negotiate for the sale or rental of a dwelling, because of race, color, religion, sex, familial status, or national origin, or to discriminate in the sale or rental of a dwelling because of a handicap (disability).
2. Discriminate in the "terms, conditions, or privileges" of sale or rental of a dwelling, or in the provision of services or facilities in connection with sales or rentals, because of race, color, religion, sex, handicap, familial status, or national origin.
3. Engage in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin.
4. Make, print or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination. This advertising prohibition applies to private owners who may otherwise be exempt from the act.

5. Represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that a dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
6. Engage in "blockbusting" practices in connection with the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin.
7. Deny access to or membership or participation in, or to discriminate against any person in his/her access to or membership or participation in, any multiple-listing service (MLS), real estate brokers' association, or other service organization or facility relating to the business of selling or renting a dwelling. This section also prohibits discrimination in the terms or conditions of membership or participation in the MLS or other organizations because of race, color, religion, sex, handicap, familial status, or national origin.
8. For persons whose business includes engaging in the business of residential real estate-related transactions, to discriminate in making available, or in the terms or conditions of, any residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, or national origin.
9. “Coerce, intimidate, threaten, or interfere with” any person exercising a fair housing right or on account of a person having assisted others in exercising such rights.

In Mortgage Lending -- No one may take any of the following actions based on race, color, national origin, religion, sex, familial status, or disability:

- Refuse to make a mortgage loan.
  Redlining refers to mortgage credit discrimination based upon the racial makeup of the neighborhood where the home is located. The term redlining is derived from the practice of certain lenders who used maps with integrated and minority neighborhoods outlined in red, as an indication of a poor-risk area. Redlining also refers to similar discrimination in the insurance industry with regard to home insurance.
- Refuse to provide information regarding loans.
- Impose different terms or conditions on a loan.
- Discriminate in appraising property.
- Refuse to purchase a loan.
- Set different terms or conditions for purchasing a loan.

DISCRIMINATORY REPRESENTATIONS ON THE AVAILABILITY OF DWELLINGS

Under the Fair Housing Act, it is unlawful to provide inaccurate or untrue information about the availability of dwellings for sale or rental because of a person’s race, color, religion, sex, disability, familial status, or national origin.

HUD's regulations list the following five actions that are prohibited if performed because of race, color, religion, sex, disability, familial status, or national origin:

1. Indicating through words or conduct that a dwelling available for inspection, sale, or rental has been sold or rented.
2. Representing that instruments such as deeds, trusts, or leases, which purport to restrict the sale or rental of dwellings because of a protected class, preclude the sale or rental of a dwelling to any person of a protected class.
3. Enforcing covenants or other deed, trust, or lease provisions that preclude the sale or rental of a dwelling to any person within a protected class.
4. Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale, or rental.

5. Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether such person is actually seeking housing. In other words, random testing by governmental agents is allowed.

These five items are only the most obvious examples. The law also prohibits other activities not listed above.

PROHIBITIONS AGAINST DISCRIMINATION BECAUSE OF DISABILITY

The Fair Housing Amendments Act of 1988 extended Title VIII to the physically and mentally disabled. Section 804(f) of the Fair Housing Act provides that it is unlawful to discriminate in the sale or rental of a dwelling, or to otherwise make unavailable or deny a dwelling, to any buyer or renter because of a disability of:

- That buyer or renter.
- A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available.
- Any person associated with that buyer or renter.

The law also prohibits discrimination against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of such disability. The covered disabilities include hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS and AIDS-related illness, and mental retardation.

REASONABLE MODIFICATIONS OF EXISTING PREMISES

If modifications are necessary to afford a disabled person full enjoyment of existing premises, the Fair Housing Act obligates any person, such as a landlord, to permit the disabled individual to make "reasonable" modifications, at the individual’s expense, to the premises to be occupied. The premises covered by the law include the dwelling and common-use areas. In the case of a rental, the landlord may, where it is reasonable to do so, require the renter to agree to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. Also, the landlord is prohibited from refusing to make reasonable accommodations in rules, policies, practices, or services if necessary for the disabled person to use the housing.

REASONABLE OCCUPANCY STANDARDS UNDER THE FAIR HOUSING ACT

Governmental Occupancy Standards

The Fair Housing Act does not limit the applicability of any reasonable "local, state, or federal" restrictions on the maximum number of occupants permitted to occupy a dwelling unit. According to HUD, this exemption is intended to allow “reasonable" governmental limitations on occupancy as long as these limitations are applied to all occupants and do not arise from discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin.

The preamble to HUD's final rule implementing the Fair Housing Amendments Act of 1988 provides some insight into the use of governmental occupancy standards. Although the law specifically provides that nothing in the law limits the applicability of any reasonable federal restrictions regarding the maximum number of occupants, HUD has determined that there is no support in statute or the legislative history of the law that indicates any congressional intent to develop a national occupancy code.

Although HUD has developed occupancy guidelines for use by participants in HUD housing programs, these guidelines are designed to apply to only those types and sizes of dwellings in HUD programs. The HUD guidelines may not be reasonable for dwellings that have different available space and configurations than those dwellings found in HUD-assisted housing.

Private Occupancy Standards

HUD rules reflect the belief that the law permits an owner or manager of housing to restrict the number of occupants who can reside in a dwelling. Accordingly, HUD's rules permit owners and managers, in appropriate circumstances, to develop and implement "reasonable" occupancy requirements based on:

- Number and size of sleeping areas.
- Overall size of the unit.

HUD cautions that any such non-governmental restriction will be carefully examined to ensure that it does not operate unreasonably to limit families with children or discriminate against other protected classes.

HUD also allows governmental authorities to set occupancy standards pertaining to health and safety.

TENANT SELECTION

Leasing agents must be cautious and strictly adhere to the qualifications permitted under fair housing law when interviewing a prospective tenant. Issues of concern include appropriate criteria, special conditions for the disabled, application forms, and questions the agent can or cannot ask.

The criteria used to select tenants should be objective and relevant to the applicant's ability to fulfill the obligations of tenancy. Appropriate criteria may include:

- Rent-to-income ratio.
- Credit record.
- Rent payment pattern.
- Household size.

