



Exclusive Brokerage Agreements and Minimum Services A Helpful Compliance Guide for Illinois Real Estate Practitioners

This document examines and explains some of the issues surrounding exclusive brokerage agreements and the minimum services that are required under Articles 15, Section 15-75 of the Illinois Real Estate License Act of 2000 (the Act).

Section 15-75 requires those licensees acting under an exclusive brokerage agreement to provide the statutory “minimum services” for two important reasons. One is for consumer protection. When a client is being represented exclusively, the client should be assured their agent will assist them. The second involves agency when there is an agent representing one party in the transaction, and the other party’s exclusive broker/agent was unreachable, thus leaving the other agent in the untenable position of possible undisclosed dual agency.

Definition of Exclusive Brokerage Agreement

The Act defines an exclusive brokerage agreement as a written agreement pursuant to which the minimum services set forth in Section 15-75 of the Act will be provided by a broker through one or more sponsored licensees as designated agent for the client.

Section 15-75 Required Minimum Services

The sponsoring broker, through its sponsored licensees, must:

- 1) Accept delivery of and present to the client all offers and counteroffers to buy, sell, or lease the client’s property or the property the client seeks to purchase or lease;
- 2) Assist the client in developing, communicating, negotiating, and presenting offers, counteroffers and notices that relate to the offers and counteroffers until a lease or purchase agreement is signed and all contingencies are satisfied or waived; and
- 3) Answer the client’s questions relating to the offers, counteroffers, notices and contingencies.

The essence of agency is assisting the client through the contract negotiation process, until a binding contract is entered into by the parties.

Frequently Asked Questions

What if a licensee does not perform the required minimum services pursuant to an exclusive brokerage agreement?

The licensee could be subject to discipline by the Illinois licensing agency pursuant to the Section 20-20 “Bad Acts” list.

The sponsoring broker’s license and/or the licensee’s license could be subject to discipline ranging from letters of reprimand to suspension or revocation of license and monetary fines.

Are minimum services required if the brokerage agreement is open or non-exclusive?

No. The minimum services apply by definition only to exclusive brokerage agreements.

A broker is free to offer non-exclusive or open brokerage relationships.

May these duties be waived?

As a practical matter, no, because the definition of exclusive brokerage agreement contains the requirement to perform the minimum services. If these minimum services are waived in the brokerage agreement, then by law, the agreement will not be an exclusive one.

Is there a requirement to have the statutory minimum services language in the exclusive brokerage agreement?

Not necessarily. The sponsoring broker should ensure that exclusive brokerage forms contain language describing the minimum duties owed to clients.

If not, the sponsoring broker might (1) add a statement that says the broker, through its designated agents, will perform those services set forth in Section 15-75 of the Act, or (2) add the statutory language to the form verbatim from Section 15-75.

Do the minimum services apply to exclusive brokerage agreements with commercial brokers, builders and developers?

Yes. The Section is business-model neutral and fee-structure neutral.

If an exclusive brokerage agreement is entered with a commercial/builder client, minimum services are required. However, every situation is different and the needs of the client may vary, so actual services provided may differ.

After the sponsoring broker explains the minimum services that are required in an exclusive relationship, the client might elect to enter an open or non-exclusive agreement.

Do the minimum services requirements prohibit disclosed dual agency?

No. If a seller has entered an exclusive brokerage agreement with the sponsoring broker, and seller's designated agent finds a buyer, with proper written disclosure and consent of both clients, the agent could proceed as a disclosed dual agent and satisfy the minimum services requirements.

The role of the designated agent may become limited to one of more a messenger or delivery person conveying information back and forth between the clients, as opposed to counseling clients about the price to offer or accept.

What if there is a listing in the Multiple Listing Service (MLS) that directs the buyer to consult the seller directly?

First, the local MLS is free to make its own individual business decision as to whether it accepts only exclusive brokerage agreements.

If the local MLS does restrict its listings to only exclusive ones, you should assume the listing is exclusive.

The buyer agent might try to contact the listing office to educate the listing broker about the requirements and get the listing agent involved.

If not, then the buyer agent, in serving the buyer client, should contact the seller to schedule a showing. The buyer agent might give the seller a Notice of No Agency Relationship while taking care to act only as a buyer's agent.

Note: This document is provided for informational purposes only and you may need to consult legal counsel for specific and more detailed advice.



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