

## Indiana's Commercial Real Estate License Portability Rules

Prior to the change in the Indiana statute in mid-2004, out-of-state commercial real estate brokers and salespeople were not allowed to earn commissions on real estate transactions in Indiana. Without an Indiana license, an out-of-state commercial real estate practitioner was limited to earning only referral fees. Indiana has since changed its commercial real estate license portability rules under its Real Estate Broker and Salesperson Licensing Act ("Act", found under Indiana Code Section 25-34.1) which has greatly expanded out-of-state real estate practitioners' opportunities in Indiana. Indiana now allows out-of-state commercial practitioners to perform acts with respect to Indiana commercial real estate, which would otherwise require an Indiana license, without an Indiana license. Out-of-state commercial real estate practitioners must, however, strictly follow the requirements established in the Indiana statute.

The rules for commercial and residential real estate practitioners differ and this article only addresses the requirements for commercial real estate practitioners. Additionally, the requirements for out-of-state real estate practitioners to conduct business in Indiana differ for brokers and salespeople. The requirements for each will be discussed below.

### Out-of-State Commercial Brokers

For an out-of-state commercial broker to perform acts with respect to Indiana commercial real estate without an Indiana license (when a license would be required for a resident commercial broker) for a fee, commission, or other valuable consideration, or in expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration, the out-of-state commercial broker must do all of the following:

- (1) Work in cooperation with a broker who holds a valid Indiana license (hereafter "Indiana Broker" refers to an Indiana-licensed broker with whom the out-of-state commercial broker works);
- (2) Enter into a written agreement with the Indiana Broker that includes the terms of cooperation and compensation and a statement that the out-of-state commercial broker and the broker's agents will comply with Indiana law;
- (3) Furnish the Indiana Broker with a copy of the out-of-state commercial broker's current certificate of good standing or other proof of a license in good standing from a jurisdiction where the out-of-state commercial broker maintains a valid real estate license;
- (4) File an irrevocable written consent with the Indiana Real Estate Commission ("Commission") that legal actions arising out of the conduct of the out-of-state commercial broker or the broker's agents may be commenced against the out-of-state commercial broker in a court with jurisdiction in a county in Indiana in which the cause of action accrues – this consent can be waived if certain conditions are met;
- (5) Advertise in compliance with state law and include the name of the Indiana Broker in all advertising;
- (6) Deposit all escrow funds, security deposits, and other money received by either the out-of-state commercial broker or the Indiana Broker in a trust account maintained by the Indiana Broker; and
- (7) Give to the Indiana Broker all documentation required above and records and documents related to any Indiana transactions with the Indiana Broker.

The Indiana Broker must retain the documentation that is provided by the out-of-state commercial broker as required by the Act and documents related to a transaction for at least five (5) years. This documentation need not be submitted to the Commission, but it is advisable to make sure the statute is followed and the documentation is retained in case of an inquiry by the Commission.

#### *Out-of-State Commercial Salespeople*

For an out-of-state commercial salesperson to perform acts with respect to commercial real estate in Indiana without a license (when a license would be required for a resident commercial real estate salesperson), the out-of-state commercial salesperson must do all of the following:

- (1) Be licensed with and work under the direct supervision of an out-of-state commercial broker who has complied with all the requirements required of an out-of-state commercial broker to conduct transaction in Indiana (this seems to imply that an out-of-state commercial salesperson must be paired with an out-of-state commercial broker that has complied with the rules discussed above for an out-of-state commercial broker to conduct business in Indiana);
- (2) Provide the Indiana Broker with a copy of the out-of-state commercial salesperson's current certificate of good standing or other proof of a license in good standing from the jurisdiction where the out-of-state commercial salesperson maintains a valid real estate license in connection with the out-of-state commercial broker; and
- (3) Collect money, including commissions, deposits, payments, rentals or escrow funds only in the name of and with the consent of the out-of-state commercial broker under whom the out of state commercial salesperson is licensed; and
- (4) File with the Commission a written consent that any action arising out of the conduct of the out-of-state commercial salesperson's business in Indiana may be commenced in any Indiana county in which the cause of action accrues. This consent may be waived if certain conditions are met. This consent must also provide that service of process may be made upon the Commission, as agent for the out-of-state commercial salesperson, and that service in accordance with the Indiana Rules of Trial Procedure subjects the out-of-state commercial salesperson to the jurisdiction of the courts of that county.

Many out-of-state commercial real estate practitioners now know that they can conduct real estate transactions in Indiana, but do not realize they must work with an Indiana broker to do so. Whether the out-of-state practitioner is listing an Indiana property or representing an interested buyer, he or she must work in cooperation with an Indiana broker and follow the statute.

The Indiana Attorney General's Office investigates violations of the statute and refers potential violations to the Commission. The Commission is charged with providing any alleged violator with a hearing as well as enforcing violations of the statute. It is a Class B infraction to violate these rules or associate with any person and allow such person to violate these rules. The minimum fine for a violation of the statute is any fee or other compensation received in the transaction and, in most cases, an additional fine will be imposed. Since Indiana cannot revoke an out-of-state license for violations of its statute, out-of-state commercial practitioners face fines which will be, at a minimum, any fees or commission earned in Indiana, in addition to being prohibited from conducting future transactions in Indiana.

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