

**REGULATIONS UNDER ILLINOIS BUSINESS BROKER ACT OF 1995
AMENDED 1-1-01**

SUBPART A: DEFINITIONS

Section 140.50 Scope of the Law (Repealed)

Section 140.51 Definitions of Terms Used in the Act and the Rules

- a) As used in the Act and this Part, unless the context otherwise requires, the term:

"Act or Law" means the Illinois Business Brokers Act of 1995 [815 ILCS 307].

"Advertising" means any circular, disclosure statement, advertisement, or other material or any communication by radio, television, pictures or the transmittal or sending of any communication via the non-proprietary, nonprofit, public computer network (commonly known as the "Internet") or similar means.

"Affiliate" of, or a person "affiliated" with, a specified person means a person who, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

"Applicant" means the person making application for registration.

"Branch Office":

Branch office means any office, residence or other place or location in this State where the business of a registered business broker is conducted and which is owned or controlled by, or operated directly, or indirectly for the benefit of, the registered business broker and where the business of the business broker is conducted by a principal, agent or employee for such registered business broker.

The principal office located in this State of the registered business broker shall not be considered a branch office.

Except as otherwise provided in this Section, each office, residence or other place or location where business is being conducted in this State on behalf of a registered business broker shall be considered a branch office for the registered business broker.

"Date of Filing" means the date that all of the required documents are received by the Securities Department and all the required fees are paid to the Secretary of State. A document shall not be deemed to be filed if any material

information required by the Act or this Part is omitted or the document is illegible.

"Director" means any director of a corporation or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

"Domicile" means, when applied to a business, that entity's principal place of business and, where applicable, that entity's place of incorporation.

"Dominant Element of a Transaction" as used in Section 10-5.15 of the Act means any transaction in which (1) 50% or more of the purchase price or 50% or more of the net asset value of the business being sold is real estate; or (2) real estate is an integral part of the business being sold. The percentage of the transaction made up of the purchase price or net asset value of the real estate shall be based upon the reasonable expectation of the person potentially acting as a business broker and the client at the time the brokerage contract or agreement for services is entered into; or (3) real estate is the single largest part of the transaction.

"Employee" does not include a director, trustee or officer.

"Federal Banking Act of 1933" means the Federal Banking Act of 1933 (12 U.S.C. 227), and the Rules and Regulations thereunder as in effect on January 1, 1996.

"Hearing" means a proceeding conducted by the Securities Department in which the rights, privileges, immunities, duties or obligations of any person or party are required by law to be determined by the Secretary of State only after opportunity for a hearing.

"Insolvency" means the rendering of a business broker financially unable to perform any contractual obligation of its business brokering duties.

"Offer or Offer to Sell" includes every attempt to dispose of a business for value or solicitation of an offer to purchase a business.

"Officer" means the president; any vice president in charge of a principal business unit, division or function; the secretary; the treasurer; any principal financial officer, comptroller or principal accounting officer; any other officer performing a principal policy-making function and any other person performing similar functions with respect to any organization whether incorporated or unincorporated.

"Ongoing Business" means an existing business that, for at least six months prior to the offer, has been operated from a specific, but not necessarily the same, location, has been open for business to the general public and has substantially all of the equipment and supplies necessary to operate the business.

"Principal" means any officer, director, partner, member, trustee or manager who is responsible for the supervision and management of the daily business operations in this State of a business broker required to be registered under the Act.

"Proposed Client" means any person who has executed a disclosure statement which he or she received from a business broker and returned or caused to be returned to the business broker.

"Real Estate" means and includes leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or non-freehold, and whether the real estate is situated in Illinois or elsewhere.

"Rules" refers to all rules adopted by the Secretary of State pursuant to the Act.

"Sale or Sell" means every contract or agreement of sale, contract to sell, or the disposition of a business or interest in a business for value.

"Secretary of State" means the Securities Department of the Office of the Illinois Secretary of State or the Secretary of State or the Securities Director, or his or her designee, as the case may be.

"Section" refers to a Section of this Part unless a reference to the Act is specifically made.

- b) A Section of this Part which defines a term without express reference to the Act or to this Part or to a portion thereof or hereof defines such term for all purposes as used both in the Act and in this Part. Terms defined in the Act and not defined in this Part have the meanings given them in the Act.

SUBPART B: REGISTRATION OF BUSINESS BROKERS

Section 140.100 Procedures for Registration as a Business Broker Under Section 10-10 of the Act

No person shall be registered as a business broker unless such person submits a completed application as set forth in this Section.

