

**SPLITTING FEES WITH UNLICENSED PERSONS PROHIBITED – FINDER’S FEES,  
DONATING TO CHARITIES**

The Real Estate License Law prohibits Idaho licensees from “splitting fees” with unlicensed persons. This prohibition means that a licensee may not pay any part of his commission, fee or other compensation to any individual or entity that does not have an active real estate license.

**Paying Finder’s Fees.**

The Commission routinely receives calls asking whether a licensee is permitted to pay or reward an unlicensed person for the referral of customers. Under Idaho law, the answer is “no.” The law specifies that paying or offering to pay a “finder’s fee” or referral fee to an unlicensed person is considered fee splitting and is prohibited. Moreover, any person who engages in “procuring of prospects” is required to hold an active real estate license; an unlicensed person who engages in this activity is in violation of the law’s licensing requirement.

If there is an “intent” by the licensee to compensate the unlicensed person for referring customers, or the unlicensed person *expects* to be compensated for referring customers (either buyers or sellers), then one or both parties may be in violation of the License Law: the licensee for fee-splitting; and the unlicensed person for unlicensed practice.

Note: Presentation of a relatively inexpensive “gift” to an unlicensed person in a gesture of gratitude is not prohibited if the “gift” has not been promised to (and is not expected by) the unlicensed person.

**Making Charitable Donations.**

The Idaho Real Estate Commission often receives calls from licensees asking whether the law permits them to donate a portion of their sales commissions to charity, and whether they may advertise their charitable giving to the public. IREC is not against charitable efforts, but IREC is concerned that a licensee’s charitable-giving program does not violate the law’s fee-splitting prohibitions, or that its advertisement not mislead the public.

It is the Commission’s position that a licensee may, consistent with the license law, advertise that he or she will donate a portion of earned commissions to charity, even a specific charity, provided the following conditions are met:

1. The designated broker is made aware in advance, and condones this activity.
2. The receiving charity does not act or participate in any manner that could be considered the procuring of prospects, or in any other activities that would require a license.
3. The licensee must exercise reasonable care to ensure that any charity advertised is a bona fide nonprofit.

4. All advertising of any charitable giving arrangement must clearly disclose the terms under which the donation will be made, and must otherwise comply with all laws regarding advertising.
5. The donation must be made at the brokerage or individual level, after closing. The donation is not permitted to be made from the escrow process.
6. A full written disclosure must be made to all principals, lien holders, and new mortgage underwriters if one of the parties or licensees controls or benefits from the charity involved.

An arrangement whereby a charity makes referrals to a licensee in anticipation of a contribution is not permissible. Making referrals is considered the procuring of prospects and constitutes unlicensed practice by the charity. Paying for such referrals constitutes illegal fee splitting by the licensee.

In considering whether an advertised charitable giving program violates the license law, the Commission will assess the following factors:

- Does the charity only receive a contribution if they provided one of the principals?
- Do only charities that provide principals receive contributions?
- Does the charity advertise an affiliation with a specific brokerage that contributes to it?

Licensees are also cautioned to keep abreast of HUD laws regarding discriminatory practices. This falls under Federal jurisdiction, and IREC does not enforce these laws. Conviction by HUD could lead to a disciplinary action by the Commission.

## **IDAHO REAL ESTATE LICENSE LAW**

### **54-2054. Compensation, Commissions and Fees - Prohibited Conduct.**

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(2) Fee-splitting with unlicensed persons prohibited. Unless otherwise allowed by statute or rule, a real estate broker, associate broker or salesperson licensed in the state of Idaho shall not pay any part or share of a commission, fee or compensation received in the licensee's capacity as such in a regulated real estate transaction to any person who is not actively licensed as a real estate broker in Idaho or in another state or jurisdiction.

(3) Finder's fees prohibited. Any offer of monetary value, by an Idaho licensee, to any person who is not licensed in Idaho or any state or jurisdiction, made for the purpose of inducing such unlicensed person to secure prospects to buy, sell, option, or otherwise dispose of an interest in real property shall be considered to be splitting fees with an unlicensed person, and is prohibited.

### **54-2002. Licensure Required.**

No person shall engage in the business or act in the capacity of real estate broker or real estate salesperson in this state without an active Idaho real estate license therefore. Unless exempted from this chapter, any single act described within the definitions of "real estate broker" or "real estate salesperson" shall be sufficient to constitute "engaging in the business" within the meaning of this chapter. Any person who engages in the business or acts in the capacity of real estate broker or salesperson in this state, with or without an Idaho real estate license, has thereby submitted to the jurisdiction of the state of Idaho and to the administrative jurisdiction of the Idaho real estate commission, and shall be subject to all penalties and remedies available under Idaho law for any violation of this chapter.

**54-2004. Definitions.**

As used in this chapter:

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(33) "Real estate broker" means and includes:

- (a) Any person other than a real estate salesperson, who, directly or indirectly, while acting for another, for compensation or a promise or an expectation thereof, engages in any of the following: sells, lists, buys, or negotiates, or offers to sell, list, buy or negotiate the purchase, sale, option or exchange of real estate or any interest therein or business opportunity or interest therein for others;
- (b) Any actively licensed broker while, directly or indirectly, acting on the broker's own behalf;
- (c) Any person who represents to the public that the person is engaged in any of the above activities;
- (d) ***Any person who directly or indirectly engages in, directs, or takes any part in the procuring of prospects***, or in the negotiating or closing of any transaction which does or is calculated to result in any of the acts above set forth;
- (e) A dealer in options as defined in this section.