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Real Property

The newsletter of the Illinois State Bar Association's Section on Real Estate Law

Genie in the Bottle: Rule 137 Sanctions

BY DONALD HYUN KIOLBASSA AND EMILY HOLMES

THE GOAL OF BUDDHISM IS TO reach enlightenment or "Nirvana" by letting go of attachment. One form of attachment is anger.

In fact, Buddha says, "Holding onto anger is like grasping a hot coal with the intent of throwing it at someone else; you are the one that gets burned."

When you are wronged, you may be angered. You need to know when to pursue recourse and when to let it go.

For Illinois attorneys, we have Illinois Supreme Court Rules of Professional Conduct to keep us in check from allowing our anger to file meaningless litigation. In the case of *Palmquist v. Livingston*, 2024 Ill. App. Unpub. LEXIS 1302, the appellate court helps us understand the ways Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018) can get you in trouble.

Before we get started, let us have a quick sidebar with a tale from the Middle Eastern Folklore "The Fisherman and the Genie" from *A Thousand and One Nights*. This story teaches us that attacking someone with ego and malicious intent can land you in trouble.

There was once a Fisherman who cast his net and pulled up a sealed bottle. When he opened the bottle a powerful

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Can a Trustee Execute a Warranty Deed?

BY RICHARD F. BALES

Introduction

On occasion, the title company closer will have a closing where a problem arises with the type of deed used to convey the land. The facts will usually be some form of the following:

Example: The attorneys for buyer and seller are at a closing. A trustee of a trust is the owner of the land. The attorney for the buyer is insisting that the trustee execute a general warranty deed. The attorney for the seller objects.

Can a trustee of a trust warrant title?

Discussion

Deeds from trustees (trustee's deeds) are traditionally quit claim deeds and not warranty deeds or special warranty deeds. This has always been the case with a land

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Genie in the Bottle

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Genie emerged. The Genie was so angry for being trapped in the bottle, that he threatened revenge on the Fisherman. The Fisherman, fearful for his life, asked the Genie how such a large powerful spirit could fit in such a little bottle. The Genie, eager to show his power, submerged back into the bottle. The Fisherman then trapped the Genie back into the bottle.

The moral of this story is that ego and anger might cloud your judgment and the revenge you seek might land you in trouble.

Modern application of this theme can be found in *Palmquist v. Livingston*.

The facts are simple and relatable.

Livingston (hereinafter, "Defendant") was a tenant of her landlord, Palmquist (hereinafter, "Plaintiff"). Midway through the Defendant's lease, she decided to buy a residence and break her lease.

At the trial court level, the Plaintiff sued the Defendant for $21,450.39. The Defendant acknowledges the breach, but survived summary judgment to argue over the amount of damages. Specifically, Defendant sought to prove whether Plaintiff took reasonable efforts to mitigate damages.

It is important to note that two months after the Defendant breached, the Plaintiff was presented with another tenant but denied the application. The Plaintiff alleges that the denial was due to financial considerations but ended up eventually renting to someone with a similar background.

Once the trial court decided that an issue of material fact existed in the limited scope of mitigation, the Plaintiff amended his complaint to join the real estate agent (hereinafter "Agent") for tortious interference of a contract and violation of the Real Estate Licensing Act of 2000.

The trial court agreed with the Defendant that the Plaintiff failed to mitigate damages and awarded the Plaintiff $6,050.18. In addition, the trial court granted summary judgment in favor of the Agent for both tortious interference of a contract and violation of the Real Estate Licensing Act of 2000.

The Agent then moved for sanctions against the Plaintiff and his attorney for pursuing claims barred by the statute of limitations, frivolous claims, and counsel was sanctioned numerous times in the past.

The trial court denied sanctions.

The Plaintiff now appeals.

Essentially, there are four issues presented. They are as follows: Mitigation of Damages for Landlord/Tenant Breach, Tortious Interference of a Contract, Violation of the Real Estate Licensing Act of 2000, and 137 Sanctions. Let us discuss each.

- Mitigation of Damages for Landlord/Tenant Breach.

The appellate court affirmed the trial court decision that the Plaintiff failed to mitigate damages. The Defendant does not deny the breach yet questioned the damages.