- a) Each applicant for registration as a business broker shall file with the Secretary of State Securities Department a completed and current application on Illinois Form BB01 and pay to

the Securities Department all appropriate fees as specified in Section 140.2110 of this Part. The application shall be accompanied by the following:

- 1) A Consent to Service of Process for the applicant on Illinois Form BB10, unless the applicant is a corporation organized or authorized to transact business under the laws of this State;
 - 2) The disclosure document required under Section 10-30(b) of the Act or Section 10-30(b)(1) of the Act and Section 140.302 or 140.303 of this Part (provided however a contract does not need to accompany the disclosure document);
- b) Upon the grant of registration of a business broker, the Securities Department shall issue to the business broker proof of registration as evidence of such registration;
 - c) The application and documents on file with the Securities Department with respect to the business broker shall be amended whenever a change occurs which renders the information contained therein not accurate in any material respect. Such amendment shall be filed with the Securities Department within ten business days after the occurrence of the change; and
 - d) An applicant may request that certain information in its application be kept confidential. The Securities Department shall honor such request if the information is personal in nature or if public access to the information is not reasonably necessary to further the purposes of the Act.

Section 140.120 Procedures for Withdrawal of Pending Application or Termination of Registration as a Business Broker

If a business broker elects to withdraw its pending application prior to registration in this State, or if a registered business broker wishes to terminate its registration in this State, it shall provide written notice to the Securities Department indicating such intent. Any fees paid shall not be returnable in any event.

Section 140.130 Procedure with Respect to Abandoning Incomplete Applications for Registration as a Business Broker

- a) When an incomplete application for registration as a business broker has been on file with the Secretary of State for a period of six months, the Secretary of State may, in his or her discretion, proceed in the following manner to determine whether the application for registration has been abandoned by the applicant.
- b) A notice will be sent to the applicant named in the application for registration, by certified mail, return receipt requested, addressed to the most recent address reflected in the application for registration. The notice will inform the applicant that the application

for registration is incomplete and one of the following must be done within 30 days after the date of the Notice:

- 1) the deficiencies must be corrected and filed; or
 - 2) written intent to complete within a specified period must be filed to comply with the applicable requirements of the Act; or
 - 3) a request must be filed for withdrawal of the pending application.
- c) Should the applicant fail to respond to such notice by filing the information or document necessary to correct the deficiencies or withdrawing the application for registration, the Secretary of State shall enter an order declaring the application for registration abandoned.
- d) When such an order is entered by the Secretary of State:
- 1) the filing, examination and registration fees paid upon the filing of the application for registration will not be returned; and
 - 2) the records of the Secretary of State will be marked to indicate that the application for registration was abandoned and the date of the order.
- e) The applicant may request an administrative hearing in writing within 15 days after receipt of the Order of Abandonment. A request for hearing shall set forth the grounds upon which the applicant petitions for a hearing.

Section 140.200 Procedures for Renewal of Registration as a Business Broker Under Section 10-20 of the Act

- a) If a registered business broker wishes to renew its registration, it shall file with the Securities Department the preprinted Illinois Form BB04 together with the renewal filing and examination fee and branch office fee, if any, as specified in Section 140.2110 of this Part.
- b) Any amendment(s) shall also be filed with the Securities Department within ten business days if any material change occurs in the information that was filed with the Securities Department when the business broker applied for registration.
- c) Any application for renewal of registration of a business broker filed with or fees paid to the Securities Department within 29 days or less prior to the date upon which the registration or renewal would expire shall pay an additional fee set forth in Section 140.2110 of this Part.

- d) Upon receipt of the renewal fees the Securities Department shall issue to the business broker proof of renewal as evidence of such registration.

Section 140.300 When Disclosure Statement Must Be Provided

- a) Except as provided in Section 10-30.5 of the Act, a business broker shall provide a disclosure statement, pursuant to Section 10-30 of the Act, which shall be consistent in all material respects with this Section, to any client or proposed client at least seven days before the earlier of:
 - 1) The time such client or proposed client signs a contract for the services of the business broker; or
 - 2) The time the business broker receives any consideration for the contract.
- b) As used in this Part and in the Act, the term "client" does not include a person who is under no obligation to compensate the business broker under any circumstances.
- c) The Secretary of State recommends that business brokers have each client and proposed client sign and date an acknowledgment of receipt when the disclosure statement is provided to clients and proposed clients.