"Handicapped-only" parking restrictions are of recent concern in the courts. Agents should be aware that certain parking spaces should be reserved for residents with disabilities. If a resident complains that someone without a disability takes a space reserved for the disabled, act quickly. If the car belongs to a resident, ask him or her to move it immediately. If you cannot identify the car or get in touch with the car owner, take whatever steps are necessary to have the car towed. Ask your attorney in advance about towing requirements in your location.

Brokers must be aware that rental applications must conform to the Fair Housing Act. To ensure compliance, leasing agents should be careful to use only the most current application form supplied by the sponsoring broker or firm.

During the interview process, agents must be careful about what questions they ask the prospective tenant. Below is a list of questions you should not ask and some suggestions for questions you may ask.

- **Questions you cannot ask**
    - Do you have a physical disability?
    - Have you ever suffered a serious illness?
    - Do you have a mental disability?
    - Are you able to live independently?
    - Have you ever used drugs or alcohol?
    - Have you ever filed any personal injury lawsuits or workers compensation claims?
    - How many children are in your family?

Questions you can ask

- Have you ever been convicted of any drug-related or alcohol-related activity? If yes, please explain.
- Have you ever engaged in the sale of illegal drugs?
- Do you currently engage in the use or sale of illegal drugs? If yes, please explain.
- Are there any money judgments pending against you? If yes, please describe.
- Have you ever declared bankruptcy?
- Have you ever been evicted from a rental property? If yes, please explain.
- How many people will be living in this rental property?

Remember: if you ask one prospect any of these questions, you must ask all prospects these questions.

EXEMPTIONS FROM AND LIMITATIONS TO THE FAIR HOUSING ACT

The Fair Housing Act covers most types of housing. However, the law contains several important exemptions, including single-family homes sold or rented without the use of a real estate broker, and housing operated by religious organizations or private clubs that limit the sale or occupancy to its members. The basic exemptions and limitations to the Fair Housing Act are as follows:

1. **Private Owner Exemption**. The Fair Housing Act does not apply to:
    A. The private sale of a single-family home by an owner if ALL of the following conditions are met:
        - The owner does not own or more than three single-family homes.
        - The home is sold without the help of a real estate licensee.
        - No discriminatory advertising is used.
        - The owner either was the most recent occupant of the home OR has not already used the "private owner" exemption during the previous 24 months.
    B. Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his/her residence. (This exception is known as the "Mrs. Murphy's Boarding House Rule.") However, this exemption only applies if no discriminatory advertising is used.
2. **Religious Organizations.** The Fair Housing Act does not prohibit limitation of the sale, rental, or occupancy of dwellings in non-commercial properties owned or operated by a religious organization, or owned by a nonprofit institution that is operated by a religious organization, to persons of the same religion or from giving preference to such persons. If membership in a religion is denied to any protected class, this exemption does not apply.
3. **Private Clubs.** The Fair Housing Act does not prohibit a private club (not, in fact, open to the public) from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.
4. **Occupancy Standards**. The Fair Housing Act does not limit the applicability of any "reasonable" local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.
5. **Drug Conviction**. The Fair Housing Act does not prohibit discrimination against a person because that person has been convicted, by any court of competent jurisdiction, of the illegal manufacture or distribution of a controlled substance.

6. **Health and Safety**. The Fair Housing Act allows a landlord to refuse to rent to a "handicapped" person if that person's occupancy constitutes a threat to the health and safety of other persons.
7. **Housing for Elderly**. The Fair Housing Act provides that the provisions regarding "familial status" do not apply to duly qualified "housing for older persons." This means that qualified properties are not required to accept tenants who qualify, based on age, if the tenants have a minor living with them.

It is important to remember, however, that even discriminatory actions that are exempt from the Fair Housing Act will still be in violation of the Civil Rights Act of 1866 if they are based on race.

ENFORCEMENT

WHERE TO FILE A COMPLAINT

Discriminatory acts covered by the Fair Housing Act should be reported to the Department of Housing and Urban Development (HUD). HUD notifies the complainant when the complaint has been received and:

- Notifies the alleged violator of the complaint and permits that person to submit an answer.
- Investigates the complaint to determine if the Fair Housing Act has been violated.
- Notifies the complainant if the investigation cannot be completed within 100 days of receiving the complaint.

CONCILIATION

HUD will try to reach an agreement with the person named in the complaint (the respondent). A conciliation agreement must protect both the complainant and the public interest. If an agreement is signed, HUD will take no further action. However, if HUD has reasonable cause to believe that a conciliation agreement has been breached, it will recommend that the Attorney General file suit against the breaching party.

COMPLAINT REFERRALS

If HUD determines that the state or local agency in which the complaint was filed has the same fair housing powers as HUD, the complaint is referred to that agency for investigation and the complainant is notified of the referral. That agency must begin work on the complaint within 30 days or HUD may assume responsibility for its processing.

WHAT IF HELP IS NEEDED QUICKLY?

If immediate help is necessary to stop a serious problem caused by a Fair Housing Act violation, HUD may be able to assist the complainant as soon as the complaint is filed. HUD may authorize the Attorney General to go to court to seek temporary or preliminary relief, pending the outcome of the complaint, if either of the following is true:

- Irreparable harm is likely to occur without HUD's intervention.
- There is substantial evidence that a violation of the Fair Housing Act has occurred.

Example: A builder agrees to sell a house, but, after learning the buyer is black, fails to keep the agreement. The buyer files a complaint with HUD. HUD may authorize the Attorney General to go to court to prevent a sale to any other buyer until HUD investigates the complaint.

WHAT HAPPENS AFTER A COMPLAINT INVESTIGATION?

If HUD finds reasonable cause to believe that discrimination has occurred, the complainant is informed. The case is heard in an administrative hearing within 120 days, unless either party wants the case to be heard in federal district court. Either way, there is no cost to the filer of the complaint.