In the State of Illinois, a landlord has an affirmative statutory duty to mitigate damages. ILCS 5/9-213.1 states that "a landlord or his or her agent shall take reasonable measures to mitigate the damages recoverable against a defaulting lessee." 735 ILCS 5/9-213.1.

The burden of proof lies on the landlord, and if a landlord cannot show that it took reasonable steps to mitigate its damages, the damages that it would otherwise recover are reduced.

The appellate court believed that Plaintiff was offered a "ready, willing, and able" tenant that was prepared to quickly step into the shoes of the Defendant. However, the Plaintiff arbitrarily required the potential tenant to have their son sign as a co-signor.

The appellate court acknowledged the counter argument of "Business Judgment." Everyone should have the ability to exercise independent business judgment in deciding who to do business with. However, the appellate court skated around this counter argument by stating

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that the Plaintiff had the burden of proof at the trial court level to show the reason that denying the tenant was not a bad business decision.

- Tortious Interference of a Contract.

The appellate court affirmed the trial court's decision granting summary judgment in favor of the Agent in the Tortious Interference of a Contract claim by the Plaintiff.

The Plaintiff argued that the real estate agent engaged in the Tortious Interference of a Contract.

In Illinois, *"To support a cause of action for tortious interference with a contractual relationship, a plaintiff must show: (1) that a valid and enforceable contract existed between the plaintiff and another party, (2) that the defendant was aware of that contractual relationship, (3) that the defendant intentionally and unjustifiably induced a breach of the contract, (4) that there was a subsequent breach of the contract by the other party that was caused by the defendant's wrongful conduct, and (5) that the plaintiff suffered damages."*

The appellate court quickly dismissed this claim by stating that the Plaintiff failed to provide any evidence that the Agent induced the Defendant.

The evidence showed that the Defendant wanted to buy a home and sought out the Agent.

- Violation of the Real Estate Licensing Act of 2000.

The appellate court affirmed the trial court's decision granting summary judgment in favor of the Agent in the Violation of the Real Estate Licensing Act of 2000.

The Plaintiff unsuccessfully argued to the trial court that the Agent violated the Real Estate Licensing Act of 2000 by technically failing to keep up corporate maintenance of the LLC of the brokerage. The LLC which held the license was not renewed and involuntarily dissolved. The Plaintiff argued that this was a violation of the Real Estate Licensing Act of 2000 because the Agent technically misrepresented themselves as an agent.

The trial court quickly dismissed this argument as the Plaintiff failed to prove any damages because of this.

The appellate court even more quickly dismissed the Plaintiff's argument agreeing with the trial court that there were no damages.

- 137 Sanctions.

In an absolutely scathing opinion, the appellate court tore into the Plaintiff and their attorney reversing the trial court's decision to deny the Defendant's right to pursue Rule 137 Sanctions against the Plaintiff and his attorney.

Illinois Supreme Court Rule 137 - Signing of Pleadings, Motions and Other Documents-Sanctions states, *"The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation."*

The intent of the rule is to penalize parties that file false or frivolous lawsuits without sufficient legal or factual basis.

It is important to note that the Plaintiff's pleadings on appeal cited no relevant authority for his arguments.

Licensed attorneys must hold themselves to a higher standard of emotional intelligence. Artificial Intelligence is real and legal tech is coming.

The old-school idea of being the "bulldog" is no longer a value proposition in itself. The only reason attorneys in the past could pull that technique off was that they had a monopoly on the "skill" of litigating.

That "skill" is going to be eroded as technology lowers the barrier of entry into law.

We must exercise a high level of emotional intelligence with our clients and each other to ensure that we are actually delivering value.

Law must evolve from adversarial to collaborative, even when opposing parties do not see eye to eye. Life is not binary. We should zealously represent our clients and coach them when it is better to just walk away. If we do not, like the story of the Genie and the Fisherman, our anger and egos might get us trapped in a bottle one day… ■

Can a Trustee Execute a Warranty Deed?

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trustee. Chicago Title Land Trust Company will not warrant the condition of the title. It merely holds legal title for the beneficiary.