Section 140.301 Purpose of Disclosure; Substantial Compliance

- a) The Secretary of State has determined that the disclosure statement and waiting period requirements of the Act should be interpreted and enforced so as to further the objective of the Act. That objective is to ensure that clients and proposed clients of business brokers have full disclosure of the material terms in the business broker's contract with the client, have an opportunity to review those terms and, at the client's request, have an attorney review the contract.
- b) Where a business broker has reasonably tried to comply with the provisions of this Part, such broker shall be deemed to have complied with Section 10-30 of the Act if the client or proposed client has been provided with all material information required by this Part and has had a reasonable opportunity to review and consider the information, to review the business broker's contract, and to have the business broker's contract reviewed by an attorney.
- c) The Secretary of State recommends that business brokers have each client or proposed client sign and date an acknowledgment of receipt when the disclosure statement is provided to clients and proposed clients.

Section 140.302 Contents of Disclosure Statement

The disclosure statement shall contain the following information:

- a) Nothing except the following language in at least 10-point boldface capital letters shall appear on the cover page (an example is set forth in Section 140.303):

- 1) DISCLOSURES REQUIRED BY LAW;
 - 2) THE SECRETARY OF STATE HAS NOT REVIEWED AND DOES NOT APPROVE, RECOMMEND, ENDORSE OR SPONSOR ANY BUSINESS BROKERAGE CONTRACT. THE INFORMATION CONTAINED IN THIS DISCLOSURE HAS NOT BEEN VERIFIED BY THE SECRETARY OF STATE; AND
 - 3) IF YOU HAVE ANY QUESTIONS, SEE AN ATTORNEY BEFORE YOU SIGN A CONTRACT OR AGREEMENT.
- b) On the following pages, the information as set forth in Section 10-30(b) of the Act shall be provided including (an example is set forth in Section 140.303):
- 1) The name and form of organization of the business broker, the names under which the business broker has done, is doing, or intends to do business, and the name of any parent organization or affiliate of the broker;
 - 2) The names, addresses and titles of the business broker's officers, directors, trustees, general partners, general managers, principal executives and any other person performing similar duties;
 - 3) A full and detailed description of the actual services that the business broker undertakes to perform for the proposed client; and
 - 4) A specific statement of the circumstances under which the business broker will be entitled to obtain or retain consideration from the party with whom the business broker has entered into a contract.
- c) The information in subsections (b)(3) and (b)(4) of this Section need not be set out on the disclosure statement if the business broker's contract is provided with the disclosure statement.

Section 140.303 Providing the Contract With the Disclosure Statement

- a) Because the purpose of the disclosure statement is to provide full information about the material terms of the business broker's contract with the client, the Secretary of State encourages business brokers to include a copy of the contract with the disclosure statement. When the contract is provided to the client with the disclosure statement, the disclosure statement need not contain either:
- 1) the full and detailed description of the actual services that the business broker undertakes to perform; or

- 2) a specific statement of the circumstances under which the business broker will be entitled to obtain or retain consideration from the party with whom the business broker has entered into a contract.
- b) The following is an example of a cover page which, if prepared as follows and accurate in all material respects, will be deemed to comply with the Act (important: nothing except the following language in at least 10-point boldface capital letters shall appear on the cover page):
- 1) DISCLOSURES REQUIRED BY LAW;
 - 2) THE SECRETARY OF STATE HAS NOT REVIEWED AND DOES NOT APPROVE, RECOMMEND, ENDORSE OR SPONSOR ANY BUSINESS BROKERAGE CONTRACT. THE INFORMATION CONTAINED IN THIS DISCLOSURE HAS NOT BEEN VERIFIED BY THE SECRETARY OF STATE; AND
 - 3) IF YOU HAVE ANY QUESTIONS, SEE AN ATTORNEY BEFORE YOU SIGN A CONTRACT OR AGREEMENT.
- c) The following is an example of page two (this is not a form):

The information regarding the Business Broker's organization, principals, services and fees is being provided in this Disclosure Statement pursuant to the Illinois Business Brokers Act of 1995 [815 ILCS 307/10-30(b)].

THE BUSINESS BROKER CONTRACT (OR FEE AGREEMENT) IS PROVIDED WITH THIS DISCLOSURE STATEMENT AND IS AN INTEGRAL PART OF THIS DISCLOSURE STATEMENT.