THE ADMINISTRATIVE HEARING

If the case goes to an administrative hearing, HUD attorneys will represent the complainant. The complainant may also choose his/her own attorney. An administrative law judge (ALJ) considers evidence from the complainant and the respondent. If the ALJ decides that discrimination has occurred, the respondent can be ordered:

- To compensate the complainant for actual damages, including humiliation, pain, and suffering.
- To provide injunctive or other equitable relief (for example, to make the housing available to the complainant).
- To pay the federal government a civil penalty to vindicate the public interest.
- To pay reasonable attorney's fees and costs.

FEDERAL DISTRICT COURT

If the complainant or the respondent chooses to have the case decided in federal district court, the Attorney General will file a suit and litigate it on the complainant's behalf. Like the ALJ, the district court can order relief and award actual damages, attorney's fees, and costs. In addition, the court can award punitive damages.

COMPLAINANT MAY ALSO FILE SUIT

The complainant may file suit in federal district court or state court within two years of an alleged violation. If the complainant cannot afford an attorney, the court may appoint one. Suit may be brought even after a complaint has been filed, as long as the complainant has not signed a conciliation agreement and an administrative law judge has not started a hearing. A court may award actual and punitive damages and attorney's fees and costs.

OTHER TOOLS TO COMBAT HOUSING DISCRIMINATION

- If there is noncompliance with the order of an administrative law judge, HUD may seek temporary relief, enforcement of the order, or a restraining order in a United States Court of Appeals.
- The Attorney General may file a suit in federal district court if there is reasonable cause to believe a pattern or practice of housing discrimination is occurring.

Instructions and forms for filing a fair housing complaint can be obtained at HUD's website**.**

ILLINOIS HUMAN RIGHTS ACT

The following are protected classes under federal law:

- Race.
- Color.
- Religion.
- National origin.
- Sex.
- Physical or mental handicap (disability).
- Familial status (an adult with a child 18 or younger living with him/her).

Under the Illinois Human Rights Act, Illinois has exceeded federal standards by also making housing discrimination illegal when it is based on:

- Age.
- Ancestry.
- Sexual orientation.
- Marital status.
- Military status.
- Unfavorable discharge from military service.
- Order of protection status.

DISCRIMINATION IN BROKERAGE SERVICES

The Fair Housing Act declares that it is unlawful to discriminate when providing real estate brokerage services. Specifically, the law prohibits a party from denying any person who is a member of a protected class access to, membership or participation in, any multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings. The law also prohibits discrimination against any person in the terms or conditions of such access, membership, or participation, if such discrimination is based on race, color, religion, sex, handicap, familial status, or national origin.

REAL ESTATE LICENSE ACT OF 2000

The Real Estate License Act of 2000 (the “License Act”) contains provisions for disciplining licensees who violate fair housing laws.

Under Section 20 of the License Act, the Illinois Department of Financial and Professional Regulation (Division of Real Estate) may:

- Refuse to issue or renew a license.
- Place a licensee on probation, or suspend or revoke licensure.
- Reprimand or impose a civil penalty not to exceed $25,000 upon any licensee for the following causes:
    - **Section 20-20 (30)** Influencing or attempting to influence, by any words or acts a prospective seller, purchaser, occupant, landlord or tenant of real estate, in connection with viewing, buying or leasing real estate, so as to promote, or tend to promote, the continuance or maintenance of racially and religiously segregated housing, or so as to retard, obstruct or discourage racially integrated housing on or in any street, block, neighborhood or community.
    - **Section 20-20 (31)** Engaging in any act that constitutes a violation of any provision of Article 3 of the Illinois Human Rights Act, whether or not a complaint has been filed with or adjudicated by the Human Rights Commission.

Under Section 20 of the License Act, a licensee will be disciplined if the court judges that the individual is guilty of illegal discrimination:

- **Section 20-50** When there has been an adjudication in a civil or criminal proceeding that a licensee has illegally discriminated while engaged in any activity for which a license is required under this Act, the Department, upon the recommendation of the Board as to the extent of the suspension or revocation, shall suspend or revoke the license of that licensee in a timely manner, unless the adjudication is in the appeal process. When there has been an order in an administrative proceeding finding that a licensee has illegally discriminated while engaged in any activity for which a license is required under this Act, the Department, upon recommendation of the Board as to the nature and extent of the discipline, shall take one or more of the disciplinary actions provided for in

Section 20-20 of this Act in a timely manner, unless the administrative order is in the appeal process.

REAL ESTATE LICENSEES AND FAIR HOUSING LAWS

Real estate licensees play a major role in the process of achieving fair housing and equal opportunity for everyone in this country. The direct involvement of real estate professionals in the process requires them to be more than practitioners; they must be teachers and policemen as well. A real estate professional's prominent position in assisting the public with the purchase and sale of property can expose him/her to claims of unfair housing practices. Blockbusting (panic peddling) and steering are of particular concern.

BLOCKBUSTING (PANIC PEDDLING) AND STEERING

Blockbusting or Panic Peddling

Blockbusting, or *panic peddling*, occurs when a real estate licensee attempts to make a sale by inducing a person to sell a dwelling by implying that people of a particular protected class are moving, or are going to move, into the neighborhood. For example, an agent might warn a prospective seller of an impending change in the neighborhood composition with respect to race, color, religion, sex, or national origin. The agent might also assert that the entry of these classes will result in undesirable consequences for the neighborhood or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities. The agent's actions would be viewed as panic peddling in either of these instances.

Most blockbusting cases involve a real estate licensee's uninvited solicitation of homeowners to sell ("list") their homes. A licensee panic peddling for his/her own financial benefit violates federal and state fair housing laws.

Steering

Steering occurs when a licensee attempts to direct a prospect to a particular area based on, for example, the person's race, color, sex, religion, national origin, handicap, or familial status. Intentionally steering a minority prospect to an area in which there are no minorities is also illegal. All prospects must be given the opportunity to choose from the entire inventory of available housing.

Testers

Private groups and various governmental entities can monitor real estate licensees through the use of *testers*. Testers help determine if licensees are acting properly or improperly.

Testers are individuals who pose as prospective tenants and, working in pairs, they test how one licensee treats two tenants with equal buying power but of different race, color, sex, familial status, religion, national origin, or disability or lack thereof. Testers do not have to admit they are testers even if asked directly. When acting on behalf of an aggrieved party who wishes to purchase or lease the property, testers may even proceed to enter into a contract before acknowledging their status as testers.