Will a trustee of a personal trust warrant title? John Smith as trustee of the John Smith trust, certainly *can* warrant title. But what good is that warranty? Attorneys for purchasers will want warranty deeds so that in the event there is a title problem post-closing, they may be able to seek redress from the seller. But John Smith, individually, is not making any warranties. John Smith, as trustee, is signing the deed, and John Smith, as trustee, may not have any assets after closing.

Does John Smith, as trustee, even legally exist after he executes a deed, if he is conveying the only asset of the trust? Yes, he does, as the trust still exists. John Smith may even want to purchase replacement real estate after the closing, and he may want to take title in this same trust. On the other hand, there may be no assets in the trust after closing, and there may never be any assets in the trust after closing.

The problem of a trustee warranting title is especially acute when the trustee is a successor trustee. Assume that Adam takes title to his home in 2010 as trustee of his personal trust. The trust agreement provides that Adam's only child, Ben, is the successor trustee. Adam dies in January of 2024, and Ben decides to sell the home. The closing is held in June of 2024. Can Ben, as successor trustee, really be expected to warrant title in a general warranty deed to a home that he has owned as trustee for only six months?

In a situation concerning a successor trustee, is a special warranty deed a reasonable compromise? (see 765 ILCS 5/8). With a special warranty deed, the grantor will warrant the condition of title *only for that period that the grantor has owned the land.* Compare a special warranty deed to a general warranty deed (see 765 ILCS 5/9) where the grantor warrants the condition of title "all the way back."

But, the successor trustee may be unwilling to execute even a special warranty deed—and with good reason. The successor trustee may be a third party who may not even live in the property and may have little, if any, connection to the property.

One might think that the form of deed to be executed will ultimately depend on what the real estate contract provides. But, that may not be definitive. See paragraph 16 of the Multi-Board Residential Real Estate Contract 7.0:

> 16. THE DEED: Seller shall convey or cause to be conveyed to Buyer or Buyer's designated grantee good and merchantable title to the Real Estate by recordable Warranty Deed, with release of homestead rights, (or the appropriate deed if title is in trust or in an estate). . .

`The drafters of this contract intended that the "appropriate" deed to be used when title was in a trust would be a trustee's deed. They intended that the "appropriate" deed to be used when title was in an estate would be either an executor's deed, an administrator's deed, or a deed from the heir of a deceased owner. They knew that it was customary in the real estate profession that such deeds be quit claim deeds. Nonetheless, because the *nature* of these "appropriate" deeds is not specified in paragraph 16 of the contract, buyers' attorneys have sometimes insisted that these deeds be warranty deeds and not quit claim deeds.

Perhaps paragraph 16 should be reworded in the next version of this contract. For example, see the italicized words below:

> 16. THE DEED: Seller shall convey or cause to be conveyed to Buyer or Buyer's designated grantee good and merchantable title to the Real Estate by recordable Warranty Deed, with release of homestead rights, (or *the appropriate quit claim deed* if title is in trust or in an estate). . .

Finally, see paragraph 9 (Prorations) and paragraph 22 (Seller Representations) of the 7.0 contract. These paragraphs indicate that if title to a residence were in trust, and the trust beneficiary executed the 7.0 contract, but the trustee executed the trustee's deed, the representations made in paragraph 9 and paragraph 22 would survive the closing and not merge with the deed.

Conclusion

A trustee of an institutional land trust will never execute a warranty deed. A trustee of a personal trust *can* execute a warranty deed, but the benefits of such a deed seem to be questionable. The attorney for the purchaser may want a general warranty deed to preserve a cause of action against the grantor in the event there is a breach of a warranty. However, the attorney for the purchaser should instead be able to take some comfort from the fact that his or her client will have the protection of the title policy.