READ BOTH THIS DISCLOSURE STATEMENT AND THE CONTRACT OR AGREEMENT CAREFULLY. YOU ARE ENCOURAGED TO HAVE THE CONTRACT OR AGREEMENT REVIEWED BY AN ATTORNEY.

Organization

Organization Name: _____ Type: _____

Business Name (if different): _____

Address: _____

Name(s) under which Business Broker has done business: _____

Parents/Affiliates: _____

List of Business Broker's officers, directors, trustees, general partners, general managers, principal executives and others performing similar duties:

President: _____ Address: _____

Vice President: _____ Address: _____

Principal: _____ Address: _____

Services

The actual services that the Business Broker undertakes to perform are set forth in the Business Broker Contract (or Fee Agreement). Those are the only services that the Business Broker is obligated to provide.

Client's Obligations

The circumstances under which you will be obligated to pay the Business Broker (or the Business Broker will be permitted to retain money you have paid) are set forth in the Business Broker Contract (or Fee Agreement). **READ THE CONTRACT OR AGREEMENT CAREFULLY.**

CLIENT ACKNOWLEDGMENT:

I received this Disclosure Statement and a copy of the Business Broker Contract (or Fee Agreement) on the date set forth below.

Date: _____ Client Signature: _____

Client Name (printed): _____

Section 140.304 Providing the Contract to Client (Repealed)

SUBPART C: PROCEDURES FOR ADMINISTRATIVE HEARINGS

Section 140.400 Hearings

Any hearing required pursuant to the Act or by this Part shall be held pursuant to 14 Illinois Administrative Code 130, Subpart K: Procedures for Administrative Hearings.

SUBPART D: RECORDS

Section 140.750 Records Required of Business Brokers

- a) Each business broker agreement or contract shall be given a unique identifying account number and all instruments or documents relating to that agreement or contract must bear this number. Every business broker registered by the Secretary of State shall keep and maintain for a period of six years from the date of its agreement or contract with the client in the business broker's principal office in this State the following records:
 - 1) A business broker agreement or contract register that consists of a chronological listing of all business broker agreements or contracts that have been entered into. For each business broker agreement or contract the register shall contain the following:
 - A) The account number;
 - B) The date of the agreement or contract;
 - C) The name of the client or proposed client;
 - D) The amount of fees charged, if any; and
 - E) The cost and type of insurance required, if any.
 - 2) A file for each client or proposed client shall contain the following:
 - A) The name, address and telephone number of the client or proposed client;
 - B) A copy of the signed business broker agreement or contract;
 - C) A copy of any other papers or instruments used in connection with the business broker agreement or contract that are signed by the client or proposed client, including a copy of the disclosure document required by Section 10-30 of the Act that contains an acknowledged receipt by the client or proposed client; and

- D) The amount of the business broker's fee that the client has paid; and, if there is an unpaid balance, the status of any collection efforts.

No file need be kept for a buyer client or proposed buyer client where no fee, expense reimbursement, retainer or other charge was incurred and no transaction was consummated.

- 3) All receipts from or for the account of clients or proposed clients and all disbursements to or for the account of clients or proposed clients, recorded so that the transactions are readily identifiable.
- 4) A copy of the following:
 - A) All advertisements, pamphlets, circulars, letters, articles or communications published in any newspaper, magazine, periodical or the transmittal or sending of any communication via the non-proprietary, nonprofit, public computer network (commonly known as the "Internet") which discuss the business broker;
 - B) Scripts of any recording or radio or television announcement which discuss the business broker; and
 - C) Any sales kit or literature used or to be used in solicitation of clients.
- b) Every registered business broker shall preserve during the life of its business organization and of any successor thereto all partnership agreements, certificates or articles and amendments thereto or, in the case of a corporation, all certificates and articles of incorporation or charter or amendments thereto, minute books and stock certificate books.
- c) Every business broker registered by the Secretary of State shall maintain within this State, in an easily accessible place, all records required by this Section or the Act. All records required to be maintained under this Section or the Act must be separate or readily identifiable from the records of any other business that is conducted in the office of the business broker. A written request for a waiver of the provisions of this Section may be made to the Secretary of State to permit any registered business broker to maintain any of the records required by this Section or the Act outside the State of Illinois. In determining whether the provisions of this Section should be waived, the Secretary of State shall consider, without limitation, whether the main office of the business broker is outside the State of Illinois or whether the business broker uses all or some of the bookkeeping facilities of some other business broker whose main office is outside the State of Illinois.