A tester will report any unequal treatment, regardless of whether more or less services are offered to a protected class. Remember: the fair housing laws do not emphasize better treatment for minorities, but instead emphasize equal treatment for all.

Advertising and Fair Housing

The Fair Housing Act outlaws almost every discriminatory notice, statement, or advertising that relates to the sale or rental of housing. This advertising rule even applies to those otherwise exempted from the law. Beginning in the early 1970s, HUD issued advertising guidelines, which are now published in HUD's regulations.

The Fair Housing Act makes it unlawful to discriminate in the sale, rental, or financing of housing, or in the provision of brokerage and appraisal services, because of a person's protected class. The Fair Housing Act makes it unlawful to make, print, or publish (or cause to be made, printed, or published), any notice, statement, or advertisement, with respect to the sale or rental of a dwelling, that shows an intention to indicate any preference, limitation, or discrimination because of an individual's race, color, religion, sex, handicap, familial status, national origin, or other protected class.

It is recommended that licensees use the equal housing logo in all display advertising. It is a good policy to use the logo on your business cards and stationery as well as newspaper and magazine advertising. Classified ads do not require use of the logo since the publisher is required to place a notice regarding equal housing at the beginning of that section of the publication.

Real estate licensees sometimes find it difficult to understand what constitutes discriminatory advertising. There have been claims by some fair housing organizations that ads using terms like "master bedroom" or "in-law apartment" are discriminatory.

HUD has addressed these issues at the request of the National Association of REALTORS®. HUD issued a statement that stopped short of listing every word or phrase you can or cannot use in advertising material. However, HUD did offer guidance by saying that words implying preferences are to be avoided, and words describing physical characteristics of the property are permissible.

Signs

Federal fair housing law considers signs a form of advertising. Therefore, such signs must conform to the same standards mentioned above.

Local governments have dealt with signs in various ways. Some municipalities believe the placing of signs, in and of itself, can amount to a violation. Placing too many signs in an area can become a form of panic peddling. Other local governments believe that sign limitation laws violate fair housing laws because they limit the public's ability to find out which properties are available.

Currently, there is no federal or state law limiting the number of signs or the length of time they can be displayed on a property in Illinois.

Record Keeping

Good record keeping can help you prove that you did not intend to discriminate. Records showing that you used the same method of financial qualification for all of your prospects, and that prospects with the same qualifications were shown the same properties, may help to prove that your intent was to avoid discrimination.

THE AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

PURPOSE AND INTENT OF THE ADA

The Americans with Disabilities Act was enacted on July 26, 1990, and is the world's first comprehensive civil rights law for the protection of persons with disabilities. The ADA prohibits private employers and providers of public accommodations from intentional acts or omissions that cause discrimination against physically or mentally disabled persons.

The law requires the removal of all existing architectural and communicational barriers to the access and use of public facilities. Nonresidential and public goods and services, including public transportation and telecommunications by common carriers, must also be accessible to the

disabled. Employers and private entities must provide reasonable accommodation for persons with disabilities seeking employment.

WHO IS COVERED UNDER THE ADA

A person with a disability is defined as one who:

- Has a mental or physical impairment that substantially limits one or more major life activities.
- Has a record of such impairment.
- Is regarded as having such impairment.

If a person cannot talk, walk, hear, see, think, or independently care for him/herself, the individual has substantial limits on "major life activities" and is covered under the ADA. The law does not provide a list of disabilities; the only stipulation is that the disability must substantially limit a person's life activity. For example, an epileptic whose condition is regulated by prescription medication would not be significantly limited by his/her epilepsy, and would therefore not qualify for any special accommodation.

Examples of a "disability" include physical or mental impairments to vision, speech, hearing, or orthopedics. Other disabilities include, but are not limited to, cerebral palsy, epilepsy, multiple sclerosis, muscular dystrophy, diabetes, cancer, retardation, tuberculosis, emotional illness, chronic AIDS, HIV infection, and heart disease. Recovering drug and alcohol users are also considered to have a disability. The Act does not apply to short-term illness, pregnancy, or predisposition to illness. Homosexuality, bisexuality, transsexualism, transvestitism, and other various sexual-identity or gender-identity issues are not considered disabilities, nor are gambling, kleptomania, pyromania, or the use of illegal drugs.

Obesity and scars are not generally covered under the ADA, but a person with morbid excessive obesity or major facial disfigurement due to an accident or birth defect could be covered by the ADA if the individual suffers discrimination or physical limitations as a direct result. Also, if someone is discriminated against based on a perceived disability that the person does not actually have – such as AIDS – or if a person is discriminated against for living with someone who has AIDS, the individual is protected under the ADA.

EMPLOYMENT DISCRIMINATION

As of July 26, 1994, the ADA applies to every employer with 15 or more full-time employees, or any agent of such a person. Title I prohibits employers from discriminating against the disabled and requires "reasonable accommodation" that does not create an "undue hardship" on the business. Disabled individuals must be able to safely perform their jobs without presenting a "direct threat" to themselves or others.

Reasonable accommodation requires the revision of work procedures and the alteration of existing facilities to make them more accessible to disabled employees. This could be as simple as adjusting a workstation desk height, or it might involve an employer reassigning specific duties to someone else. If an employee's disability creates the need for flexibility in work hours, the employer should accommodate them. The purpose of the law, however, is not to alter or lower existing job qualifications, such as those required by police or fire departments.

PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Title III of the ADA, which went into effect in 1992, prohibits all private entities that own, operate, or lease to a *place of public accommodation* from discriminating against an individual on the basis of a disability. Place of public accommodation means a privately owned business or facility that affects commerce and falls within at least one of the following categories:

- Place of lodging.
- Establishments serving food or drink.

- Places of exhibition or entertainment.
- Place of public gathering.
- Sales or rental establishments.
- Service establishments.
- Stations used for specified public transportation.
- Places of public display or collection.
- Places of recreation.
- Places of education.
- Social service center establishments.
- Places of exercise or recreation.