Can the attorney for the seller take any comfort in this situation? Possibly. If the seller, as a trustee, has to execute a warranty deed, the attorney for the seller should tell the client to keep the title policy that the seller received when the seller originally purchased the property now being sold. Normally, title policy coverage ceases when the Insured conveys the land. (See below.) But, title policy coverage will continue in favor of the Insured if the Insured conveys the land with a warranty deed and the Insured is later sued by the grantee for a breach of one of the warranties. See Condition 2.c. of the 2021 owner's policy:

> 2. CONTINUATION OF COVERAGE
> This policy continues as of the Date of Policy in favor of an Insured, so long as the Insured:
> a. retains an estate or interest in the Land;
> b. owns an obligation secured by a purchase money Mortgage given by a purchaser from the Insured; or
> c. has liability for warranties given by the Insured in any transfer or

conveyance of the Insured's Title. Except as provided in Condition 2, this policy terminates and ceases to have any further force or effect after the Insured conveys the Title. This policy does not continue in force or effect in favor of any person or entity that is not the Insured and acquires the Title or an obligation secured by a purchase money Mortgage given to the Insured.

Naturally, the title company will not defend against a breach of a warranty resulting from the acts of the seller/trustee. See Exclusion 3.a. of the 2021 title policy:

> The following matters are excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:
>
> 3. Any defect, lien, encumbrance, adverse claim, or other matter:
>
> a. created, suffered, assumed, or agreed to by the Insured Claimant;

Acknowledgments

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Review of Agency (And No Agency) Under the Illinois Real Estate License Act

BY VICTORIA MUNSON

THERE HAS BEEN MUCH DISCUSSION recently concerning when a real estate agent would be 'working with' a buyer thus requiring a written buyer brokerage agreement under the National Association of REALTORS® (NAR) nationwide settlement of the *Sitzer/Burnett* case in the Western District of Missouri (420 F. Supp. 3d 903 (W.D. Mo. 2019)).

However, we need to recognize that in Illinois, real estate licensees operate under the presumption of designated agency. As stated in the Illinois Real Estate License Act, at 225 ILCS 454 (hereinafter "Act"), a licensee is presumed to be the agent of the client with whom they are working. This is set forth in Section 15-10 of the Act: "Licensees shall be considered to be representing the consumer they are working with as a designated agent for the consumer unless there is a written agreement between the sponsoring broker and the consumer providing that there is a different relationship." In the simplest terms, if a licensee is working with a buyer, they are considered the buyer's agent, and if working with a seller, a seller's agent. The only way around this presumption is to have a written agreement. Therein lies the danger, which will be discussed more fully below.

Before that, it is important to cover other common scenarios. One is where an agent represents a seller and there is an unrepresented buyer. The agent who represents the seller will treat that buyer as a customer providing that buyer with the required notice of no agency. This notice is required by Section 15-35(c) of the Act: "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." This notice informs the opposite party that the agent represents the other side of the deal and does not represent them. The agent of the seller, for example, owes only a duty of honesty to the buyer/customer. In addition, the seller's agent would have a duty to disclose any physical defects in the property of which the agent has actual knowledge.

On the other hand, an agent might represent the buyer who is trying to purchase a "For-Sale-By-Owner" or "FSBO" seller. On these facts, the buyer's agent must give the unrepresented seller notice of no agency. This is true even if the buyer's agent and the seller reach an agreement for the seller to pay the buyer brokerage firm in exchange for bringing a successful buyer to the closing table.

Another scenario is where the agent may serve in the limited capacity of disclosed dual agent, where they would then represent both a buyer and a seller. In this case, the agent's role is limited and requires the informed written consent of both the seller and the buyer. The agent owes both clients the statutory (fiduciary-like) duty of confidentiality[1] and becomes more of a messenger and data provider to both sides than a counselor to any one side.

It is very important to note there is no specific provision in the Act that allows a licensee to assist opposing parties to a transaction as a "non-agent," "facilitator" or "transactional agent." When treating an unrepresented party as a customer and giving notice of no agency, the agent represents one party but, as part of fulfilling their agency duties to that party, may assist the unrepresented party or customer with certain limited clerical functions. However, this assistance is not an agency for the unrepresented party but is performed by the agent to assist the agent's client.

Any attempt to draft an agreement which purports to contract away any agency duties to both parties in a transaction presents some dangerous possibilities. First, neither party could get any professional market advice from the agent who does not represent the seller or the buyer. Next, there is a definite chance that, where the seller and buyer make their deal (for better or worse without market advice), asking the agent "to do the paperwork," including writing a purchase contract, puts the agent in the untenable and illegal position of practicing law without the proper license. (This is more likely in geographic areas where parties do not routinely use attorneys in their residential real estate transactions).