- d) For the purpose of this Section, if advertisements are made through the use of the United States mail or similar means of delivery, or broadcast over radio or television or similar means of broadcast, or transmitted or sent via the Internet then only one representative copy of the advertisement is required to be maintained by the business broker, together with the dates of printing, broadcast or transmission (if known) and the names and addresses of the recipients.

SUBPART E: EXEMPTIONS

Section 140.800 Previous and Ongoing Agreements or Contracts and Transactions Not Affected (Repealed)

Section 140.801 Burden of Proof

In any administrative, civil or criminal proceeding related to the Act, the burden of proving an exemption, an exception from a definition or an exclusion from the Act is upon the person claiming it.

Section 140.802 Exemption for Franchises (Repealed)

Section 140.803 Exemptions from Waiting Period and Disclosure Requirements Pursuant to Section 10-30 of the Act

A business broker shall be entitled to rely upon a statement executed by the client that:

- a) the client is in one of the categories enumerated in Section 10-30.5(a)(1) through (5) of the Act. Illinois Form BB02 may be utilized by the business broker for this purpose; or
- b) the client had an attorney review the business broker's contract with the client. Illinois Form BB03 may be utilized by the business broker for this purpose.

Section 140.804 Exemption for Attorneys (Repealed)

Section 140.805 Exemption for Certified Public Accountants (Repealed)

Section 140.806 Other Persons Exempt from the Act and This Part (Repealed)

Section 140.807 Transactions Exempt from the Act and This Part (Repealed)

Section 140.808 Exemption for Real Estate Brokers and Real Estate Salespersons -- Services Incidental to a Real Estate Brokerage Agreement (Repealed)

Section 140.810 Exemption for Loan Broker Agreements or Contracts from the Business Brokers Act of 1995

A loan broker agreement or contract, made pursuant to and in compliance with the Illinois Loan Brokers Act of 1995 [815 ILCS 175] between a client and a registered loan broker, which contains a promise by, or obligation of, a loan broker to procure or assist in procuring a loan for business financing or the purchase of a business for the client, is exempt from this Act.

SUBPART F: SERVICE OF PROCESS

Section 140.1000 Service of Process upon the Secretary of State

- a) Any process, notice or demand to be served upon the Secretary of State under the Act shall be made by delivering personally to the Securities Director, or any employee of the Securities Department designated by the Securities Director to accept such service on behalf of the Secretary of State, or by sending by registered mail or certified mail, return receipt requested, a copy of the process, notice or demand to the Securities Department. Procedures for service are specified as follows:
 - 1) Service upon any person who has filed a consent to service of process upon the Secretary of State;
 - 2) Service upon any person who, by virtue of acting as a business broker in this State which is neither registered nor covered by an exemption from registration, shall have appointed the Secretary of State as agent for service of process; and
 - 3) Service of a copy of a complaint in a private civil action.
- b) Service of any process, notice or demand under this Section shall be made at the Springfield or Chicago office of the Securities Department during regular business hours as specified in Section 140.2100 of this Part.
- c) At the time of any service upon the Secretary of State there shall be paid a fee in the amount specified in Section 140.2110 of this Part, which shall not be returnable in any event. Each process, notice or demand shall be submitted with a separate payment.
- d) The Securities Department shall keep a record, which shall show the date of service of all the processes, notices and demands received.

SUBPART G: PROCEDURES FOR BUSINESS BROKER LIENS

Section 140.1150 Procedures for Filing a Notice of Lien or Amendment to a Notice of Lien Under Section 10-115 of the Act

- a) A business broker who is filing a notice of lien must file ~~Form BB115, Notice of Lien, Form UCC 1, Financing Statement,~~ with the ~~Illinois Securities Department Uniform Commercial Code Division,~~ together with the filing fee, as specified in ~~Section 140.2110 of this Part~~ by 810 ILCS 5/9-403 through 9-406. The form must contain the following information:
- 1) Name of business broker, ~~and~~ business broker file number and address in the section marked as secured party;
 - 2) Name of purchaser and address labeled "Name of purchaser and address" in the section marked as "debtor" if the lien is against the purchaser, otherwise in the section marked as "secured party";
 - 3) Name of seller and address labeled "Name of seller and address" in the section marked as "debtor" if the lien is against the seller, otherwise in the section marked as "secured party";
 - 4) In the section marked as "this financing statement covers the following types (or items) of property:"
 - A) A legend in bold capital letters stating as follows: "NOTICE OF BUSINESS BROKER LIEN";
 - B) Name of business and address;
 - 5) C) Description of business;
 - 6) D) Total dollar amount claimed; and
 - 7) E) A detailed description of business assets to which the lien applies that reasonably identifies those assets. The description may include, but is not limited to, addresses, legal descriptions, inventory and serial numbers. Failure to describe an asset(s) shall not affect the validity of a lien.
- b) The form shall be signed by the business broker or a person authorized to sign on behalf of the business broker, ~~and verified as to the truth and accuracy of information contained in the notice.~~