Stated plainly, the twelve categories of public accommodations include hotels, motels, restaurants, theaters, sports arenas, stores, offices, hospitals, museums, parks, zoos, schools, day care centers, health spas, shopping and convention centers, and basically any businesses or operations that serve the public.

The ADA requires owners and tenants of public accommodations to remove barriers and make "readily achievable modifications," meaning easily accomplished with minimum difficulty or expense, to ensure disabled individuals equal opportunity for access. An owner of a non-compliant facility would be wise to have a written plan outlining future modifications for accommodating the disabled.

Real estate sales and leasing offices must comply and be accessible since they are serving the public.

PLACES OF LODGING

It may not always be clear what falls under "other places of lodging" in the ADA. The intent was to include single-room occupancy hotels or mixed-use nonresidential accommodations (transient lodging) used for short-term stays, but exclude solely residential facilities operated or used for long-term residences (covered under the Fair Housing Act). To determine if a facility is included under the Act, consider the following:

* Does the facility resemble a hotel or motel-type operation?
* Are public services available for residents of the facility?
* Does a landlord-tenant act apply to the facility?

Possible "problem" facilities that may be subject to separate and independent analysis under both the ADA and Fair Housing Act are:

- Homeless or domestic violence shelters.
- Nursing homes.
- Halfway houses and residential care facilities.

Applicability is determined based on length of stay and the extent of social services provided to the occupants.

PAYING FOR ACCESSIBILITY

The question of who pays the costs of modification of existing places of public services is not addressed in the ADA. The landlord, tenant, and operating manager can be charged with ADA non-compliance. Since most leases state that the premises revert back to the owner, it is arguable that the landlord should bear the cost of compliance. In the case of a long-term lease where the tenants are financially capable, they may assume the costs of compliance.

ENFORCEMENT

The ADA allows for a victim of discrimination, or an individual about to be discriminated against, to take civil action. The U.S. Attorney General can bring suit if a pattern of discrimination exists or is of public importance.

The good faith efforts of the non-complying party will be considered during determination of a civil penalty.

STUDY QUESTIONS
FAIR HOUSING

Answer the following questions “true” or “false”:

1. An owner renting an apartment in his/her owner-occupied five-apartment building is allowed to discriminate if the services of a real estate broker are not used.
2. Testers must admit they are testers when asked.
3. Advertising is a separate issue and has no place in a discussion of fair housing.
4. A licensee must check to find out who are the minorities in the area before showing apartments.
5. Familial status refers to an adult with a child under the age of 18 living with him/her.
6. The Illinois Human Rights Act protects additional classes of individuals who are not protected under federal law.
7. The Americans With Disabilities Act applies to places of public accommodation.
8. A landlord managing his or her own building must comply with fair housing laws.
9. An exception to Title VIII allows religious organizations to limit their membership based on race and sex as well as religion.
10. Minorities are not required to adhere to the rules of Title VIII when selling their homes.

(Answers to Study Questions can be found on page 28)

CONSUMER PROTECTION

RENTAL FINDING SERVICES

The Administrative Rules of the Illinois Real Estate License Act of 2000, as updated in 2010, define and provide rules for rental finding services.

a) Definition -- Application.
   1) A rental finding service is any business that finds, attempts to find, or offers to find, for any person who pays or is obligated to pay a fee or other valuable consideration, a unit of rental real estate or a lessee to occupy a unit of rental real estate not owned or leased by the business.
   2) Any person, corporation, limited liability company, partnership, or limited partnership that operates a rental finding service shall be considered a broker or salesperson as defined in the Act shall obtain a license pursuant to the Act and shall comply with the provisions of this Section.

The rules for contract terms and disclosure, set forth below, protect consumers by giving them the complete information they need to make informed decisions.

b) Contract. A rental finding service shall, prior to accepting a fee or other valuable consideration for the services, enter into a written contract with the person for whom services are to be performed and deliver to the individual a copy of the contract. The contract shall include, in the case of a rental finding service that finds, offers or attempts to find a unit of rental real estate for an individual, at a minimum, the following provisions:
   1) The term of the contract;
   2) The total amount to be paid for the services to be performed and a clear designation of the amount paid in advance of the performance of the services;
   3) A statement regarding the refund or nonrefund of the fee paid in advance that shall include:
      A) the precise conditions, if any, upon which a refund is based;
      B) the fact that the conditions shall occur within 90 days from the date of the contract;
      C) the fact that the refund shall be paid no later than 10 days after demand, provided the check has been honored.
   4) The statements required by subsection (b)(3) shall be uniform in type of a size larger than that used for the balance of the contract;
   5) The type of rental unit desired, the geographical area requested, and the rent the prospective tenant is willing to pay;
   6) A detailed statement of rental finding services to be performed by the licensee, which shall include, at a minimum, the delivery to the prospective tenant of all rental information listed in subsection (c);
   7) A statement that the contract shall be null and void if information concerning possible rental units or locations furnished by the licensee is not current or accurate with respect to the type of rental unit desired and described in subsection (b)(5). A listing for a rental unit that has not been available for rent for over 2 days shall be prima facie proof of not being current;
   8) A statement that information furnished by the licensee concerning possible rental units may be up to 2 days old;
   9) A statement requiring the licensee to refund all fees paid in connection with the contract if the contract is null and void for any reason. The licensee shall not impose any condition for the refund, and the contract shall state when the refund will be paid.

c) Disclosure. Pursuant to subsection (b)(6), the following written information for each rental unit shall be provided to the person with whom the contract is entered:
   1) The name, address and the telephone number of the owner of each rental unit or the owner's authorized agent;
   2) A description of the rental unit;
   3) The amount of rent requested;
   4) The amount of security deposit required;
   5) A statement describing utilities that are located in the rental unit and included in the rent;
   6) The occupancy date and the term of lease;
   7) A statement setting forth the source of the rental information (i.e., owner, agent);
   8) All other information that may reasonably be expected to be of concern to the prospective tenant.

d) Permission of Owner. A rental finding service shall not list or advertise any rental unit without the express written authority of the owner or agent of each unit.