So, in Illinois, licensees will be representing one party or the other in a transaction as their designated agent. If the other party opts against having their own representation, the licensee could treat the unrepresented party as a customer, or act as a disclosed dual agent and represent both parties in a permitted but substantially limited role. Agents should be strongly cautioned about attempting to disclaim their agency duties, especially when there is no corresponding facilitator-type role existing under the Act. Most importantly, how will that consumer interpret the role of an agent who denies the duties that would be essential to the consumer in the real estate transaction?

There is no sub-agency in Illinois,[2] which means since the presumption of designated agency arrived in 1995, agents working with buyers were subagents for the seller. Thus, buyers had no representation at all. It was "buyer beware." The ability for a buyer to have their own agent has proven over time to be good for consumers, has encouraged better deal making and is more intuitive for

consumers. In other words, it just makes sense that a person's agent represents them and not their opponent.

In conclusion, while the real estate brokerage practice undergoes some changes in the wake of the NAR settlement, under the Act, these guiding principles remain:

- Under the presumption of designated agency, the agent represents the party with whom they are working as their "legal" agent for brokerage services.
- The agent owes their client fiduciary-like, statutory duties.[3]
- There is no subagency, non-agent, transactional agent or facilitator capacity provided for under the Act.
- An agent will represent one party or the other and could treat the other party as a customer by providing notice of no agency to that customer, owing only a duty of honesty.
- An agent could, if done correctly, serve in the messenger type role of a disclosed dual agent with informed consent from both parties. This substantially limits the role of the agent but preserves the duty of confidentiality owed to both sides.
- The danger of a "written agreement otherwise" attempting to deny any duties to anyone, is where a court could default to common law fiduciary duties owed to a consumer when and if they suffer economic harm when working with their "non-agent."

NOTE: As of August 17, 2024, REALTORS® have been implementing the practice changes to show they have been made in good faith and to encourage final approval of the settlement. The settlement was preliminarily approved on April 23, 2024, and the hearing for final court approval is scheduled for November 26, 2024, in the Western District of Missouri, with a final order to be issued sometime after that date. Also, the agency v. non-agency concepts presented in this article are not dependent on the practice changes and present the current status of the Act. ■

1. 225 ILCS 454/15-45
2. 225 ILCS 454/15-55
3. 225 ILCS 454/15-15

Legislation Update

BY PAUL PETERSON

THE ARTICLE *General Assembly Bills Reviewed by the ISBA Real Estate Law Section Council* in the October 2023 newsletter noted several bills introduced into the 103rd General Assembly and reviewed by the Real Estate Law Section Council that had become Public Acts. Below are additional bills of the 103rd General Assembly submitted to the Real Estate Law Section Council for review that are now Public Acts. The bulk of the Public Acts are effective 1/1/2025. The Section Council reviewed over 200 bills plus amendments. This summary is intended to be a notice of changes in defined areas. Those wishing to see a full copy of the public act can go to www.ilga.gov and click on "Public Acts" under Legislation & Laws, to select the full text of the public act. Other public acts may be added after the veto session of the legislature after the November election.

Both the legislature and the RELSC had extended discussions on HB 5371 (Human Rights) and SB 2919 (Mortgage Foreclosure Procedure). Numerous members opposed SB 2740 (Condos – Accessible Parking), SB 2834 (Mobile Home, Eviction), and SB 2935 (Mobile Home Right Refusal). While not submitted to the Real Estate Law Section Council, you may also want to note SB 3421, Power of Attorney Honoring Forms now PA 103-0994 effective 1/1/2025, which sets forth a certification of the validity of the Power of Attorney for Property to be executed by an attorney.

HB 4206 & HA#1 – LANDLORD/TENANT-ADDITIONAL FEEPA 103-0809 effective for leases executed after 1/1/2025

If the landlord requires payment through a portal that collects a fee, the tenant can pay by check or cash.

HB 4251 -- ELECTRONIC WILLS-SCOPE

PA 103-0666 effective 1/1/2025

Amends the Electronic Nontestamentary Estate Planning Documents Article of the Electronic Wills and Remote Witnesses Act. Provides that the Article does not apply to a nontestamentary estate planning document, will, or terms of a trust if the terms governing the document expressly preclude use of an electronic record or electronic signature.