- c) A business broker may file an amendment to an existing Notice of Lien by filing ~~Form BB115, together with the Amendment to Notice of Lien fee in the amount specified in Section 140.2110 of this Part~~ Form UCC 3, together with the Amendment to Notice of Lien fee in the amount specified by 810 ILCS 5/9-403 through 9-406.
- d) A Notice of Lien may not be filed by a business broker who is unregistered or whose registration has been denied, suspended or revoked. A Notice of Lien filed by a business broker whose registration currently or subsequently is denied, suspended or revoked is immediately terminated.

Section 140.1152 Procedures to Terminate a Notice of Lien Prior to the Two Year Expiration

- a) A business broker may terminate a Notice of Lien ~~that was filed prior to January 1, 2001 with the Securities Department or after January 1, 2001 with the Uniform Commercial Code Division~~ prior to the two year termination by filing Form BB115-1, Release of Lien with the Illinois Securities Department within ten business days of the occurrence Form UCC 3 with the Uniform Commercial Code Division. ~~If the form is received more than ten business days from the date after the occurrence a late fee in the amount specified in Section 140.2110 of this Part is required.~~ This form must contain the following information:
 - 1) Name of business broker and business broker file number;
 - 2) Name of purchaser;
 - 3) Name of seller;
 - 4) Name of business;
 - 5) Date Notice of Lien was filed with the Illinois Securities Department or Uniform Commercial Code Division; and
 - 6) Reason for release and date of such occurrence.
- b) The form shall be signed by the business broker or a person authorized to sign on the behalf of the business broker, ~~and verified to the truth and accuracy of information contained in the release.~~

SUBPART H: EVIDENTIARY MATTERS AND NON-BINDING STATEMENTS

Section 140.1200 Request for Non-Binding Statements

- a) Required Information and Format.

- 1) All requests for non-binding statements shall be in writing and be accompanied by the fee set forth in Section 140.2110 of this Part. The request shall be filed with the Securities Department and shall contain the following:
 - A) A brief summary of the Sections of the Act and of the Rules to which the request pertains;
 - B) A detailed factual representation concerning every relevant aspect of the proposed transaction, such as the names of affected parties, details regarding the transactions, each claim of exemption, if any, and reasoning in support of each such claim. Requests should be limited to the particular situation, and should not attempt to include every possible type of situation which may arise in the future;
 - C) A discussion of current statutes, rules and legal principles relevant to the facts set forth;
 - D) A statement setting forth the person's own opinion in the matter and the basis for such opinion; and
 - E) A representation that the transaction in question has not been commenced and will not commence for at least 30 days.
 - 2) The Securities Department will not respond to requests for non-binding statements involving the anti-fraud provisions of the Act or the Rules.
 - 3) The Securities Department will not respond to requests for non-binding statements with respect to transactions which have already taken place.
 - 4) The Securities Department will not respond to requests based upon hypothetical facts or involving unnamed parties.
- b) Review procedure. After a review of the relevant facts presented, in light of existing judicial, legislative and administrative history, the Securities Department may issue its finding as to the applicability of the Act to the situation presented in the form of a non-binding statement stating that it will recommend that no enforcement action be initiated against the parties involved if all the facts are true and complete. Facts or conditions different than those presented may require different conclusions and persons other than those requesting the statement should not rely on the statement.
- c) Availability of non-binding statements issued by the Department.
- 1) The Securities Department will maintain a chronological index by statutory Section(s) involving all non-binding statements issued.

- 2) Copies of such statements may be reviewed in the Securities Department's Springfield or Chicago office and copies thereof may be obtained upon payment of the cost of duplication as set forth in Section 140.2110 of this Part.