ILLINOIS REAL ESTATE LICENSE ACT of 2000

The entire Real Estate License Act is consumer protection legislation; however, we will review only those sections that are especially relevant to leasing agents.

Section 10-20. Sponsoring broker; employment agreement.

(a) A licensee may perform activities as a licensee only for his or her sponsoring broker. A licensee must have only one sponsoring broker at any one time.

(b) Every broker who employs licensees or has an independent contractor relationship with a licensee shall have a written employment agreement with each such licensee. The broker having this written employment agreement with the licensee must be that licensee's sponsoring broker.

(c) Every sponsoring broker must have a written employment agreement with each licensee the broker sponsors. The agreement shall address the employment or independent contractor relationship terms, including without limitation supervision, duties, compensation, and termination.

(d) Every sponsoring broker must have a written employment agreement with each licensed personal assistant who assists a licensee sponsored by the sponsoring broker. This requirement applies to all licensed personal assistants whether or not they perform licensed activities in their capacity as a personal assistant. The agreement shall address the employment or independent contractor relationship terms, including without limitation supervision, duties, compensation, and termination.

(e) Notwithstanding the fact that a sponsoring broker has an employment agreement with a licensee, a sponsoring broker may pay compensation directly to a corporation solely owned by that licensee that has been formed for the purpose of receiving compensation earned by the licensee. A corporation formed for the purpose herein stated in this subsection (e) shall not be required to be licensed under this Act so long as the person who is the sole shareholder of the corporation is licensed.

Section 10-27. Disclosure of licensee status.

Each licensee shall disclose, in writing, his or her status as a licensee to all parties in a transaction when the licensee is selling, leasing, or purchasing any interest, direct or indirect, in the real estate that is the subject of the transaction.

Section 10-30. Advertising.

(a) No advertising whether in print, via the Internet or through any other media, shall be fraudulent, deceptive, inherently misleading, or proven to be misleading in practice. Advertising shall be considered misleading or untruthful if, when taken as a whole,

there is a distinct and reasonable possibility that it will be misunderstood or will deceive the ordinary purchaser, seller, lessee, lessor, or owner. Advertising shall contain all information necessary to communicate the information contained therein to the public in an accurate, direct, and readily comprehensible manner.

(b) No blind advertisements may be used by any licensee, in any media, except as provided for in this Section.

(Blind advertising refers to not stating the sponsoring broker or firm name in advertising.)

(c) A licensee shall disclose, in writing, to all parties in a transaction his or her status as a licensee and any and all interest the licensee has or may have in the real estate constituting the subject matter thereof, directly or indirectly, according to the following guidelines:

(1) On broker yard signs or in broker advertisements, no disclosure of ownership is necessary. However, the ownership shall be indicated on any property data form and disclosed to persons responding to any advertisement or any sign. The term "broker owned" or "agent owned" is sufficient disclosure.

(2) A sponsored or inoperative licensee selling or leasing property, owned solely by the sponsored or inoperative licensee, without utilizing brokerage services of their sponsoring broker or any other licensee, may advertise "By Owner". For purposes of this Section, property is "solely owned" by a sponsored or inoperative licensee if he or she (i) has a 100% ownership interest alone, (ii) has ownership as a joint tenant or tenant by the entirety, or (iii) holds a 100% beneficial interest in a land trust. Sponsored or inoperative licensees selling or leasing "By Owner" shall comply with the following if advertising by owner:

(A) On "By Owner" yard signs, the sponsored or inoperative licensee shall indicate "broker owned" or "agent owned." "By Owner" advertisements used in any medium of advertising shall include the term "broker owned" or "agent owned."

(B) If a sponsored or inoperative licensee runs advertisements, for the purpose of purchasing or leasing real estate, he or she shall disclose in the advertisements his or her status as a licensee.

(C) A sponsored or inoperative licensee shall not use the sponsoring broker's name or the sponsoring broker's company name in connection with the sale, lease, or advertisement of the property nor utilize the sponsoring broker's or company's name in connection with the sale, lease, or advertising of the property in a manner likely to create confusion among the public as to whether or not the services of a real estate company are being utilized or whether or not a real estate company has an ownership interest in the property.

(d) A sponsored licensee may not advertise under his or her own name. Advertising in any media shall be under the direct supervision of the sponsoring or managing broker and in the sponsoring broker's business name, which in the case of a franchise shall include the franchise affiliation as well as the name of the individual firm. This provision does not apply under the following circumstances:

(1) When a licensee enters into a brokerage agreement relating to his or her own real estate, or real estate in which he or she has an ownership interest, with another licensed broker; or

(2) When a licensee is selling or leasing his or her own real estate or buying or leasing real estate for himself or herself, after providing the appropriate written disclosure of his or her ownership interest as required in paragraph (2) of subsection (c) of this Section.

(e) No licensee shall list his or her name under the heading or title "Real Estate" in the telephone directory or otherwise advertise in his or her own name to the general public through any medium of advertising as being in the real estate business without listing his or her sponsoring broker's business name.

(f) The sponsoring broker's business name and the name of the licensee must appear in all advertisements, including business cards. Nothing in this Act shall be construed to require specific print size as between the broker's business name and the name of the licensee.

(g) Those individuals licensed as a managing broker and designated with the Department as a managing broker by their sponsoring broker shall identify themselves to the public in advertising as a managing broker. No other individuals holding a managing broker's license may hold themselves out to the public or other licensees as a managing broker.

Section 10-35. Internet and related advertising.

(a) Licensees intending to sell or share consumer information gathered from or through the Internet or other electronic communication media shall disclose that intention to consumers in a timely and readily apparent manner.

(b) A licensee using Internet or other similar electronic advertising media must not:

(1) use a URL or domain name that is deceptive or misleading;

(2) deceptively or without authorization frame another real estate brokerage or multiple listing service website; or

(3) engage in the deceptive use of metatags, keywords or other devices and methods to direct, drive or divert Internet traffic or otherwise mislead consumers.

Section 15-15. Duties of licensees representing clients.

(a) A licensee representing a client shall:

(1) Perform the terms of the brokerage agreement between a broker and the client.

(2) Promote the best interest of the client by:

(A) Seeking a transaction at the price and terms stated in the brokerage agreement or at a price and terms otherwise acceptable to the client.