HB 4261 Aging-Ombudsman Program

PA 103-0811 effective 8/9/2024

Provides for a report from the Illinois Rental Housing Support Program Finding Allocation Task Force and other groups making recommendations to the General Assembly.

HB 4467 & HA#1 & HA#2– MOBILE HOME PARK-LICENSING

PA 103-0819 effective 1/1/2025

Modifies provisions relating to mobile home parks.

HB 4768 & SA#1– LANDLORD RETALIATION ACT

PA 103-0831 effective 1/1/2025

Provides that the tenant may file an action seeking a recovery of an amount equal to and not more than two months' rent or two times the damages sustained by the tenant, whichever is greater, and reasonable attorneys' fees if the landlord retaliates against the tenant. Deletes punitive damages as a remedy for the tenant for a violation of this Act.

HB 4921 & SA#1– HOME EQUITY ASSURANCE-LOANS

PA 103-0737 effective 1/1/2025

Establishes a Low Interest Home Improvement Loan Program.

HB 4926 – LANDLORD-TENANT CREDIT REPORT

PA 103-0840 effective 1/1/2025

Prohibits a landlord from charging a prospective tenant an application screening fee if the prospective tenant provides a reusable tenant screening report that meets defined criteria.

HB 5296 & HA #1 – DNR-MONARCH ACT

PA 103-0840 effective 1/1/25

Provides that an association shall not prohibit any resident or owner from planting or growing Illinois native species on the resident's or owner's lawn, with certain requirements.

HB 5357 – INSURANCE CODE-HOMEOWNER'S INSURANCE-SEWER

PA 103-0858 effective 1/1/2025

Requires disclosure whether the homeowner's insurance policy covers damage from a sewer backup or overflow from a sump pump and, if not, allows the insured to purchase such coverage.

HB 5371 & HA#1 & HA#2 & SA# 1– HUMAN RIGHTS-VARIOUS

PA 103-0859 effective 8/9/2024 with some parts 1/1/2025

Numerous changes to the Freedom of Information Act and the Illinois Human Rights Act. Expands civil rights violation in a real estate transaction. Provides for separate penalties for each civil rights violation under the Act.

HB 5502 & HA#1– REAL ESTATE-FLIPPING

PA 103-0719 effective 1/1/2025

Provides that in a sale of a condominium unit by a unit owner, no condominium association may exercise any right of refusal, option to purchase, or right to disapprove the sale: (i) on the basis that the purchaser's financing is guaranteed by the Federal Housing Administration; or (ii) for a discriminatory or otherwise unlawful purpose.

SB 201 FORECLOSURE-SEAL FILE-COVID19

PA 103-0061 effective June 9, 2023

Provides instead that the court may seal the file, upon motion of a mortgagor, of any foreclosure action filed during the COVID-19 emergency and economic recovery period if the action is not subject to the moratoria enacted by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Department of Veterans Affairs.

SB 691 & SA #1 – LOCAL GOVERNMENT-TECH

PA 103-0754 effective 1/1/2025

Amends the Counties Code relative to regional planning commissions.

SB 1817 Human Rights – Real Estate

PA 103-0232 effective 1/1/2024

Provides that it is a civil rights violation for an owner or any other person, or for a real estate broker or salesperson, because of unlawful discrimination, familial status, immigration status, source of income, or an arrest record to refuse to engage in a real estate transaction with a person.

SB 2601 & SA 1 – LANDLORD/TENANT-FLOOD DISCLOSE

PA 103-0754 effective 1/1/2025

Requires disclosure to a tenant if the property is in a FEMA Special Flood Hazard Area or if the property has been flooded within the last 10 years. Exempts farmland and DNR property.

SB 2740 & HA#1 – CONDOS-ACCESSIBLE PARKING

PA 103-0916 effective 1/1/2025

Provides that the developer and the board of managers of a condominium must adopt a policy to reasonably accommodate a unit owner who is a person with a disability, including reasonable parking. Calls for a policy from the board within 90 days of the effective date of the Act.