SUBPART I: PUBLIC INFORMATION

Section 140.1400 Inspection of Business Broker Records

- a) Records of all registered business brokers are available for public inspection during the business hours at the Springfield or Chicago office of the Securities Department of the Secretary of State upon written request.
- b) Each request for information on file with the Securities Department regarding a registered business broker shall be made in writing and delivered to the Springfield or Chicago office of the Securities Department of the Secretary of State. The request may be delivered by United States mail, private courier, hand, facsimile or electronic transmission or any similar type of delivery or transmission.
- c) The request shall include the name, address and telephone number of the person making the request, and a statement setting forth the reason that the person is initiating the request. The Secretary of State or his or her designee shall maintain for six calendar years each written request for disclosure of information.
- d) The Securities Department shall notify each registered business broker in writing within seven calendar days of its receipt after a request for disclosure of information on file.
- e) No information on file with the Securities Department regarding any social security number, contract with a client or any terms of a contract, the name or address of any contracting client or the address or telephone number of any office of the business broker (except the principal office) shall be made available to the public.

Section 140.1401 Non-Public Distribution of Information

Information or documents obtained by employees of the Secretary of State in the course of any examination or investigation pursuant to Section 10-45 of the Act shall, unless made a matter of public record, be deemed confidential. Employees are hereby prohibited from making such confidential information or documents or any other non-public records of the Secretary of State available to anyone other than an employee of the Secretary of State, or other governmental agency, unless the Secretary of State authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest.

SUBPART J: RULES OF GENERAL APPLICATION

Section 140.2100 Business Hours of the Securities Department

- a) The principal office of the Securities Department at Lincoln Tower, 520 South Second Street, Suite 200, Springfield, Illinois 62701, is open each day, except Saturdays, Sundays and holidays, from 8:00 a.m. to 4:30 p.m. Central Standard Time or Central Daylight Savings Time, whichever is currently in effect in Springfield.
- b) An office of the Securities Department at 17 N. State, Suite 1100, Chicago, Illinois 60602 is open each day, except Saturdays, Sundays and holidays, from 8:30 a.m. to 5:00 p.m. Central Standard Time or Central Daylight Savings Time, whichever is currently in effect in Chicago.

Section 140.2101 Computation of Time

The time within which an act under the Act shall be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or holiday as defined or fixed in any statute now or hereafter in force in this State, and then it shall also be excluded. If the day succeeding such Saturday, Sunday or holiday is also a Saturday, Sunday or holiday, then such succeeding day shall also be excluded.

Section 140.2110 Payment of Fees

- a) Fees under the Act are as follows:

Section 10-10 Filing, Examination and Registration Fee	\$200(plus \$50 for each person who is engaged in business brokering on behalf of the business brokerage firm in excess of 2 <u>two</u>)
Branch Office Fee	\$20 (if in excess of 2 branch offices in this State)

Section 10-20	
Renewal Filing and Examination Fee	\$200(plus \$50 for each person who is engaged in business brokering on behalf of the business brokerage firm in excess of two <u>two</u>)
Renewal Branch Office Fee	\$20 (if in excess of 2 branch offices in this State)
Renewal Late Fee	\$100(if the renewal application is filed within 29 days preceding the expiration of the current registration)
Business Broker Fee to report a change in its form of organization or change of its name	\$20
Service of Process (when served upon the Secretary)	\$10
Section 10-50	
Certificate	\$10
Certified Copy of Document	\$10 plus
Each Page Certified	\$.50

Section 10-115 Notice of Lien	\$50 <u>As specified in the Uniform Commercial Code [810 ILCS 5/9-403 through 9-406]</u>
Amendment to Notice of Lien	\$25 <u>As specified in the Uniform Commercial Code [810 ILCS 5/9-403 through 9-406]</u>
Late Notice of Release	\$25 (if filed more than ten business days from the occurrence)
Non-Binding Statement	\$75
Duplication of Documents Each Page Duplicated	\$.50
Additional fee for payment of fee returned to the Securities Department due to insufficient funds or for a similar reason	\$50

- b) All payments of fees, except for payment of administrative fines and Notices of Liens pursuant to Section 10-115 under the Act, as set forth below, shall be made by check, money order, certified check, bank cashier's check, or indicia of forms of electronic transfer of funds payable to the "Secretary of State". No third party check or money order endorsed over to the Secretary of State shall be accepted as payment of any fee. All payments for administrative fines, in excess of \$500, under the Act, except for a person registered under Section 10-10 or 10-20 of the Act, shall be made by money order, certified check or bank cashier's check.
- c) Any person whose payment of fees is returned to the Securities Department due to insufficient funds or for a similar reason shall pay to the Secretary of State the amount of fee owed plus an additional fee as set forth in this Section for each payment returned. This fee shall include the fee required by 5 ILCS 290/10.
- d) The Secretary of State shall require any person to make payment of fees in the form of a money order, certified check, or bank cashier's check if any previous payment of fees

has been returned to the Securities Department due to insufficient funds or for a similar reason.