(B) Timely presenting all offers to and from the client, unless the client has waived this duty.

(C) Disclosing to the client material facts concerning the transaction of which the licensee has actual knowledge, unless that information is confidential information. Material facts do not include the following when located on or related to real estate that is not the subject of the transaction: (i) physical conditions that do not have a substantial adverse effect on the value of the real estate, (ii) fact situations, or (iii) occurrences.

(D) Timely accounting for all money and property received in which the client has, may have, or should have had an interest.

(E) Obeying specific directions of the client that are not otherwise contrary to applicable statutes, ordinances, or rules.

(F) Acting in a manner consistent with promoting the client's best interests as opposed to a licensee's or any other person's self-interest.

(3) Exercise reasonable skill and care in the performance of brokerage services.

(4) Keep confidential all confidential information
received from the client.

(5) Comply with all requirements of this Act and all applicable statutes and regulations, including without limitation fair housing and civil rights statutes.

(b) A licensee representing a client does not breach a duty or obligation to the client by showing alternative properties to prospective buyers or tenants, by showing properties in which the client is interested to other prospective buyers or tenants, or by making or preparing contemporaneous offers or contracts to purchase or lease the same property. However, a licensee shall provide written disclosure to all clients for whom the licensee is preparing or making contemporaneous offers or contracts to purchase or lease the same property and shall refer to another designated agent any client that requests such referral.

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

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

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

Section 15-35. Agency relationship disclosure.

(a) A licensee shall advise a consumer in writing of the following no later than beginning to work as a designated agent on behalf of the consumer:

(1) That a designated agency relationship exists, unless there is written agreement between the sponsoring broker and the consumer providing for a different brokerage relationship.

(2) The name or names of his or her designated agent or agents. The written disclosure can be included in a brokerage agreement or be a separate document, a copy of which is retained by the sponsoring broker for the licensee.

(b) The licensee representing the consumer shall discuss with the consumer the sponsoring broker's compensation and policy with regard to cooperating with brokers who represent other parties in a transaction.

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

SECURITY DEPOSITS

The *security deposit* is money taken from the tenant/lessee at the time the lease is created in order to protect the landlord/lessor in the event that the tenant damages the property and leaves without making repairs or does not pay all the rent due before vacating the premises. Both state and local laws in Illinois regulate security deposits. In Illinois, security deposits are not included in the list of elements necessary for the formation of valid leases; however, all residential leases address the handling of security deposits and the amount of interest accruing on the deposit.

There are two requirements for all security deposits in Illinois. First, a lessor of residential property of five or more units cannot withhold any portion of a security deposit to cover property damage unless an itemized statement of damages is sent to the lessee. The lessees must receive the statement within 30 days after they vacate, and copies of repair receipts must be furnished within 30 days after the statement is delivered. If the statement or receipts are not given, the landlord must return the full security deposit within 45 days of the tenant vacating. If a court finds that the landlord did not comply with these rules, the landlord must pay the tenant double the security deposit due plus all attorney fees.

Second, lessors of residential buildings that have 25 or more units must pay interest on security deposits held longer than six months. The rate must be the same as the interest paid on a minimum deposit passbook savings account of the state’s largest commercial bank with its main banking center in Illinois. This interest can be paid in cash, or credit on the rent, and must be paid unless the lessee is in default. If a court finds a landlord guilty of withholding security deposit interest, the owner must pay the tenant a sum equal to the security deposit plus the tenant’s court costs and all attorney fees.

A real estate licensee acting as property manager must place security deposits in an escrow or trust account.

DRUG HOUSES

The office of the Illinois Attorney General has published the following information:

“Illinois law allows the state to pursue civil action against the owners of drug houses. Under the Controlled Substance and Cannabis Nuisance Act, a nuisance is any place where controlled substances are unlawfully sold, possessed, served, delivered, manufactured, cultivated, given away or used more than once within a period of one year.

“When a drug house is identified, the law requires that authorities send notice of the nuisance to the owner. The owner has 14 days from the date of mailing or seven days from personal service to appear at the state's attorney’s office and arrange to take action to abate the nuisance. If the owner does not comply or fails to appear within the designated time period, the law allows the state to file a civil suit to prevent the owner from using the property for up to a year. The law also allows the state to remove and sell any moveable property and fixtures within the property that contributed to drug activity.”

Landlords are also given the right to post a five-day notice of eviction if their property is being used for unlawful purposes or if a tenant is charged with committing a Class X felony on the premises. Examples of Class X felonies include aggravated criminal sexual assault, armed robbery, and various major drug crimes.

LEAD-BASED PAINT REGULATIONS

The Environmental Protection Agency (EPA) and the Department of Housing and Urban Development (HUD) help to ensure that the public has adequate information to prevent lead-based paint poisoning. Sellers and landlords of housing built before 1978, when lead-based paint was widely used, are required by law to give their respective buyers and tenants a pamphlet explaining the hazards of lead-based paint, as well as practical, low-cost tips to identify and control any problems resulting from the use of lead-based paint.

Lead-Based Paint in Housing

Approximately three-quarters of the nation's housing stock built before 1978 (approximately 64 million dwellings) contain some lead-based paint. When properly maintained and managed, this paint poses little risk. However, 1.7 million children have blood lead levels above safe limits, mostly due to exposure to lead-based paints.

What Does Lead Poisoning Do to Children?

Lead poisoning causes permanent damage to the brain and other organs and may also cause learning and behavioral problems. For example, recent research has linked lead exposure to juvenile delinquency. Lead may also cause abnormal fetal development in pregnant women.

Background

To protect families from exposure to lead in paint and the contaminated dust and soil it generates, Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992. Section 1018 of this law directed the EPA and HUD to require the disclosure of known information on lead-based paint and lead-based paint hazards before the sale or lease of most housing built before 1978.

What Is Required?

Before ratification of a contract for sale or lease:

- Sellers and landlords must disclose known lead-based paint and lead-based paint hazards and provide available reports to buyers or tenants.
- Sellers and landlords must give buyers and renters the EPA/CPSC/HUD pamphlet “Protect Your Family From Lead in Your Home.”
- Home buyers (but not lessees) will get a 10-day period to conduct a lead-based paint inspection or risk assessment at their own expense, if desired. The number of days can be changed by mutual consent.