SB 2834 & SA#1 – MOBILE HOME-EVICTION

PA 103-0630 effective 1/1/2025

Prohibits a park from evicting a tenant on the grounds of non-payment of rent if the park has not applied for its license or its license renewal and failed to submit all fees due and payable under the Mobile Home Park Act.

SB 2919 & SA#1 & SA#2– JUDICIAL FORECLOSURE PROCEDURE

PA 103-0930 effective 1/1/2025

Amends the Mortgage Foreclosure Article of the Code of Civil Procedure. Allows a judge, sheriff, or other person to conduct a judicial foreclosure sale online in accordance with the Article. Allows the person conducting the sale to engage a third party online sale provider to assist with performance of the online sale and charge an additional fee as a reasonable expense of the sale for costs associated with conducting the sale online.

SB 2935 – MOBILE HOME-RIGHT REFUSAL

PA 103-0766 effective 1/1/2025

Requires a mobile home park owner to provide written notice to the officers of the homeowners' association if the park is offered for sale including in the notice the price and terms and conditions of the sale. Provides that the mobile homeowners, through their association, have the right to purchase the park if the association meets the terms of the contract within 60 days of the notice.

SB 3297 – HOUSING IS RECOVERY-18

PA 103-0970 effective 1/1/2025

Provides conditions to an individual to receive a Housing is Recovery bridge rental subsidy for purposes of stabilizing the individual's mental illness or substance use disorder.

SB 3351 – HOUSING-FAMILY WITH DISABILITIES

PA 103-0981 effective 1/1/2025

Provides that an elderly parent with an adult child with disabilities of the opposite sex shall not be required to occupy subsidized housing with only one bedroom.

SB 3420 & SA#1– UNFAIR SERVICE AGREEMENTS

PA 103-0993 effective 8/9/2024

Creates the Prohibition of Unfair Service Agreements Act. Provides for the characteristics of unfair service agreements and sets forth exceptions to the Act. Provides that if a service agreement is unfair under the Act, it is unenforceable and shall not create a contractual obligation.

SA#1 Synopsis As Amended - Provides that no person shall knowingly record or knowingly cause to be recorded (rather than record or cause to be recorded) an unfair service agreement or a notice or memorandum of the unfair service agreement. Removes provision concerning criminal penalties.

SB 3550 & SA #1 – DIVISION OF FINANCIAL INSTITUTIONS-VARIOUS

PA 103-1024 effective 8/9/2024

Provides allowed duties of the Division of Financial Institutions

SB 3551 & SA#1 & SA#2– SHARED APPRECIATION AGREEMENTS

PA 103-1015 effective 1/1/2025

Amends the Residential Mortgage License Act of 1987. Provides that, prior to taking any legally binding action on a shared appreciation agreement, the borrower or borrowers shall be provided specified counseling regardless of the county in which the property is located.

SB 3652 DOMESTIC VIOLENCE-REMEDIES

PA 103-1031 effective 1/1/2026

Requires a form advising tenants who have suffered domestic violence or sexual violence of the rights that provide protection in their ability to have safe housing. Requires landlords to attach a copy of the summary as the first page of any written residential lease entered into with a tenant.

SB 3679 & SA #1 – BUSINESS IMPROVEMENT DISTRICTS

PA 103-0646 effective 7/1/2024

Provides for the establishment of business improvement districts by a municipality. Provides for charges on property owners whose real properties are located within the business improvement district.

SB 3687 & SA #1 – CREDIT UNIONS-EXAMINATION FEES

PA 103-1034 effective 8/9/2024

Provides that the aggregate of all fees collected from credit unions pursuant to the Illinois Community Reinvestment Act shall be paid promptly after they are received, accompanied by a detailed statement thereof. Provides for use of those funds by the state.

SB 3740 – REAL ESTATE LICENSING-VARIOUS

PA 103-1039 effective 8/9/2024 as to part and 1/1/2025 as to remainder

Provides that for licensure as a managing broker, the person must personally take and pass a written examination after prescribed education. Provides for reciprocal licenses with other states. ■

Paul Peterson is the chair of the Legislative Subcommittee for the ISBA Real Estate Section Council.