- e) All payment of fees under the Act, except Notices of Liens under Section 10-115 of the Act, shall be deemed to be filed and the fees paid upon receipt by the Securities Department, provided that the fee paid is not less or more than \$5 ~~five dollars~~ of the amount due.

Section 140.2120 Place of Filing

All applications for registration or exemption from registration and other papers, except Notices of Liens under Section 10-115 of the Act, filed with the Securities Department or the Secretary of State pursuant to the Act shall be filed at Lincoln Tower, Suite 200, 520 South Second Street, Springfield, Illinois 62701 or 17 N. State, Suite 1100, Chicago, Illinois 60601. Such material may be filed by delivery to the Securities Department, through the mail or otherwise.

Section 140.2130 Date of Filing

- a) The date of filing of any document required to be filed, except Notices of Liens under Section 10-115 of the Act, with the Securities Department shall be the date of delivery of the document and any required fee to the Securities Department in Springfield or Chicago, Illinois, as specified in Section 140.2120 of this Part.
- b) A document may not be deemed to be filed with the Secretary of State unless all requirements of the Act and this Part with respect to such filing have been complied with and the required fee has been paid.

Section 140.2140 Requirements as to Proper Form

Any document, except Notices of Liens under Section 10-115 of the Act, filed with the Securities Department pursuant to the Act shall be prepared in accordance with the form, if any, prescribed by the Securities Department. Any such document shall be deemed to be filed on the proper form unless objection to the form is made by the Securities Department.

Section 140.2141 Additional Information

In addition to the information expressly required to be included in an application for registration, the applicant shall include other material information which may be necessary to make the required statements truthful.

Section 140.2142 Additional Exhibits

The applicant may file exhibits in addition to those required by the appropriate form, except Notices of Liens pursuant to Section 10-115 of the Act. The exhibits shall be marked to indicate the subject matters to which they refer.

Section 140.2143 Information Unknown or Not Reasonably Available

Information required need be given only insofar as it is known or reasonably available to the applicant. If any required information is unknown and not reasonably available to the applicant, either due to unreasonable effort or expense, or because it rests within the knowledge of another person not affiliated with the applicant, the information may be omitted, subject to the following conditions:

- a) The applicant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.
- b) The applicant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to the person for the information.

Section 140.2144 Requirements as to Paper, Printing and Language

- a) Application for registration shall be filed on good quality, unglazed, white paper, 8 1/2 by 11 inches in size, insofar as practicable.
- b) The application for registration, and all papers and documents filed as a part thereof, shall be printed, lithographed, mimeographed or typewritten. However, the application or any portion thereof may be prepared by any similar process which, in the opinion of the Secretary of State, produces copies suitable for permanent record. All copies of the material shall be clear, easily readable and suitable for repeated photocopying. Debits in credit categories and credits in debit categories shall be designated to be clearly distinguishable as such on photocopies.
- c) The application for registration shall be in the English language. If any exhibit or other paper or document filed with the application for registration is in a foreign language, it shall be accompanied by a translation into the English language.

Section 140.2145 Number of Copies--Signatures

- a) One copy of the completed application for registration, manually signed by the applicant, including exhibits and all other papers and documents filed as a part of the application, shall be filed with the Secretary of State.
- b) If any name is signed to the application for registration pursuant to a power of attorney, copies of the power of attorney shall be filed with the application for registration. In addition, in the case of a corporate applicant, if the name of any officer signing on behalf of the applicant, or attesting to the applicant's seal, is signed pursuant to a power

of attorney, copies of a resolution of the applicant's board of directors authorizing the signature shall be filed with the application for registration.

Section 140.2190 Provisions for Granting of Variance from Rules

The Secretary of State or his or her designee may grant variances from this Part in individual cases where he or she determines that:

- a) The provision from which the variance is granted is not statutorily mandated;
- b) No party will be injured by granting the variance; and
- c) The Section from which the variance is granted would, in the particular case, be unnecessarily burdensome.