- If an offer to purchase or lease a property is made before the required disclosures, the owner must make the disclosures before accepting the offer and give the potential buyer or tenant time to amend the offer.

Sales and leasing contracts must include certain language to ensure that disclosure and notification actually take place.

Sellers, lessors, and real estate agents share the responsibility for ensuring compliance.

What the Rule Does Not Require

- No testing, removal or abatement of lead-based paint is required.
- This law does not invalidate leasing and sales contracts.

Which Types of Housing Are Covered?

Most private housing, public housing, federally-owned housing, and housing receiving federal assistance.

Which Kinds of Housing Are Not Covered?

The following kinds of housing are not covered by the law:

- Housing built after 1977.
- Zero-bedroom units, such as efficiencies, lofts, and dormitories.
- Leases for less than I00 days, such as vacation houses or short-term rentals.
- Housing exclusively for the elderly (unless there are children living there).
- Housing for the disabled (unless there are children living there).
- Rental housing that has been inspected by a certified inspector and found to be free of lead-based paint.
- Houses being sold because of foreclosure.

Why Isn't Housing Built After 1977 Included?

Congress chose not to cover post-1977 housing because the Consumer Product Safety Commission banned the use of lead-based paint for residential use in 1978.

What Are Sellers Required to Do?

- Give buyers the pamphlet.
- Give buyers a 10-day opportunity to test for lead, if desired.
- Disclose all known lead-based paint and lead-based paint hazards in the house (and provide buyers with any available reports).
- Include standard warning language as an attachment to the contract.
- Complete and sign statements verifying completion of requirements.
- Retain the signed acknowledgment for three years.

What Should I Do If I Am a Landlord Renting Out a Dwelling?

- Give renters the pamphlet.
- Disclose all known lead-based paint and lead-based paint hazards in the dwelling unit (and provide renters with any available reports).
- Include standard warning language in the lease or as an attachment.
- Complete and sign statements verifying completion of requirements.
- Retain the signed acknowledgment for three years.

Do I Have to Give the Pamphlet to All My Existing Tenants?

No, but the pamphlet must be provided when the lease is renewed, as is the case with new tenants.

What About Non-English Speaking Buyers or Renters?

The disclosure has to be in the same language as the contract.

Do I Have to Check My House for Lead Before I Sell It?

No, but you do have to give buyers a 10-day opportunity to have a test done if desired.

Do I Have to Correct Any Lead Hazards That Are Found?

No. Nothing in the law requires an owner to remove lead paint or correct hazards. The law also does not prevent the two parties from negotiating hazard reduction as a contingency. This will be handled in the same way as any other housing defect.

Agent Responsibilities

Agents must ensure that:

- Sellers and landlords are aware of their obligations.
- Sellers and landlords disclose the proper information to buyers and tenants.
- Sellers give buyers the 10-day opportunity to conduct an inspection (or another mutually agreed-upon period).
- Leases and sales contracts include proper disclosure language and proper signatures.

What Is the Agent's Responsibility If the Seller or Landlord Fails to Comply With the Law?

Agents must comply with the law if the seller or landlord fails to do so. However, the agent is not responsible if an owner conceals information from the agent or fails to disclose the information to the agent.

Do I Have to Get a Lead Test If I'm Buying a House?

No. This law only gives you the right to have one if you want. If you get a test, you must pay for it (or negotiate with the seller as to who will pay for it).

Can the 10-Day Inspection Period Be Waived?

Yes. The buyer and seller can choose any time period they want, as long as it is by mutual consent, or the buyer may waive the 10-day opportunity altogether.

If I Am Renting, Do I Have the Right to Test for Lead?

No. The 10-day inspection period is limited to sales transactions. But nothing in the law prevents the renter from negotiating an inspection or risk assessment with the landlord or lessor before rental.

What Happens If Sellers, Lessors, or Agents Fail to Comply With the Law?

Under the law, they can be sued for triple the amount of damages. They may also be subject to civil and criminal penalties. By clarifying the duties of all parties, this law helps to prevent misunderstandings about responsibilities while making sure that buyers and renters have the information they need to protect themselves and their children.

A sample disclosure form follows. Viewing the form should make the duties of the lessor and the agent clearer.

Sample Disclosure Format for Target Housing Rentals and Leases

Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards

Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not taken care of properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, landlords must disclose the presence of known lead-based paint and lead-based paint hazards in the dwelling. Tenants must also receive a Federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure (initial)

_____ (a) Presence of lead-based paint or lead-based paint hazards (check one below):

☐ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

_____

_____

☐ Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

_____ (b) Records and reports available to the lessor (check one below):

☐ Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

_____

_____

☐ Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)

_____ (c) Lessee has received copies of all information listed above.

_____ (d) Lessee has received the pamphlet *Protect Your Family from Lead in Your Home*.

Agent's Acknowledgment (initial)

_____ (e) Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852(d) and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by the signatory is true and accurate.

Lessor	Date	Lessor	Date
Lessee	Date	Lessee	Date
Agent	Date	Agent	Date

STUDY QUESTIONS
CONSUMER PROTECTION

Answer the following questions “true” or “false”:

1. All rental finding services must be licensed.
2. Rental finding services must enter into contracts only when they find an apartment the consumer wants to rent.
3. Licensees must always disclose the fact that they are licensed when entering into a transaction for themselves.
4. Blind advertising by licensees is prohibited.
5. All landlords must pay interest on security deposits.
6. Once their property is declared a drug house, the law allows landlords to evict tenants.
7. Tenants are required to perform lead-based paint testing before signing a lease.
8. Landlords must provide disclosure regarding lead-based paint when renewing a lease.
9. The use of lead-based paint was prohibited in residential units after 1977.
10. Information about the property’s condition cannot be disclosed without the client’s consent.

(Answers to Study Questions can be found on page 28)

ANSWERS TO STUDY QUESTIONS

FAIR HOUSING

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

CONSUMER PROTECTION

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

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